



DEPARTMENT OF MERCANTILE LAW

Evaluating the practice of child labour in Lesotho and identifying  
strategies to provide for better protection

By

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## **Declaration**

I, Nthatsi E. Metsing, hereby declare that the work contained in this thesis is my own original work and has not previously in its entirety or in part been submitted at any other university for a degree.

## Acknowledgments

Thank you Heavenly Father for the grace to undertake and complete this task. Indeed, those who trust in the Lord are never put to shame.

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## Abstract

The overwhelming prevalence of child labour globally continues to be a matter of concern. Millions of children below the age of eighteen years are found engaging in exploitative and life-threatening economic activities, leaving them susceptible to human rights violations and ultimately death. The African continent accounts for a greater number of child labourers, calling therefore for an immediate action against child labour, particularly the worst forms of child labour. As a result of harsh and appalling social, economic, political and cultural realities evident within the continent, child labour remains inevitable for many African countries including the Kingdom of Lesotho. In an attempt to help their economically ailing families, children engage in labour activities as either sole providers or contributors to the little household income. Resultantly, a vast majority of children are found working within hazardous and unregulated informal sectors; comprising of street vendors, domestic workers, working on farms and caring for livestock to state but the least. Due to lack of official regulation of the informal sector, children are then exposed to abuse, exploitation and violation with little to no protection.

In response to the incidences of child labour, several treaties and conventions aimed at protecting the rights of children and ultimately eradicating child labour have been adopted by both international and regional communities. These include the Convention on the Rights of the Child, International Labour Organisation Conventions on child labour, the United Nations Sustainable Development Goals (SDGs) target 8.7, which prohibits and seek to eliminate child labour by 2025, the African Charter on Human and People's Rights as well as the African Charter on the Rights and Welfare of the Child among others. The endorsement and domestication of these treaties have been evident in many African countries including the Kingdom of Lesotho through the enactment of laws and adoption of policies aimed at promoting the rights of children and protecting children against harmful practices such as child labour. While there have been evident and positive progress in terms of the ratification of treaties and conventions that address the issues of child labour globally, the Kingdom of Lesotho included, child labour practices continues to be a challenge for Lesotho. The study identified that these could be attributed to the lack of implementation and enforcement of both adopted international conventions and enacted domestic laws in Lesotho, therefore a matter of concern. Moreover, failure to conform to international human rights treaties aimed at promoting and protecting the rights of children by the Kingdom of Lesotho has resulted in

failure to protect children, particularly those involved in child labour. Furthermore, the evident inconsistencies and ambiguities in the definition of child labour, conception of work, childhood and adulthood, posed a major challenge in understanding the severity of the practice of child labour and its effects on children. Child labour should also be considered a security issue, calling therefore for an immediate action.

It is however crucial to note that, while the Kingdom of Lesotho continues to grapple with the plight of child labour, a number of African countries have made great progress in responding to child labour and bringing about a reduction in its prevalence. This includes the Republic of South Africa, the Republic of Tanzania and the Kingdom of Morocco among others. Cognisant of these advancements, the study critically evaluated practices of child labour in these countries and the responses thereto as means to identify good practices to be emulated by the Kingdom of Lesotho. These good practices will help provide strategies that will ensure better protection for children involved in child labour and ultimately end the practice of child labour in the near future.

## **Key Words**

Child labour

Child work

Causes of child labour

International, regional and national responses

Enforcement

Implementation

Protection

Children's rights

Human rights

## **Abbreviations**

ACHPR - African Charter on Human and Peoples' Rights

ACPF - African Child Policy Forum

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

APEC - Action Programme on the Elimination of Child Labour

ATE - Association of Tanzania Employers

BCEA - Basic Conditions of Employment Act

CDG - Care Dependency Grant

CGP - National Child Grant Programme

CGPU - Child and Gender Protection Unit

CHHs - Child Headed Households

CINDI - Children in Distress Network

CLPA - Child Labour Programme of Action

CNDH - The National Council for Human Rights

COSATU - South African Congress of Trade Unions

CPWA - Children's Protection and Welfare Act

CRC - Convention on the Rights of Children

CSG - Child Support Grant

CSOs - Civil Society Organisations



DCPT - National Coordinating Committee and District Child Protection Teams

DRC - Democratic Republic of Congo

ELS - SADC Employment and Labour Sector

FCG - Foster Child Grant

FGM - Female Genital Mutilation

FTTSA - Fair Trade in Tourism South Africa

GDP - Gross Domestic Product

HIV/ AIDS – Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome

ICESCR - International Covenant on Economic, Social and Cultural Rights

ILO - International Labour Organisation

ILO C138 – Minimum Age Convention, 1973

ILO C182 – Worst Forms of Child Labour Convention, 1999

IPEC – International Programme on the Elimination of Child Labour

ITV - Independent Television

LMPS - Lesotho Mounted Police Service

MAC - Minimum Age Convention

MKUKUTA - National Strategy for Growth and Reduction of Poverty

NAP - National Action Plan for the elimination of child labour

NGOs - Non-governmental organisations

NOCC - National Orphans and Vulnerable Children's Coordinating Committee

NPA - National Prosecuting Authority

NPAC - The National Programme of Action for Children in South Africa

NPOVC - National Policy on Orphaned and Vulnerable Children

NSCAN - The National Strategy on Child Abuse and Neglect

NSDP - National Strategic Development Plan

OAU - Organisation of African Unity

OTTU - Organization of Tanzania Trade Unions

OVC - National Orphans and Vulnerable children

PPIPEM - Integrated Public Policy on the Protection of Children in Morocco

RSA/ SA – The Republic of South Africa

SAA - The South Africa's Social Assistance Act

SADC - Southern African Development Community

SAFTU - South African federation of Trade Unions

SASSA - South Africa Social Security Agency

SAYP - Survey of Activities of Young People

SGDs - Sustainable Development Goals

SOS - Save the Children

StatsSA - Statistic South Africa

STDs - Sexually Transmitted Diseases

TB – Tuberculosis

TBP - National Time-Bound Programme

TECL programme – The Programme Towards the Elimination of the worst forms of labour

TFTU - Tanzania Federation of Trade Unions

UDHR - Universal Declarations of Human Rights

UN - United Nations

UNDP - United Nations Development Programme

UNESCO - United Nations Education, Scientific and Cultural Organization

UNICEF – United Nations Children’s Fund

UNSAID – The Joint United Nations Programme on HIV/AIDS

WFCL - Convention on the Worst Forms of Child Labour

MAD – Moroccan Dirham

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# CHAPTER ONE - INTRODUCTION

## 1. Background and problem statement

Child labour is still a major problem in the 21<sup>st</sup> century. While child labour remains a global concern,<sup>1</sup> its frightening intensification and high prevalence continues to be a major problem faced by many African countries particularly poor and underdeveloped nations. According to UNICEF, Sub-Saharan Africa has the highest prevalence of child workers worldwide, with 29% of children between the ages of 5-17 years involved in the economic sector.<sup>2</sup> This has been attributed to the social and political circumstances evident in Africa such as poverty, conflicts, inequality as well as the struggling economy to mention but a few. As such, one can argue that there is a high risk of children being involved in child labour within the continent, particularly within the informal sector of the economy.<sup>3</sup> According to Fox and Gaal, informal sector refers to the sector of economy that employs individuals in small to medium scale economic activities.<sup>4</sup> This includes self-employment or working within the households or family businesses.<sup>5</sup> Often, businesses or firms operating as well as work done within the informal sector unlike in the formal sector do not require skills. Businesses are usually not registered and therefore not subject to labour laws and regulations applicable to the formal sector.<sup>6</sup> A range of services provided in the informal sector include selling on the streets, agricultural services, domestic work and repairs as mining to mention but the least.<sup>7</sup> It has been revealed that at least 70 percent of people in the Sub-Saharan are employed within the informal sector, making this sector a crucial feature in the African economy.<sup>8</sup> Furthermore, it

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1 Buck (2014) International Child Law Third Edition. 227. Buck contends that, although the incidences of child labour seem to be rampant within the African continent, there is also evidence of such practices within developed and technologically advanced states such as the United States

2 Unicef data 2019. According to the report at least one in four children is found partaking in work deemed detrimental to their health. Available at: <https://data.unicef.org/topic/child-protection/child-labour/> (accessed 08 January 2020).

3 *Ibid.*

4 Fox, L & Gaal, M. S. (2008) Working out of Poverty: Job creation and the quality of growth in Africa. The World Bank Report. Available at: <http://documents.worldbank.org/curated/en/316891468212385709/working-out-of-poverty-job-creation-and-the-quality-of-growth-in-Africa> (Accessed 7 March 2020). See also the official definition of the informal sector adopted by the Fifteenth International Conference of Labor Statisticians in January 1993. See also Ruffer and Knight (2007), who details the characteristics of the informal sector to “include ease of entry, reliance on indigenous resources, family operations of business, small scale of production, labor intensive and adapted technology, skills acquired outside school, and the bypassing of regulations”

5 *Ibid.*

6 *Ibid.*

7 *Ibid.*

8 Adams, A. V., Johnson de Silva, S & Razmara, S. (2013). Improving skills development in the informal sector: strategies for Sub-Saharan Africa. The World Bank Report.

argued that the evident growth of the informal sector within the Sub-Saharan region has not only attracted a significant portion of women but also lured a great number of children alike. Children employed in the informal sector are often tasked to participate in work that is harmful thus exposing them to all sorts of abuse and exploitation. Most children are often found working as domestic workers, street vendors, herd boys, taxi conductors, farmers and mechanics.<sup>9</sup> In addition to this, in some countries like the Democratic Republic of Congo (DRC), children are found working in hazardous mining industries.<sup>10</sup> Majority of these children work very long hours with dangerous equipment and chemicals under harsh climatic and exploitative conditions; and frequently experience violence at the hands of employers.<sup>11</sup>

Although Bass<sup>12</sup> asserts that child labour is not at all bad but rather a blessing in the midst of not so many opportunities to help feed or provide for the households,<sup>13</sup> children find themselves working within environments that often subjects them to harsh labour practices with little to no protection as stated above. Often the work done by these children are hazardous and negatively affect the children's physical, mental and social development. Additionally, work often interferes with the children's educational prospects and is usually harmful to their health.<sup>14</sup> As such, it is evident that child labour is both a breach of children's rights and a violation of their basic human rights.<sup>15</sup> Cognisant of the negative effects of child labour particularly on children and on the rights of children, interventions by international organisations including the International Labour Organisation (ILO), the United Nations (UN), the African Union (AU) have been evident. Through the organisations efforts in drafting and ratifying of treaties, conventions and covenants aimed at promoting and protecting the rights of children, a significant decline in child labour practices particularly the worst forms of child labour globally was recorded.<sup>16</sup> However, despite evident decline of child labour in other regions, the prevalence of child labour within the African region remains

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<sup>9</sup> Fox, L & Gaal, M. S. (2008) See also Kimane (2006) on the forms of child labour practices in Lesotho.

<sup>10</sup> News 24: Amnesty warns companies on child labour in DRC cobalt mining. Available at: <https://www.news24.com/Africa/News/amnesty-warns-companies-on-child-labour-in-drc-cobalt-mining-20171116>. (accessed 18 October 2017).

<sup>11</sup> Unicef: Child protection from violence, exploitation and abuse 'child labour' Available at: [http://www.unicef.org/protection/57929\\_child\\_labour.html](http://www.unicef.org/protection/57929_child_labour.html) (Accessed 9 March 2020).

<sup>12</sup> Bass (2004:3).

<sup>13</sup> *Ibid.*

<sup>14</sup> Bass (2004:7).

<sup>15</sup> Cullen (2007:43) Chapter 3. Child Labour and The Sexual and Criminal Exploitation of Children in The Role of International Law in the Elimination of Child Labour.

<sup>16</sup> International Labour organisation (2013). Making Progress against child labour: Global estimates and trends 2002-2012. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_221513.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_221513.pdf) (Accessed 04 April 2018) viii.

high.<sup>17</sup> At least 72 million children in Africa are involved in child labour.<sup>18</sup> For instance, between 2012 and 2016, the African continent has witnessed a rise in child labour despite numerous policies implemented by governments to fight against and eradicate child labour.<sup>19</sup> While children constitute the greater number of the population, they remain one of the most vulnerable groups within the society susceptible to child labour.<sup>20</sup> Child labour therefore continues to be a matter of concern within the African continent.

As in many African countries within the Sub-Saharan region, the use of child labour in Lesotho is still prevalent. The recent years have witnessed an alarming increase in the practice of child labour and its effects thereof.<sup>21</sup> In Lesotho a number of children have been found working as herd boys, domestic workers, street vendors and taxi conductors as well as in agricultural activities to state but a few.<sup>22</sup> Cognisant of the effects of child labour practices, recognising the vulnerability of children and violations children are subjected to; the Kingdom of Lesotho sought to protect children against these harmful practices and ultimately put an end to such practices.<sup>23</sup> According to Letuka,<sup>24</sup> Lesotho ratified a number of international treaties and enacted domestic law aimed at addressing children's rights and concerns relating to issues of child labour. These include the Convention on the Rights of Children (CRC), International Labour Organisation Conventions 138 and 182, the African Charter on the Rights and the Welfare of the Child and the United Nations Sustainable Development Goals, particularly target 8.7 as well as the Children's Protection and Welfare Act respectively.

Characterised by a dualist legal system, the Kingdom of Lesotho comprises of a modern "democratic parliamentary government" on one hand, and a traditional (customary) system on the other.<sup>25</sup> The dualist legal tradition allows for the incorporation of international law into

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<sup>17</sup> Global Estimates of Child Labour (2017): Results and Trends, 2012-2016. International Labour Report. Available at: [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575499.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf) (Accessed 04 April 2018) 12.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> International Labour Organisation: A future Without Child labour: Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work 2002 Available at [www.ilo.org/product/download](http://www.ilo.org/product/download) (accessed 23 November 2017).

<sup>21</sup> Kimane, I. (2006) Protecting the rights of working children in Lesotho through legislation: Presented at the RECLISA Southern African Regional child labour conference available at: [www.ilo.org/ipeinfo/product/download.do?type=document&id](http://www.ilo.org/ipeinfo/product/download.do?type=document&id) (accessed 10 March 2016).

<sup>22</sup> *Ibid.*

<sup>23</sup> Letuka, P. (1998) Chapter 10: The Best Interest of the Child and Child labour in Lesotho in 'Law, culture, tradition and children's rights in eastern and southern Africa edited by Ncube, W. 206.

<sup>24</sup> Letuka (1998: 203).

<sup>25</sup> Quinlan, T & Wallis, M (2003:145) 'Local governance in Lesotho: The central role of chiefs' in PS Reddy & DI Ray *Grassroots governance? Chiefs in Africa and the Afro-Caribbean.*

domestic law.<sup>26</sup> That said, the Kingdom of Lesotho undertakes to domesticate international laws. It is however important to state that although the international and common law exist in parallel, the challenge lies with customary law as it is to an extent in contradiction with both the common and international law, particularly in relation to legislation on child labour. As a result, these contradictions make it difficult to implement and enforce both international and domestic laws against child labour. While it is permissible under customary law for children to engage in work such as herding livestock, farming and domestic work among others, this is not the case under both international and Lesotho's national laws.<sup>27</sup> Such work usually takes place in private businesses or family units where there is no official regulation and is said to 'constitute worst forms of child labour.'<sup>28</sup> As a result, the engagement of children in such work exposes them to human rights violations and abuse without protection.<sup>29</sup>

Although child labour is permitted under customary law, the Children's Protection and Welfare Act (CPWA) of Lesotho under section 230 provides for the protection of children against work detrimental and exploitative.<sup>30</sup> Furthermore, the Act states that such work is punishable by law. It is however worth noting that although the Act does not make a distinction between the informal or formal sector, it prohibits employment of children in exploitative and hazardous child labour practices. This includes herding of animals, trafficking, commercial sex work and work where dangerous equipment is utilised to state but a few.<sup>31</sup> As stated above, these forms of labour practices are found within the unregulated informal sector. The lack of regulation in this sector, has resulted in insufficient enforcement and implementation of the Act as well as international laws, thus making it difficult to hold employers of children accountable. Consequently children continue to fall victim to harmful and dangerous child labour practices which deprives them of education, health, childhood and development. Though the Children's Protection and Welfare Act of 2011<sup>32</sup> and the 1992 Labour Code Order<sup>33</sup> of Lesotho prohibits the employment of children below the ages of 15 and 18 years in hazardous work, stating that employment of children below the stipulated ages is unlawful, children from the ages of as little as 5 to 14 years old in Lesotho have been

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<sup>26</sup> Viljoen, F (2007: 21) *International Human Rights Law in Africa*.

<sup>27</sup> Lesotho: Moderate advancement. The 2018 findings on the worst forms of child labour. Available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/lesotho> (accessed 09 January 2020).

<sup>28</sup> The author's emphasis.

<sup>29</sup> Kimane, I 'Protecting the rights of working children in Lesotho through Legislation' Available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.697.4416&rep=rep1&type=pdf> (Accessed 28 November 2017).

<sup>30</sup> Part III Article section 226 (226-230) of The Children's Protection and Welfare Act no. 7 of 2011 of the Lesotho.

<sup>31</sup> Sec 226 & Sec 230 of the The children's Protection and Welfare Act No. 7 of 2011 of Lesotho.

<sup>32</sup> The Children's Protection and Welfare Act no. 7 of 2011.

<sup>33</sup> The Children's Protection and Welfare Act no. 7 of 2011 of the Lesotho, see also the Lesotho labour Code Order 1992.

found engaging in labour activities.<sup>34</sup> While it is evident that child labour practices infringe on the rights of the children enshrined in both domestic and international legislation, it should be concluded that the practice is definitely not in the best interest of the child.<sup>35</sup> Therefore instead of regarding child labour as nothing short of a cultural practice and process of socialisation aimed at grooming and developing children to be better men and women in the future<sup>36</sup> or fulfilling duties and responsibilities as expected by the family<sup>37</sup>, child labour should be recognised as a harmful practice that needs to be eradicated. Furthermore, considering child labour as an acceptable cultural practice hinders the effective implementation and enforcement of both international and state laws against child labour practices in Lesotho resulting therefore in the escalation of child labour practices and violation of children's rights without protection. While it is evident that child labour remains both an integral and crucial part of our lives today due to many other factors including the alarming rise in socio-economic conditions, influx of child headed households, inadequate legal and social protection as well as lack of differentiation between child labour and child work among others, children currently involved in harmful labour activities should be protected.

Although child labour continues to persist in Lesotho, it is crucial to note that there has been a considerable decline in the prevalence of child labour in some countries within the African region including the Republic of Tanzania, the Kingdom of Morocco and the Republic of South Africa to mention but a few.<sup>38</sup> According to the Hague report, these countries have experienced a significant decrease in child labour practices through effective implementation of both international and national legislation as well as adoption of national policies aimed at eradicating child labour.<sup>39</sup> The strategies adopted by these countries have proved to be positive and worth being emulated by the Kingdom of Lesotho in order to help provide better protection for children involved in child labour and ultimately put an end to the practice. It is

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<sup>34</sup> Kimane, (2006).

<sup>35</sup> Lesotho 's Children's Protection and Welfare Act of 2007, the Convention on the Rights of Children and African Charter on the Rights and Welfare of the Child documents to mention a few. These documents advocate for the promotion and protection of the rights of children against any practice deemed detrimental to the wellbeing of the child. See also ILO's report: A joint PRO 169 and IPEC Initiative on the Guidelines for combating Child Labour among Indigenous and Tribal People available at: [http://pro169.org/res/materials/en/child\\_labour/Guidelines%20for%20combating%20Child%20Labour%20among%20indigenous%20and%20tribal%20peoples.pdf](http://pro169.org/res/materials/en/child_labour/Guidelines%20for%20combating%20Child%20Labour%20among%20indigenous%20and%20tribal%20peoples.pdf) ( accessed 06 February 2017).

<sup>36</sup> Letuka, P. (1998) Chapter 10: The Best Interest of the Child and Child labour in Lesotho in 'Law, culture, tradition and children's rights in eastern and southern Africa edited by Ncube, W. 206.

<sup>37</sup> *Ibid.*

<sup>38</sup> The Hague Global Child Labour Conference 2010 – Towards a world without Child Labour, Mapping the Road to 2016 - Conference Report (2010), Available at: [www.ilo.org/ipcc/Informationresources/WCMS\\_146399](http://www.ilo.org/ipcc/Informationresources/WCMS_146399) (Accessed 10 March 2017).

<sup>39</sup> The Hague Global Child Labour Conference 2010 – Towards a world without Child Labour, Mapping the Road to 2016 - Conference Report (2010), 12 -13

therefore crucial to identify and adopt measures that will help protect children against harmful child labour practices within the informal sector in Lesotho.

### **1.1 Objectives of the Study**

The overall objective of the research is to evaluate the practice of child labour in Lesotho and identify ways to provide better protection for children involved in child labour. The research establishes whether domestic legislation and policies adopted contribute to curbing child labour particularly the worst forms of child labour particularly within the informal sector. Additionally, the research seeks to identify other objectives including:

- Identifying causes or reasons for child labour.
- Determining the extent to which child labour violates the rights of children.
- Critically examining existing national laws and policies on child labour in Lesotho and identifying gaps thereof.
- Investigating the implementation and enforcement of international law and policies aimed at eradicating child labour by the Kingdom of Lesotho.
- Identifying the positive strategies that have been implemented by the Republic of South Africa, the Republic of Tanzania and the Kingdom of Morocco that helped achieve the reduction in child labour.
- Based on the strategies identified, the study recommends that Lesotho emulates these positive strategies by the above countries as means to reduce, regulate and ultimately abolish child labour in Lesotho.

### **1.2 Research question(s)**

Cognisant of the inadequate implementation and enforcement of national and international laws aimed at prohibiting child labour and protecting the rights of children, this thesis undertakes to critically evaluate the practice of child labour within the informal sector in Lesotho by critically examining the Children's Welfare and Protection's Act of Lesotho and its response to child labour.

Does Children's Welfare and Protection's Act of Lesotho adequately address the plight of child labour? Does the Act provide measures to be considered and enforced in an order to protect children against child labour, reduce the practice and ultimately eradicate it?

Sub-questions:

- How does child labour affect and violate the rights of children?
- How has the Kingdom of Lesotho responded to the scourge of child labour?
- What measures have been implemented to curb the practice of child labour?
- Has Lesotho implemented and enforced international and domestic legislation on protecting children's rights sufficiently, particularly those involved in child labour?
- Have the recommendations, initiatives and policies by international organisations such as ILO, UNICEF, IPEC aimed at abolishing child labour been effectively implemented by the Kingdom of Lesotho?

### **1.3 Methodology**

The herein proposed study adopts a desktop research. Information will be collected through the process of reviewing important literature that delves on child labour and the rights of the child. The study will consist of both primary and secondary sources. Primary sources include the Constitution of Lesotho and South Africa, Tanzania and Morocco, Conventions on the rights of the child, for instance the CRC, ILO conventions, newspaper, legislation, reports and relevant information from SADC. Primary sources express first-hand information concerning the investigated study. This therefore permits one to understand the depth of the problem at hand. The secondary sources that will be examined include reviews, online articles, books and journal reports relevant to the study. Secondary sources shed light on the past by giving an interpretation and analysis of the primary sources. It is significant to consider both sources of information as they form the core basis of analysis and help understand discussions that the research paper aims to unpack. Upon the collection of relevant data, data analysis approach will follow. Data analysis helps to gain more understanding and knowledge about the study. Resultantly, information gathered can be used to draw conclusion and help bring about solutions to the problem at hand. This study will employ different data analysis methods. These include the descriptive, comparative and analytic approaches.



The descriptive method is used in investigating incidents of child labour and defining the key concepts in the study. In addition, this approach helps understand the devastating effects of child labour. An analytic method will be utilised to help understand the depth of the problem at hand and help make recommendations and solutions to the problems the study addresses. Finally, the study will make use of the comparative analysis approach. Given the wide scope of child labour, the study will focus mainly on comparisons between selected African countries namely South Africa, Tanzania and lastly Morocco concerning their positive approaches to child labour. South Africa adopted child labour plan of action aimed at addressing the root cause of child labour which is poverty, Tanzania on the other hand, adopted a Time-Based Program that helped reduce child labour through several approaches from both national and local levels. Morocco prioritised the harmonisation of international law thus adopting a national plan, as well as establishing national level bodies whose fundamental aim was on addressing child labour as stated by The Hague Global Child Labour Conference 2010 report.<sup>40</sup> These approaches have resulted in noticeable advancements in addressing child labour. The study will also look at how these countries have responded to child labour by examining their application and implementation of international legislation. This will help reach informed solutions and provide recommendations that will help the Kingdom of Lesotho in addressing the problem of child labour.

#### **1.4 Motivation of study**

The concept of child labour is not new and issues around it have not been of great concern until recent times. Interest to do away with it within the global and in Lesotho has been evident. The increasing number of unprotected children involved in child labour and lack of formal regulation of this practice serves as the motivation for the study. The Children's Protection and Welfare Act of 2011 was implemented in line with international human rights law aimed at protecting children against any activity harmful to them as well as the promotion of the rights of the children in all aspects of life. While the Act under section 226 addresses child labour, prohibiting the employment of children in harmful economic activities, the increase in the number of children involved in the hazardous economic activity

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<sup>40</sup> The Hague Global Child Labour Conference 2010 – Towards a world without Child Labour, Mapping the Road to 2016 - Conference Report (2010), Available at: [www.ilo.org/ipec/Informationresources/WCMS\\_146399](http://www.ilo.org/ipec/Informationresources/WCMS_146399) (Accessed 10 March 2017)12 -13.

is evidence that the provisions of the Act are not only violated, but that the Act is not sufficiently implemented and enforced to accomplish its mandate which is to protect children. The intense prevalence of child labour in the Sub-Saharan region including Lesotho is of concern to scholars and policy makers. It is therefore crucial to ensure that laws aimed at protecting children against child labour are effectively implemented. Moreover, strategies and policies that will help regulate and end child labour should be adopted. The need for scholarship on the subject cannot be stressed enough.

### 1.5 Literature review

D'Avolio states that in the past, child labour was considered good for both the family and the society.<sup>41</sup> Work done by children was understood as a part of culture and a passage in which children's moral values were developed and cultivated.<sup>42</sup> In colonial America, it was believed that children were a better choice for employment within the unskilled labour sector.<sup>43</sup> It was (and still is) cheaper to hire children. A lot of employers argue that they can rely on children because they are efficient and unlikely to strike.<sup>44</sup> D'Avolio rightfully asserts that because of the poor and undesirable economic conditions and in an attempt to escape these conditions, many parents in developing states like Lesotho force children to work in order to provide for the basic needs of the family.<sup>45</sup> This act of compulsion should be seen as a violation of children's rights as it places children into a state of vulnerability. However, Edmonds argues that based on the economic standpoint, child labour is merely a response to the labour supply and demand therefore cannot be regarded as a human rights concern.<sup>46</sup> This assertion by Edmonds is not entirely true. Child labour is in fact a human rights concern, hence the adoption of legislation aimed at addressing the practice of child labour and the need to protect the rights of children involved in this practice.

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<sup>41</sup> D'Avolio, M. Child Labor and Cultural Relativism: From 19<sup>th</sup> Century America to 21<sup>st</sup> Century Nepal Pace International Law Review, Issue 1 Vol 16 Article 14 2004 115.

<sup>42</sup> D'Avolio (2004: 115).

<sup>43</sup> D'Avolio (2004: 116).

<sup>44</sup> D'Avolio (2004: 116).

<sup>45</sup> As above. See also Bonnet, M 'Child labour in Africa International Labour Review, Vol. 132 No. 3 1993 375.

<sup>46</sup> Edmonds E V 'Defining child labour: A review of the definitions of child labour in policy research' International Labour Office, International Programme on the Elimination of Child Labour (IPEC) - Geneva: ILO, 2009 available at: [www.ilo.org/ipecinfo/product/download.do?type=document&id...](http://www.ilo.org/ipecinfo/product/download.do?type=document&id...) (accessed 14 March 2016).

According to Kimane,<sup>47</sup> child labour is work that is unsafe and harmful to children. It is often practised within the informal sector of the economy.<sup>48</sup> Within this sector, there is less to no legal regulation. In Lesotho, labour practices found in the informal sector comprise of farming, herding of livestock, quarrying, commercial sexual work, selling on the street and domestic work among others. Children engaging in the above mentioned forms of labour are often exposed to harm. In fact, children are prone to sexual abuse, economic exploitation and are exposed to harsh working and environmental conditions.<sup>49</sup> According to Edmonds, child labour is also defined by many as work that puts constraints on children's time,<sup>50</sup> robbing them of time to enjoy their childhood, depriving them of privileges to be in school and denying them moral, social and psychological development.<sup>51</sup> Therefore, based on the above elucidations, it is imperative to conclude that, child labour bears detrimental consequences and violates the fundamental rights of the child and therefore not in the best interest of the child. Cognisant of the high prevalence of child labour practices in the world today and the consequences thereof, the international community was forced to address the escalating problem child labour poses and the need to protect children against harmful practices. Resultantly a number of treaties and conventions centered on the realisation and protection of children's rights were adopted on both international and regional levels.

Adopted in 1989, the Convention on the Rights of Children (CRC) was the first legally binding document addressing the civil, social, economic, cultural and political rights of children.<sup>52</sup> The convention stresses the importance of promoting and protecting the rights of children. Regionally motivated by the CRC, the African Charter on the Rights and Welfare of the Child (ACRWC) was adopted. While the ACRWC like the CRC aims to promote and protect the rights of children, the charter is rather distinctive in nature as it takes into consideration the African context (that is recognising culture or traditions governing African states).<sup>53</sup> Although the ACRWA is more explicit on particular issues, both the CRC and ACRWC share similar core values aimed at protecting the rights of children including the

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<sup>47</sup> Kimane (2006: 3).

<sup>48</sup> Bonnet, M. 'Child labour in Africa *International Labour Review*' Vol. 132 No. 3 1993 375.

<sup>49</sup> Kimane (2006: 3).

<sup>50</sup> Edmonds (2009).

<sup>51</sup> *Ibid.*

<sup>52</sup> The Convention on the Rights of Children Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49. See also Article 10 (3) of the International Covenant on the Economic, Social and Cultural Rights (ICESCR) this therefore gave birth to the Convention on the Rights of Children (CRC). Some authors have argued that, this very article is one of the sources that led to the adoption of the CRC. Furthermore, it is evident from the article that child labour is a human rights issue and therefore should be addressed.

<sup>53</sup> Kaime, T. (2009: 3) 'The African Charter on the Rights and Welfare of the Child: A socio-legal perspective' Pulp University Law Press

protection of children against harmful practices such as child labour.<sup>54</sup> Moreover, addressing explicitly concerns on issues of child labour, the international community adopted the ILO Convention on the Minimum Age (no. 138) and ILO Convention on the Worst forms of Child (no. 182) among others. Under these conventions the employment of children in harmful and exploitative work is prohibited, stipulating also the minimum age under which a child can be in employment while emphasising the protection of children's rights.<sup>55</sup> In the same light, the Kingdom of Lesotho also adopted legislation aimed at protecting the rights of children. The Children's Protection and Welfare Act was enacted in 2011.<sup>56</sup> It is also imperative to note that the Kingdom of Lesotho is a state party to the above mentioned international instruments. Because Lesotho ratified all above-mentioned treaties, the instruments are binding on Lesotho. Therefore, the enactment of the Act demonstrates compliance and conformity to international law on the rights of a child. In a nutshell, these pieces of law emphasise the protection of children, addresses their needs and their challenges.<sup>57</sup>

However, in spite of the efforts to protect children against child labour practices addressing the problem, child labour continues to be challenging. The evident ambiguities in the definition of the child, the lack of distinction between work and labour, inconsistencies in the definite minimum age in which a child should be admitted into work as well as the cultural conceptions of child labour has resulted in the failure to confront the problem of child labour. Therefore, it is crucial that these concepts are understood in order to help address the plight of child labour sufficiently and to adequately implement legislation and policies aimed at protecting children against harmful labour practices and promote children's rights.

### **1.6.1 Definition of a child**

According to Van Bueren, a child is traditionally defined as any person who is not yet an adult.<sup>58</sup> Under international law, the Convention on the Rights of the Child (CRC) provides

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<sup>54</sup> Ekundayo, O. (2015). 'Does the African Charter on the Rights and Welfare of the Child (ACRRWC) only underlines and repeats the Convention on the Rights of the Child (CRC) provisions?: Examining the similarities and differences between the ACRRWC and the CRC' International Journal of Humanities and Social Science, Vol.5 No. 7(1).

<sup>55</sup> See Article 1 of ILO Convention on the Worst forms of Child (no. 182) and Article 2 (3) of Minimum Age Convention (no. 138).

<sup>56</sup> UNICEF report (2010). Lesotho moving towards enacting the Children's Protection and Welfare Bill. Available at: <https://reliefweb.int/report/lesotho/lesotho-moving-towards-enacting-childrens-protection-and-welfare-bill> ( Accessed 10 June 2018).

<sup>57</sup> Lesotho Launches child protection Act available at: [http://www.gov.ls/articles/2011/Lesotho\\_Launches\\_Child\\_Protection\\_Act.php](http://www.gov.ls/articles/2011/Lesotho_Launches_Child_Protection_Act.php) (accessed 5 March 2016).

<sup>58</sup> Bueren V G (1998:33) *The International Law on the Rights of the Child*.

that a child is every human being under the age of 18 years, unless the law applicable to a child states otherwise; that is providing for a different age of majority that is below 18 years.<sup>59</sup> Article 2<sup>60</sup> of the African Charter on the Rights and Welfare of the Child (ACRWC) also state that any person below the age of 18 is considered a child. In addition, Article 2 of the International Labour Organisation Convention 182 of 1999 also defines a child as an individual below the age of 18 years.<sup>61</sup> According to Zeldin<sup>62</sup> the definition of a child is echoed across all international legal instruments, as anybody below the age of 18. Although the supreme law of Lesotho; that is Constitution of Lesotho, does not provide a definition of a child, the emphasis on the protection of children and young person's rights through the adoption of laws and policies is provided for under Chapter 111 on the Principles of State Policy,<sup>63</sup>. Shale<sup>64</sup> recognises the Children's Protection and Welfare Act no.7 of 2011 (CPWA) as the principal law that addresses children's rights and under the Act, a child is defined as an individual below the age of 18 years old.<sup>65</sup> The Labour Code Order of 1992 is the primary legislation on employment of Lesotho<sup>66</sup> and provides that a child is a person below the age of 15 years old.<sup>67</sup> This provision by the Labour Code is inconsistent with the Children's Act's definition of a child. However, it is evident that while the CPWA's definition of a child is in harmony and conforms to that of international law, there is inconsistency in the definition of a child under domestic law particularly the Labour Code Order.

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<sup>59</sup> The Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49, Article 1: For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" available at: <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf> (accessed 02 May 2016). While the age of majority in Lesotho is 21 years, it is important to note that under the Children's Protection and Welfare Act (CPWA) of Lesotho, a child is defined as anyone below the age of 18 years thus consistent with the CRC. However, the Labour Code Order provides that a child is anyone below the age of 15, therefore in contradiction with both the CRC and CPWA.

<sup>60</sup> The African Charter on the Protection and Welfare of the Child.

<sup>61</sup> International Labour Organisation Convention 182- Worst Child Labour Convention, 1999, this Convention is concerned with the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Entered into force on the 19<sup>th</sup> of November 2000 and Adopted during the 87<sup>th</sup> ILC session in Geneva on the 17<sup>th</sup> June 1999.

<sup>62</sup> Zeldin, W. Law library of congress international laws children's rights executive summary available at: <https://www.loc.gov/law/help/child-rights/pdfs/Children's%20Rights-International%20Laws.pdf> (accessed 02 May 2016).

<sup>63</sup> Chapter 111 Sec 32 of the Constitution of Lesotho.

<sup>64</sup> Shale, I. *The law and legal research in Lesotho* available at: <http://www.nyulawglobal.org/globalex/Lesotho1.html> (accessed 25 March 2016).

<sup>65</sup> Part 1 Preliminary: Interpretations Section 3 The Children's Protection and Welfare Act no. 7 of 2011 of the Lesotho

<sup>66</sup> Mosito, K E. 'A Panoramic view of the social security and social protection provisioning in Lesotho' Vol 17, no. 4 2014. 1579 available at: [http://www.nwu.ac.za/sites/www.nwu.ac.za/files/files/p-per/issuepages\\_/2014volume17no4/2014\(17\)4Mosito.article.pdf](http://www.nwu.ac.za/sites/www.nwu.ac.za/files/files/p-per/issuepages_/2014volume17no4/2014(17)4Mosito.article.pdf) (accessed 27 March 2016).

<sup>67</sup> The Labour Code Order of 1992 of Lesotho. Because of the evident inconsistency between the Labour Code Order and the CPWA, it is crucial to consider that the CPWA should supercede the Labour Code Order as it serves as the primary legislation on the protection and promotion of children's rights. Moreover, the age set out under the CPWA should serve as standard or minimum age as this also conforms to standard set out under international law. Children below the age of 18 should be prohibited from engaging in work that harmful to their wellbeing.

Letuka contends that defining a child may not be an easy task given the differences in cultures and societies.<sup>68</sup> The author argues that no numeric value can be given. Instead, childhood is a better term to use in defining a child.<sup>69</sup> She asserts that based on the different communities, childhood is measured or can be weighed based on different factors. This includes the physical development, level of maturity, the ability and capacity to execute particular activities and perform certain functions.<sup>70</sup> However, Kaime, like Van Bueren, rightfully asserts that the notion of childhood is socially constructed<sup>71</sup> and thus subjectively defined and ambiguous.<sup>72</sup> Often, the notion of childhood is subjected or left to older people's definition. This is evident in Lesotho. The definition of a child is subjective to cultural and social construction given the context of Lesotho.<sup>73</sup> Consequently, such definitions continue to subject children to detrimental labour practices and exposing them to human rights violations.

### 1.6.2 Child work/ Child labour

Many scholars have argued that the definition of child labour is not an easy one. In fact, Edmonds argues that a lot of controversy has risen to this effect.<sup>74</sup> It must be noted that in Lesotho, distinguishing between child labour and child work has proved to be difficult (one could argue that this can also be ascribed to the stipulations under the CPWA and African charter on Human and People's Rights which imposes duties and responsibilities on children). Letuka<sup>75</sup> states that the notion of child labour is disregarded within the Sotho tradition. Instead the concept of child work is the one commonly accepted. It is believed that a child has a responsibility towards the family and ought to work. Culturally, working is seen as merely carrying out errands and therefore cannot be considered as labour. Furthermore, it is contended that engaging in work is a rite of passage into adulthood.<sup>76</sup> Although this conceptualisation of work seems to define work as something light and easily carried out, Letuka rightfully argues that it is not so. She states that because of the adverse socio-economic circumstances that many families suffer under, children are forced to work in

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<sup>68</sup> Letuka (1998: 206).

<sup>69</sup> Letuka (1998: 206).

<sup>70</sup> *Ibid.*

<sup>71</sup> Kaime, T. (2009:14) 'The African Children's Charter: Does it represent a relevant vision of childhood and children's rights?' *Children's Legal Rights Journal*, Vol. 29, p. 11-30.

<sup>72</sup> Kaime (2009:14).

<sup>73</sup> Letuka (1998: 207).

<sup>74</sup> Edmonds (2009: 1). See Also Edmonds, E. V. (2007: 6) 'Child labour' IZA Discussion Paper No. 2606.

<sup>75</sup> Letuka (1998:207.)

<sup>76</sup> *Ibid.*

unfavourable environments and under dangerous working conditions.<sup>77</sup> As a result this led to what has been defined as child labour.<sup>78</sup>

Although Edmonds argues that there is no universal definition of child labour,<sup>79</sup> Kimane asserts that child labour can be defined as work detrimental and hazardous to children.<sup>80</sup> These include activities harmful to the children's social, physical, mental and psychological wellbeing to mention but a few.<sup>81</sup> According to the ILO, child labour means work that is paid and, in some cases, not remunerated undertaken by children said to be under age.<sup>82</sup> This kind of work is often detrimental to the wellbeing of the child and infringes most importantly on the rights of children.<sup>83</sup> Moreover, this kind of work is prohibited under international and national laws.

In Lesotho, a great majority of children below the age of 18 partake in child labour, working as herd boys, domestic workers, street vendors and commercial sex workers.<sup>84</sup> All these are dangerous work, exposing children to harsh working conditions affecting not only their social and moral welfare but also psychological wellbeing, safety and health.<sup>85</sup> Because of the nature of child labour, children are prone to worst forms of labour, exploitation, oppression and violation of human rights. In addition, child labour robs children of their right to education, right to environment favourable to enhance their development mentally, physically, morally and socially, right to health and freedom from economic and sexual exploitation among others.<sup>86</sup>

Despite the evident consequences of child labour noted above, Letuka argues that work should also be seen as an essential aspect of socialisation and means in which children contribute to their respective families.<sup>87</sup> She asserts that the application of international law

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<sup>77</sup> *Ibid.*

<sup>78</sup> International Labour Organisation: defining child labour. see also Article 32 of the Convention on the Rights of the child which prohibits child labour

<sup>79</sup> Edmonds (2009).

<sup>80</sup> Kimane (2006:3).

<sup>81</sup> Edmonds (2009: ).

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<sup>83</sup> International Labour Organisation *Child Labour: Background paper* available at: <http://www.ilo.org/public/english/region/afpro/mdtharare/about/childlabour.htm> accessed 27 March 2016.

<sup>84</sup> Kimane (2006:4).

<sup>85</sup> Kimane (2006:7).

<sup>86</sup> World vision Action: *child labour is better than living in poverty* available at: <https://campaign.worldvision.com.au/wp-content/uploads/2013/04/It-is-better-for-children-to-work-debate-kit.pdf> (accessed 29 March 2016).

<sup>87</sup> Letuka (1998: 208).

particularly Art 32 of the CRC on child work/ labour should be in line with the cultural dynamics of the Kingdom of Lesotho.<sup>88</sup> Although this consideration appears valid, it should be noted that cultural practices that are hazardous and impinge on the rights of children should be prohibited. Although child labour and child work are used interchangeably in Lesotho, the lack of clarification and distinction between the two concepts results in the denial of the existence of child labour and the magnitude of its consequences that include violating fundamental human rights of children. The fact that Lesotho recognises child work as opposed to child labour, its gives a misapprehension that child labour does not exist. Furthermore, the lack of distinction between work and labour, fails to recognise some forms of work constituting worst forms of labour, that is work considered exploitative and dangerous; therefore not in the best interest of a child.<sup>89</sup>

It is worth noting that employment of children within the regulated formal sector also poses human rights violations. Although considered of a high level and highly esteemed, work within the entertainment industry for instance constitutes child labour, according to Bhattacharjee.<sup>90</sup> Many children especially in South Africa are involved in this industry as dancers, musicians, actors and models to mention but a few.<sup>91</sup> Bhattacharjee asserts that this industry is said to be “just another” class of child labour. Although not much emphasis is placed on this ‘class’ of child labour, it is worth noting that it also counts as an essential sector to be probed especially in the light of human rights particularly the rights of the children, their wellbeing and the best interest of the children.<sup>92</sup> According to Bhattacharjee, for many, it is assumed that children working in the entertainment industry are doing sophisticated work and are less prone to detrimental and hazardous working conditions. This presumption is however thought to be uninformed.<sup>93</sup> It has been argued that because of the attachment and involvement of the parents within this industry, children are not considered labourers or workers. Although there are legal tools in place to ensure proper regulation of the industry, these children like any other children involved in child labour practices

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<sup>88</sup> *Ibid.*

<sup>89</sup> The Optional Protocol on the Convention on the Rights of Children.

<sup>90</sup> Bhattacharjee, S (2014) ‘*Sophisticated done by children: Is child labour: An overview of children working in industries*’ Impact Journal Vol 2, Issue 6. P 45- 52.

<sup>91</sup> Bhattacharjee (2014:45).

<sup>92</sup> *Ibid.*

<sup>93</sup> Bhattacharjee (2014:46).



experience pressure and exploitation from the employers and the parents' alike.<sup>94</sup> Often parents coerce children into this industry for their own esteem and recognition.<sup>95</sup>

Bhattacharjee rightfully argues that although work done by children in the entertainment industry is regulated, because it takes place within the private sector; there is little to no regulatory measures.<sup>96</sup> The author further states that many children in this industry are exposed to toxic substances such as alcohol and drugs at a tender age. Child models on the other hand find themselves posing in sexually suggestive ways. As a result, many models are sexually objectified and stand at a risk of being sexually abused.<sup>97</sup> In other instances, children are often mistreated, affecting them physically and emotionally.<sup>98</sup> Children are prone to mental stress, trauma and behavioural disorders.<sup>99</sup> This does not only affect negatively the health but also the moral development of the children. The entertainment industry is also characterised by odd and long working hours, consequently children in this industry are deprived of their education, childhood, psychological and physical development.<sup>100</sup> It is evident therefore that violations of the fundamental human rights of children do not only occur within unregulated informal sectors, but also within regulated formal sectors. It is therefore critical to investigate the prevalence of child labour within the formal sector particularly in the private sector. There is therefore a need for government interventions in both formal and informal sectors in order to end child labour.

Having established that regardless of where child labour exists, that is either the formal or informal sector, it is a harmful practice and detrimental to children. It should be concluded therefore that unlike child work, which is not harmful to children and does not violate the rights of children,<sup>101</sup> child labour constitutes of work injurious and therefore should be prohibited.

In attempting to avoid violation of children's rights by employing children under age, both international and domestic laws have set out the minimum age of employment to be adhered to by employers. It could be argued that adherence to both international and domestic law on

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<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> International Labour Organisation's definition of child work and child labour.

the minimum age of employment will not only help regulate child labour but also reduce its prevalence.

### 1.6.3 Minimum age for admission to employment

Although the Kingdom of Lesotho culturally believes that the engagement of a child in work is part of socialisation process, growth and development, this has changed as many have come to the realisation that some forms of work performed by the children is not safe.<sup>102</sup> It should be noted that even though children still participated in work that is detrimental to their well-being in the past, it was not conceptualised as labour.<sup>103</sup> However, the increased awareness of child labour has therefore led to the question of minimum age in which children should engage in work and the kind of work thereof. Although the Constitution of Lesotho does not provide the age in which a child should be employed, it makes provision for the protection of children and young persons from being economically and socially exploited.<sup>104</sup> Furthermore, the Constitution states that employment of young children that may result in detrimental consequences to the child's health, life, morality and development is punishable by law.<sup>105</sup>

Kimane asserts that under the Lesotho Labour Code of 1992, the legal and minimum employment age of children is 15 years old.<sup>106</sup> The Code stipulates that child employment may be restricted in environments that are morally harmful and hazardous.<sup>107</sup> Contravening this law may result in conviction or a fine.<sup>108</sup> Furthermore, the Labour Code Order states that children may not work in dangerous environment such as mining and quarrying if they are below the ages of 16, unless medical reports approved by the minister proves otherwise.<sup>109</sup> The law however, seems to be applicable to and protecting those in formal sectors as opposed

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<sup>102</sup> The African Child Policy Forum, *The Best interest of the Child: Harmonising laws in eastern and southern Africa 2007* available at: [http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/Publications/supplementary-acpf-harmonisation-es\\_en.pdf](http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/Publications/supplementary-acpf-harmonisation-es_en.pdf) (accessed 29 March 2016) 68.

<sup>103</sup> *Ibid.*

<sup>104</sup> CRC report: National law and policies on minimum ages – Lesotho 1998 available at: <http://r2e.gn.apc.org /country-node/454/country-minimum> (accessed 30 March 2016). See also Section 32 (b) of the Constitution of Lesotho

<sup>105</sup> As above, also see 32 (c) of the Constitution of Lesotho.

<sup>106</sup> Kimane (2006:10).

<sup>107</sup> *Ibid.* See also The Lesotho Labour Code Order 1992, Section 128 (1): "Every employer in an industrial undertaking shall keep a register of all children and young persons employed and working therein and shall include in such register particulars of their ages or apparent ages, the dates of commencement and termination of employment and such other particulars as the Minister may by regulation prescribe".

<sup>108</sup> Sec 124 (4) read with Section 125 (6) of the Labour Code Order 1992.

<sup>109</sup> Sec 127 (1) of the Labour Code Order 1992. It is critical to note that while employment of a child is restricted to the of 15, the Labour Code Order however makes provision for another age for potentially dangerous work such as quarrying and mining.

to the informal sector.<sup>110</sup> Moreover, the Labour Code provides that children between the ages of 13 and 15 cannot partake in any sort of industrial or commercial work.<sup>111</sup> Nevertheless, many children below this stipulated age are involved in commercial work as street vendors,<sup>112</sup> resulting in the contravention of the Labour Code.<sup>113</sup> Like the Labour Code, the CPWA prohibits child labour as will be discussed below.

According to the Act, the minimum age of employment is 15 years.<sup>114</sup> The Act in addition provides that children aged 13 years and above can perform light work. That is work unlikely harmful to children.<sup>115</sup> For the purpose of this thesis, the focus will be on work that is hazardous to the wellbeing of the child, which is work that constitutes what is defined as child labour. Although the labour Code Order provides that a young male above the age of 16 can work in both mines and quarrying upon approval of the Labour Commissioner and medical officer certifying that such as an individual is fit for such work,<sup>116</sup> Section 230<sup>117</sup> prohibits the employment of any child below the age of 18 years in any kind of work that is dangerous and injurious to the child's health and damaging socially and morally. This kind of work includes mining, quarrying, carrying hefty loads, herding at cattle post outside villages and commercial sex work.<sup>118</sup>

According to the Minimum Age Convention (MAC), the age of child employment shall not be below the age of completion of compulsory schooling (primary school) and not less than 15 years of age.<sup>119</sup> The MAC furthermore provides that in countries that are poor economically and have inadequate educational systems, an exception is made. In such circumstances, the Convention permits children at the age of 14 years to be employed.<sup>120</sup> The Convention states that for light work the permitted age is 13 years and for the work deemed hazardous and unsafe to children the age of employment is strictly 18 years and not below.<sup>121</sup>

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<sup>110</sup> Kimane (2006:10).

<sup>111</sup> Sec 124 (2) of the Lesotho Labour Code Order 1992.

<sup>112</sup> 2013 findings on the worst forms of child labour: Lesotho available at: <https://www.refworld.org/pdfid/5448a62d0.pdf> (accessed 24 November 2020) See also Kimane (2006:4).

<sup>113</sup> See Sec 124 (4) of the Labour Code Order “(4) Any person who employs a child contrary to the provisions of this sec shall be guilty of an offence and shall be liable on conviction to a fine of three hundred maloti or to imprisonment for three months or both”.

<sup>114</sup> Sec 228 of the Children's Protection and Welfare Act no.7 of 2011.

<sup>115</sup> Sec 229 (2) of the children's Protection and Welfare Act no. 7 of 2011.

<sup>116</sup> Sec 127 (1) of the Labour Code Order.

<sup>117</sup> Sec 230 of the Children's Protection and Welfare Act no. 7 of 2011.

<sup>118</sup> Sec 230 (3) of the Children's Protection and Welfare Act no. 7 of 2011.

<sup>119</sup> Conditions of Work Digest *Child Labour: Law and Practice* Vol .10 1991 International Labour Office Geneva 21. See also Articles 2 (3) and (4) of Convention concerning Minimum Age for Admission to Employment. Adopted in the 58th ILC session in Geneva on 26 Jun 1973 Entry into force: 19 Jun 1976.

<sup>120</sup> Conditions of Work Digest *Child Labour: Law and Practice* (1991).

<sup>121</sup> *Ibid.*

For the purpose of the Convention on the Worst Forms of Labour, age of employment is set at 18 years.<sup>122</sup> The Convention on Rights of the Child does not make provision for the minimum age of employment. However, the Convention recognises the importance of protecting children from any kind of work that is economically exploitative and harmful to the wellbeing of the child.<sup>123</sup> Furthermore, the CRC emphasises the state party's obligation to ensure that for the minimum age of admission to employment, working hours as well as employment conditions had to be established by the government.<sup>124</sup> In addition, sanctions should be put in place if the law fails and other mechanisms should be employed to ensure that the convention is effectively enforced and implemented.<sup>125</sup> It should be noted that the Kingdom of Lesotho complied with CRC provisions, through the enactment of the Children's Protection and Welfare Act that provides for the minimum age of employment.<sup>126</sup>

Being mindful of the importance of children's rights in Africa, the members of the Organisation of African Unity (OAU), including Lesotho, adopted a Declaration on the Rights and Welfare of the child in 1990.<sup>127</sup> The African Charter on the Rights and Welfare of the Child (ACRWC) does not state the minimum age of employment, however mandates the member states to ensure that all children are protected from economic exploitation and work detrimental to children's development, health and social welfare.<sup>128</sup> The charter further states that, member states have an obligation to take administrative and legal means to ensure that Article 15 is effectively implemented in both the formal and informal sector and comply with provisions under the ILO conventions relating to children.<sup>129</sup> The legal measures should

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<sup>122</sup>Article 2 of the Worst Forms of Child Labour Convention "For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18" based on this one could conclude that any work performed should anyone who is 18 years and above especially work that is damaging to the social, health, physical and the psychological development of the child.

<sup>123</sup> Article 32 of the Convention on the Rights of the Child.

<sup>124</sup> UNICEF fact sheet: A summary of the rights under the Convention on the Rights of the Child available at: [http://www.unicef.org/crc/files/Rights\\_overview.pdf](http://www.unicef.org/crc/files/Rights_overview.pdf) (accessed 26 March 2016). It is imperative to state that the kingdom of Lesotho complies with obligations. See 2017 Findings on the Worst Forms of Child Labor: Lesotho available at: <https://www.refworld.org/pdfid/5bd05ad416.pdf> (accessed 24 November 2020).

<sup>125</sup> Article 32 (c) of the Convention on the Rights of the Child It is also important to note that the enactment of the Children's Protection and Welfare Act.

<sup>126</sup> See 2017 Findings on the Worst Forms of Child Labor: Lesotho available at: <https://www.refworld.org/pdfid/5bd05ad416.pdf> (accessed 24 November 2020).

<sup>127</sup> The African Union, Iceland human rights centre available at: <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-fora/the-african-union> (accessed 25 March 2016). The African Charter on the Rights and Welfare of the Child was adopted in July 1990 by the OAU Assembly. It entered into force on 29 November 1999 and had been ratified by 45 AU member states as of March 2010. The AU is the first regional organisation to adopt a binding regional instrument safeguarding the rights of children.

<sup>128</sup> UNICEF: The African Charter on the Rights and Welfare of the Child summary available at: [http://www.unicef.org/esaro/African\\_Charter\\_articles\\_in\\_full.pdf](http://www.unicef.org/esaro/African_Charter_articles_in_full.pdf) (accessed 22 March 2016). See also Article 15 of the African Charter on the Rights and Welfare of the Child.

<sup>129</sup> Article 15 of the African Charter on the Rights and Welfare of the Child. "1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development. 2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and

therefore include working hours, conditions of employment and sanctions to ensure that Article 15 is efficiently employed.<sup>130</sup> Failure to adhere to the provisions as stated by the (ACRWC) will result in the intervention by the Country Rapporteurs whose role will be to draft final decision of the Committee and ensure its timely submission to the parties in the matter and to undertake country visits to follow up on the implementation of the Committee's decision.<sup>131</sup>

The evident inconsistencies in national laws on the definition of a child and the minimum age of employment are matters of concern. The age set out by the Labour Code allows children to work at a tender age, denying them the right to basic education. Failure to rectify the evident inconsistencies will only lead to the escalation of child labour and violation of children's rights. It is therefore crucial for the Kingdom of Lesotho adopt a unified and standardised minimum age of employment, in line with international law.

In conclusion, the study addresses comprehensively the problem of child labour in Lesotho, the factors that contribute to child labour as well as the consequences of child labour. It has been argued that it is culturally acceptable for children to work. It is evident that a lot of children are engaged in some of the worst forms of labour in Lesotho, that is, work which is not in the best interest of the child and detrimental to their being. It is therefore essential to question and critically analyse domestic law on the rights of the children, Children's Welfare Act of 2011 in particular and Labour Code Order that deals with employment. While the Act prohibits employment of children in hazardous environments, its implementation and enforcement in order to protect children remains questionable. While incidences of child labour are evident in Lesotho, not much has been done to address this problem.<sup>132</sup> Child employers have not been held accountable.<sup>133</sup> Although some may argue that the Act is fairly new, the effectiveness of this piece of legislation in protecting the rights of children and

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informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:(a) provide through legislation, minimum wages for admission to every employment;(b) provide for appropriate regulation of hours and conditions of employment;(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;(d) promote the dissemination of information on the hazards of child labour to all sectors of the community".

<sup>130</sup> *Ibid.* Article 15 (c).

<sup>131</sup> Sec 21 (2) (d) and (e) of Terms of reference for Country and Thematic Rapporteurs of the ACERWC available at: [https://www.acerwc.africa/wpcontent/uploads/2019/10/ToR\\_establishing\\_the\\_Offices\\_of\\_rapporteurs\\_of\\_the\\_ACERWC.pdf](https://www.acerwc.africa/wpcontent/uploads/2019/10/ToR_establishing_the_Offices_of_rapporteurs_of_the_ACERWC.pdf) (accessed 24 November 2020).

<sup>132</sup> 2017 Findings on the Worst Forms of Child Labor: Lesotho available at: <https://www.refworld.org/pdfid/5bd05ad416.pdf> (accessed 24 November 2020) 450.

<sup>133</sup> 2017 Findings on the Worst Forms of Child Labor: Lesotho (2017: 451).

prohibiting child labour within the informal sector has not been apparent.<sup>134</sup> Therefore, it is based on these considerations that the study is undertaken.

The primary objective of the study is therefore to contribute to the development of jurisprudence on the rights of the children. The study advocates for the regulation child labour with a focus on the informal sector mainly because both the formal and informal sectors were discussed and the recommendations pertain not only to the informal sector but to the formal sector as well. The study proposes that policies aimed at eradicating child labour be adopted, enforce accountability mechanisms by means of reporting periodically on child labour issues and establish the Children' Rights Commission that will help with the monitoring and evaluation on the rights of the child and cases relating to child labour. Moreover, improve the legal system, ensure that perpetrators of child labour are punished and ultimately ensure that all children fully enjoy their basic human rights including protection against harmful child labour practices. The study further advocates for social change through the incorporation of culture and law to ensure those children's rights are not infringed upon within the cultural institutions such as family and society and that child labour is reduced and ultimately eradicated.

### **1.7 Limitations of the study**

- Insufficient scholarly work done on child labour in Lesotho including data on the responses to child labour in Lesotho.
- Under the comparative analysis chapter, language barriers were evident; some information was in Arabic as opposed to English, particularly on Morocco.

### **1.8 Scope of the study**

Chapter one

Gives an introduction of the study and what the paper is expected to be about. Definitions of the key concepts such as child labour or child work, a child and the minimum age of

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<sup>134</sup> *Ibid* See also 2018 Findings on the Worst Forms of Child Labor: Lesotho (2018: 3-4).

employment will be discussed. In this chapter research problems are identified. Research questions, research methodology and literature review are also stated.

#### Chapter two

In this chapter the theoretical framework will be discussed. Different perspectives on child labour and children's rights will be critically analysed. The theoretical framework will help identify reasons as to why child labour continues to persist. This includes labour supply theory and Marxist theory, cultural relativism, human rights perspectives and social standpoints to mention a few. The chapter will conclude by explaining how child labour affects the rights of children.

#### Chapter three

This discussion will focus on the response of both domestic and international law on rights of children particularly those involved in child labour. This chapter critically analyses national laws, investigating the compliance of domestic legislation to that of the international law. The chapter further questions the ineffective response by the Children's Act of Lesotho and the lack of implementation of the international bodies' recommendations such as UNICEF, ILO, UNDP and SADC.

#### Chapter four

The comparative analysis will focus on the African continent, evaluating some of the countries in Africa that have made, although not major, progress in terms of eliminating worst forms of child labour. These include South Africa, Tanzania and Morocco. This chapter will look at how these countries have defined child labour, how they have dealt with the problems, looking also at the applicability and the enforceability of law protecting the rights of children. If there are any positive outcomes, it would be important for the Kingdom of Lesotho to emulate the practices.

#### Chapter five

This is based on the conclusions made from the previous chapters and recommendations that stem from it. The chapter aims at developing a framework to be adopted in order to protect children against child labour practices predominant in Lesotho.

## CHAPTER TWO: THEORETICAL FRAMEWORK

### 2. Introduction

The predominance of child labour, particularly within the Sub-Saharan region today, has not only raised many questions regarding the enforcement of law and the protection of the rights of children, but has further questioned the inadequacy in scholarship addressing the plight of child labour.<sup>135</sup> Not only is the predominance of child labour a concern, but it is also escalating. Therefore, reasons for such escalations ought to be investigated.<sup>136</sup> Child labour should not only be understood within the context of the law relating to the rights of children, but the social implications of such a practice should also be considered. While there is large empirical evidence and scholarship of child labour on the Asian continent, this is not so for Africa.<sup>137</sup> There are insufficient accounts, statistics, as well as scholarly work done on the reasons for child labour within the African continent. It is observed that, while cases of child labour relating to illicit activities, human trafficking and prostitution have been widely reported and dealt with legally, cases involving child domestic workers and street vendors have received little to no legal attention.<sup>138</sup> It is noteworthy to state that, in many African countries, many children continue to dominate the unprotected economic sectors: engaging in

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<sup>135</sup> Ncube, W. (1997) "Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa", 1. Dartmouth Publishing Company Limited & Ashgate Publishing Limited, England & USA. Ncube argues rather that a great scope of scholarship has an understanding that children's rights have to be interpreted and applied with sensitivity, considering cultural diversity, cultural norms as well as values. It is however believed that although human rights are of universal standards given their formulation and application, their content has to recognise the importance of cultural diversity. As a result, one could argue that failing to recognise cultural diversity has led to the inadequate scholarship of child labour and rights of children within the African continent, Lesotho being one of the countries.

<sup>136</sup> Basu, K. 'Child labour: causes, Consequence and Cure, with Remarks on International Labour Standards. Journal of Economic Literature September Vol. XXXVII pp. 1083–1119. 1083

<sup>137</sup> Ncube, W. (1997), 1. See also International Labour Organisation, (2002): A future Without Child labour: Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work 2002, the reports states that figures of child labourers should be carefully treated as the information was gathered with great difficulty due the illegal nature of child labour and hidden practices thereof. This is argued to be one of the main reasons why tackling the problem of child labour has proved and continues to be difficult for both states and civil societies. See also Basu, K. 'Child labour: causes, Consequence and Cure, with Remarks on International Labour Standards', Basu argues that because of the large population within the Asian continent, child labour figures are more evident than small continents like Africa. See Also Bilal Ahmad Bhat '*Human rights perspective and legal framework of child labour with special reference to India*' He states that Africa has the highest percentage of child labourers as opposed to Asia, even though the Asian continent is having more children than any other continent. This further proves that because of the size of the Asian continent, issues of child labour are more evident than that of the African continent although Africa's has the highest number of child labourers.

<sup>138</sup> 2018 Findings on the Worst Forms of Child Labor: Lesotho (2018: 3-4). Available at: [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2018/Lesotho.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/Lesotho.pdf) (accessed 24 November 2020).



hazardous labour activities and domestic work, herding livestock, farming, and selling on the streets to state the least. In other instances children are found to be involved in violent activities including armed conflicts as child soldiers<sup>139</sup>. In armed conflicts, children are usually recruited, forced and trained to participate in the conflicts or wars, work as spies, cooks and messengers.<sup>140</sup> Children usually suffer sexual abuse at the hands of the military.<sup>141</sup>

This chapter therefore investigates reasons for the prevalence and persistence of child labour by means of examining several perspectives. A brief historical background of child labour is provided and the effects thereof. Finally, the chapter concludes with a critical analysis of the explanations of child labour as presented by the different perspectives. This will help ascertain strategies to provide for better protection of children involved in child labour.

## 2.1 Background, Causes and Consequences of child labour

The end of the 1700s and the beginning of the 1800s witnessed a great shift in the manufacturing industry. With the intensification of factories, manual labour was replaced with machinery.<sup>142</sup> This ironically resulted in many children being employed.<sup>143</sup> The employment of children came at a lower and cheaper cost. By the mid 1800s, child labour had become widespread thus posing a major problem facing the world today, given the extent of exploitation children suffer.<sup>144</sup> It is however important to note that -although named differently- child labour existed before the introduction of factories, in the form of farming.<sup>145</sup> Child labour (or the employment of children particularly on farms) has been and continues to be an accepted practice within societies globally -whether advanced or underdeveloped.<sup>146</sup> Though farming was not considered hard labour, this kind of work posed danger and

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<sup>139</sup> International Labour Organisation: Child Labour and Armed conflict Available at: <http://www.ilo.org/ipec/areas/Armedconflict/lang--en/index.htm> (Accessed 12 March 2018).

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> Fried, M."Child Labor (2014)." The New Book of Knowledge. Grolier Online. Available at: <https://www.scholastic.com/teachers/articles/teaching-content/history-child-labor/Web>. (Accessed 26 September 2017) (Review).

<sup>143</sup> Fried (2014)

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> Bhat, BA (2010) 'Human rights perspective and legal framework of child labour with special reference to India' international Journal of Sociology and Anthropology 22 019-022, 019.

continues to be hazardous.<sup>147</sup> Working on farms requires the utilisation of dangerous equipment (garden tools) as well as the use of pesticides that can be harmful to the health of a child.<sup>148</sup> “Apart from farms, children also worked in factories,” asserts Fried.<sup>149</sup>

According to Fried, children from the age of seven worked in factories.<sup>150</sup> Work done in factories requires hard labour for prolonged hours. Children employed in factories work for long hours with less pay.<sup>151</sup> Such a working environment negatively affects the child’s wellbeing, social and physical development, as well as the health of the child. Fried asserts that majority of the children working in factories would often get sick.<sup>152</sup> This could be attributed to the heavy machinery, dust and smoke that they could be exposed to during the production process. This ultimately violates the rights of children as provided in Article 32 of the Convention on the Rights of the Child (CRC).<sup>153</sup> Children are deprived of good health, education, time to play and time to rest, to mention but the least.<sup>154</sup> As a result, child labour constitutes a human rights violation and should be abolished.

According to Basu, the Bureau of Statistics of the International Labour Organisation indicates that in 1995, approximately 120 million children worldwide -between the ages of five and fourteen years- took part in full-time paid work.<sup>155</sup> Twenty years later (that is, since 1995), child labour remains a crucial part of the economic cycle.<sup>156</sup> According to the ILO report, child labour is closely related to the informal sector, which is essentially unregulated and without any formal labour inspection.<sup>157</sup> This sector of the economy poses a danger to the lives of many children involved in it. It was recognised that in an attempt to respond to the adverse conditions of poverty; high levels of inequality; and social, political and economic

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<sup>147</sup> Fried, M (2014). See also International Labour Organisation: A future Without Child labour: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work 2002, 24.

<sup>148</sup> International Labour Organisation: A future Without Child labour: Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work 2002, children are often exposed to soil infected as well as water without any sort of protective gear and this leads to harmful effects on the health of children, 24.

<sup>149</sup> Fried (2014).

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> Article 32 (1) of Convention on the Rights of the Child provides that children should be protected from work harmful to their wellbeing, this includes social, physical and moral development. Furthermore, children should be protected from work that is detrimental to their health.

<sup>154</sup> Bhat (2010: 021).

<sup>155</sup> Basu, K. (1999). *Child Labour: Causes, Consequence and Cure, with remark on International Labour Standards.*” Journal of Economic Literature September Vol. XXXVII pp. 1083–1119. 1083. see also 1996 ILO report

<sup>156</sup> Basu (1999:1083).

<sup>157</sup> ILO Report: A Future without Child Labour (Executive Summary).

instability children find themselves partaking in child labour.<sup>158</sup> Being concerned with their survival in this world of deprivation and inequality, children assume roles that not only challenge the morals on gender but also the age suitable for work.<sup>159</sup>

From an early age children have adopted survival practices including farming, working as domestics workers, trading as vendors, and mining (to mention the least) to meet their needs.<sup>160</sup> This has resulted in the inevitable practice of child labour. In other instances child labour is viewed as a source of family income, particularly in poverty-stricken regions such as Africa.<sup>161</sup> While this appears to validate child labour practices, it cannot be viewed as a justification for violating the basic and fundamental rights of a child. This rather have legal implications.<sup>162</sup> Failure to recognise children as ‘right holders’ poses a major problem.<sup>163</sup> In fact, it deprives children the rights and privileges as stated in national, regional and universal laws on the protection of children’s rights.<sup>164</sup> The rights of children are to be treated as human rights.

While it is evident that issues around child labour have evolved historically and are not new, many children in the world today continue to fall prey to child labour practices, with Third World countries at the highest.<sup>165</sup> Basu contends that the rise in globalisation did not only expose the problem of child labour, but also the silence around children engaging in economic activities.<sup>166</sup> This presented the need to adopt measures aimed at protecting children against harmful labour practices, eradicating child labour and promoting the rights of children. Being a very complex phenomenon, calls for the extensive investigation of the factors contributing to the prevalence of child labour, as well as critical analysis of the nature of work children participate in, based on different economic and social backgrounds, norms

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<sup>158</sup> Ehlers, L & Frank, C. (2008) Chapter 7 ‘*Child participation in Africa*’ in J Sloth- Nielsen, *Children’s Rights in Africa- A Legal Perspective* (Ashgate Publishing Limited) 111.

<sup>159</sup> Bourdillin, M & Musvosvi, E. (2014) ‘What can children’s rights mean when children are struggling to survive?: The Case of Chiweshe, Zimbabwe’ in Twum-Danso Imoh, A & Ansell, N. *Children’s Lives in an Era of Children’s Rights: The Progress of the Convention on the Rights of the Child in Africa*, Routledge, New York, 105.

<sup>160</sup> Bourdillin, M & Musvosvi, E. (2014: 105) It is also important to note that some scholars argue that there is a huge tension between child welfare and child agency. Some children are forced to work or rather choose to work in order to provide for their families. While other profound and critical debates may be evident regarding child labour vs. child employment. It is significant to emphasise that child labour is a human right issue and should be treated as such. See also Cullen, H. (2004) ‘The Role of International Law in the elimination of Child Labour’ *The Procedural Aspects of International Law Monograph Series Volume 28* Martinus Nijhoff Publishers

<sup>161</sup> *Ibid.*

<sup>162</sup> Cullen, H. (2004) ‘The Role of International Law in the elimination of Child Labour’ *The Procedural Aspects of International Law Monograph Series Volume 28* Martinus Nijhoff Publishers, 3 - 8.

<sup>163</sup> Ehlers, L & Frank, C. (2008: 111).

<sup>164</sup> *Ibid.*

<sup>165</sup> Basu (1999: 1083).

<sup>166</sup> Basu (1999: 1083).

and values were made.<sup>167</sup> Furthermore, the ILO report stated that it was imperative to differentiate between work done by a boy child and girl child.<sup>168</sup> This is crucial as it also sheds insight on the severity of child labour on children based on gender roles.<sup>169</sup> Distinguishing between child labour and child work remains<sup>170</sup> a challenge. However, Cullen asserts that, because of the ambiguous nature of the concept of child labour, it should be defined and understood in legal terms<sup>171</sup> as forms of work that are prohibited by law -whether national or international”<sup>172</sup>.

According to the ILO report, although poverty was considered the major factor contributing to child labour, the primacy of child labour cannot be solely attributed to poverty.<sup>173</sup> According to the same ILO report, some of contributing factors to child labour include inadequate social protection, poor quality of education, inconsistencies in policies and laws, and lastly the gap between school leaving age and minimum age of employment.<sup>174</sup> Understanding the factors contributing to the prevalence of child labour will help develop measures and effective tools to decrease and ultimately eliminate child labour, particularly the worst forms of child labour- universally.<sup>175</sup>

However, the response to the global call on addressing the issue of child labour was not entirely welcomed by other nations. According to the ILO report, some states disregarded and dismissed the idea of child labour as problematic, arguing that it is but an inescapable and foreseeable result of cultural practice.<sup>176</sup> One would therefore conclude that this argument rather sounds misinformed. Furthermore, many rejected the idea of the existence of child labour and thought of it as hypothetical and fictional, because of the fear that they would be universally criticised and possibly fall victims to trade sanctions.<sup>177</sup> This has therefore

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<sup>167</sup> Ehlers, L & Frank, C. (2008:11).

<sup>168</sup> International Labour Organisation (2002): A future Without Child labour: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work.

<sup>169</sup> International Labour Organisation (2002): A future Without Child labour: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work.

<sup>170</sup> Kimane, I. (2006) Protecting the rights of working children in Lesotho through legislation Paper presented at the RECLISA Southern African regional child labour conference ILO Report, 8.

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

<sup>173</sup> International Labour Organisation (2002): A future Without Child labour: Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work 2002, Executive Summary.

<sup>174</sup> ILO: A future without child labour (2002:1).

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*

resulted in the escalation of child labour practices with little to no protection of the children involved therein.<sup>178</sup>

Despite the lack of participation in eradicating child labour by other countries due to fear of trade sanctions,<sup>179</sup> the ILO sets out measures to address the problem of child labour globally. This includes setting out labour standards through the establishment of a minimum age of employment for children. According to the report, setting out the minimum age helps respond and address concerns around child labour.<sup>180</sup> The report advocates for member states to have a fixed minimum age of employment.<sup>181</sup> Consequently, this will help reduce and ultimately eradicate child labour, and pursue a rather well functioning adult labour standard. This will also ensure that the economy is efficiently developed.<sup>182</sup> The United Nations (UN) and African Union (AU) human rights instruments on the other hand make an obligatory instruction upon states to ensure that children are protected from harmful work practices detrimental to their well-being.<sup>183</sup>

Cognisant of the positive actions by the ILO, this study undertakes to investigate further reasons why child labour continues to persist through an examination of a number of theoretical perspectives. This includes a human rights perspective, a sociological perspective, a cultural perspective, an economic perspective and a legal perspective. This will help understand the hypothesis behind child labour as opposed to relying solely on empirical evidence. Furthermore, this will help identify measures that need to be implemented in addressing child labour. It will also provide measures to significantly implement legislation aimed at promoting the rights of children, protecting children against harmful labour practices, and putting an end to the practice.

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<sup>178</sup> *Ibid.*

<sup>179</sup> ILO: A future without child labour (2002:1).

<sup>180</sup> ILO: A future without child labour (2002:7).

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> See the UN treaties on the rights of the children, that is the CRC particularly Article 32 and the Article 15 of the African Charter on the Rights and Welfare of the Child, Both Articles speaks to the prevalence of child labour and how this practice should be dealt with by the member states

## 2.2 Human Rights-Based Approach

The undeniable negative consequences of child labour as a human right problem called for a global response.<sup>184</sup> That is, for the recognition of children's rights as human rights. Many international and regional organisations including the International Labour Organisation (ILO), United Nations, African Union, and European Union (to mention a few) responded to the plight of child labour through the drafting of several binding documents, policies, conventions and covenants to address the issues around children's rights.<sup>185</sup> Additionally, they developed programmes that put emphasis on the promotion and protection of human rights -particularly children's rights- against harmful work. For instance, the International Programme on the Elimination of Child Labour (**IPEC**).

At the centre of the treaties, conventions and covenants is the promotion and protection of children's rights as well as the ultimate abolishment of practices that are detrimental to the wellbeing of children (such as child labour).<sup>186</sup> Furthermore, specialised organizations such as the United Nations Children's Fund (UNICEF), World Health Organisation (WHO) and civil society agencies are committed to a human rights based view towards child labour, and advocating for the promotion and protection of children's rights.<sup>187</sup>

Human rights have been recognized universally and the need for the protection and promotion of these rights continues to be priority. Human rights (also referred to as natural rights) are inherent and held by every individual by virtue of them being human.<sup>188</sup> According to the Constitution of Lesotho every human being is entitled to human rights in spite of age, ethnicity, religion, language, race or sex.<sup>189</sup> All human beings are therefore equally entitled to rights and the full enjoyment of such.<sup>190</sup> Bhat<sup>191</sup> asserts that before the adoption of the

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<sup>184</sup> Bhat, B.A. (2010) *Human rights perspective and legal framework of child labour with special reference to India* International Journal of Sociology and Anthropology Vol. 2(2) pp. 019-022, February. Review. 019.

Available online <http://www.academicjournals.org/ijasa>

<sup>185</sup> Twum-Danso Imoh, A. (2014). Chapter 1 'Realizing Children's Rights In Africa in *Children's Lives in an Era of Children's Rights: The Progress of the Convention on the Rights of the Child in Africa*' Edited By Afua Twum-Danso Imoh, Nicola Ansell, 2. See also introduction by B. A. Bhat 'Human rights perspective and legal framework of child labour with special reference to India'.

<sup>186</sup> Bhat (2010: 021).

<sup>187</sup> Twum-Danso Imoh, A. (201:2).

<sup>188</sup> Donnelly, J (2009) Cultural Relativism and Universal Human Rights. *Human Rights Quarterly*, Vol. 6, No. 4 (Nov., 1984), pp. 400-419, 400.

<sup>189</sup> The 1993 Constitution of Lesotho, Section 4: Fundamental human rights and freedoms. This bears the principles of human rights as documented in the CRC.

<sup>190</sup> Donnelly, J. (1993). *International Human Rights* 19 Westview Press: Boulder.

<sup>191</sup> Bhat (2010: 022).

Convention on the Rights of the Child, the fundamental rights of all human beings were clearly articulated in legal instruments, which include conventions, declarations and covenants.<sup>192</sup> The acceptance of a single legal instrument that recognises the rights of children as human rights was adopted in 1989.<sup>193</sup> It is however noteworthy to state that, prior to the adoption of the CRC, the League of Nations adopted the first convention on the rights of the child with the aim of deliberating children's rights. This was the 1924 Geneva declaration of the Rights of the Child.<sup>194</sup> It is worth noting to state that 1979 was declared International Year of the Child.<sup>195</sup> During that year, emphasis was placed on promoting children's wellbeing by focusing on their special needs as well as encouraging member states' participation in ensuring that underprivileged and working children are protected.<sup>196</sup> As a result, the issue of child labour became the focus of the year.<sup>197</sup> However, child labour continues to be the focal point to this date, with a particular focus on human rights, specifically the rights of children.

In September 1990, the Convention on the Rights of the Child (CRC) entered into force and is currently ratified by at least 193 states including the Kingdom of Lesotho in 1992.<sup>198</sup> By ratifying the Convention, the Kingdom of Lesotho undertakes that it is bound by the CRC. The Convention on the Rights of the Child -in accordance to the principles of the United Nations Charter- recognises the innate dignity, equal and absolute rights of human race, including that of children as part of the human family.<sup>199</sup> The convention advocates for children to be raised within a family with love and understanding, and in a peaceful environment to ensure the full development of their personality. In addition, children have to be treated as individual beings within the society and should be raised in accordance to the United Nations charter principles.<sup>200</sup>

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<sup>192</sup> *Ibid.*

<sup>193</sup> Bhat (2010: 020) The CRC was adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49. The Convention on the rights of the child has been ratified by 193 states to this day.

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> United Nations Treaty Collection: Chapter IV Human Rights 'Convention on the rights of the Child' available at: [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-11&chapter=4&clang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11&chapter=4&clang=en) (accessed 24 August 2017).

<sup>199</sup> The Convention on the Rights of the Children, Preamble.

<sup>200</sup> *Ibid.* See also the Charter of the United Nations Article 1, which strives for the maintenance of peace and security through the adoption of collective measure that ensure the prevention and removal of threats to the peace, suppressing acts of aggression or anything that breaches peace thereby adopting and advocating for peaceful means that are in conformity with the principles of justice and international law. Respecting the principles of equal rights, self-determination and means to ensure that peace is strengthened. Dignity, tolerance, freedom, equality and solidarity principles are also prime principles that children should be raised in accordance with the Charter of the United Nations.

The Convention on the Rights of Children came as a successor of the two major legal instruments, namely, the 1924 Declaration on the Rights of the child and the 1959 Declaration of the Rights of the children. Contrary to its predecessors, under the CRC children's rights are treated as human rights, therefore child labour is seen as a human right problem as it impinges on the rights of children. Unlike the 1924 and 1959 Declarations, the CRC is binding, ambitious and authoritarian in nature, and centred more on the promotion and protection of the well-being of children as well as children's rights.<sup>201</sup> The CRC merges and incorporates civil and political rights with social, economic and cultural rights in one legal instrument.<sup>202</sup> The Convention recognises that all rights are equal. The underlying CRC principles are divided into four categories of rights. These include the right to survival, the right to participation, the right to development and the right to protection.<sup>203</sup> While the right to protection particularly addresses the issue of child labour, Keita rightfully asserts that the protection of children against harmful practices, such as that of child labour, also depends on the realisation of other rights,<sup>204</sup> such as the right to survival and freedom of expression, to state the least. Article 32 distinctly provides that children must be protected from any form of exploitative work.<sup>205</sup>

The Convention further places an obligation on member states to ensure that harmful labour practices that interfere with children's wellbeing, education, and physical and mental development are prohibited. The convention advocates for legislative and administrative procedures including social and educational methods to enforce the provisions of Article 32 and address the scourge of child labour.<sup>206</sup> Lubaale argues that this obligation persuades member states to retort to conditions that leave children vulnerable to child labour, such as

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<sup>201</sup> D Imoh, AT & Ansell, N (2004) 'Children's lives in an Era of Children's Rights: The progress of the Convention on the Rights of the Child in Africa. Routledge New York, 1. See also Bhat, he states that these rights include the right to protection (relates to safeguarding children from all forms of abuse and exploitation this includes protection against child labour, drug abuse, sexual exploitation to mention but a few as well as ensuring that children are not neglected) the right to survive, development (relates to the right to equal access to information, freedom, right to education, playing as well as taking part in cultural activities) and the right to participate to mention a few. Furthermore, Article 32 of the CRC provides that states should ensure that child labour practices are eradicated and that protection is provided for children engaging in work that is said to be legitimate to ensure that they are healthy and well developed.

<sup>202</sup> *Ibid.*

<sup>203</sup> *Ibid.*

<sup>204</sup> Keita, A (2008) '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*: 349. See Also published Dissertation by Lubaale Emma Charlene titled '*A Human Rights-Based Approach to Child Labour in Africa: Challenges and Prospects in South Africa*' (2011), 10.

<sup>205</sup> Article 32 of the Convention on the Rights of the Child.

<sup>206</sup> The Convention on the Rights of the Child: Article 32 (2) (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment & (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.



culture practices, poverty, diseases and poor economy, and realise other rights relevant to children such as the right to food, education, health care.<sup>207</sup> However many African states including Lesotho have failed to efficiently respond to the child labour problems evident within the continent. The lack of implementation of the CRC and the recognition of child labour as a positive cultural practice -and not as a harmful practice- remains the reasons for the prevalence of child labour.<sup>208</sup>

While many argue that child labour is an inevitable result of culture, one could rather argue that the fundamental reason is the absence of enforcement or the implementation of legislative measures as stated in the Convention.<sup>209</sup> While states have the minimum age provided by not only international law but also national laws, many children below the prescribed age are often found participating in child labour.<sup>210</sup> No actions of sanctions, arrest or fines have been issued to employers of children who contravene the CRC.<sup>211</sup> Numerous African states including Lesotho fail to adhere to their legally binding obligations to the CRC. According to the report submitted by the civil society organisations in Lesotho to the CRC Committee, several initiatives implemented by both the government and non-governmental organisations to address child labour amongst others are not guided by the Convention on the rights of the Child.<sup>212</sup> The report claims that the government and non-governmental organisations have failed to sufficiently propagate and popularise the Convention.<sup>213</sup> As a result, this further exacerbates child labour evident within the Kingdom of Lesotho.

As it has been reiterated, child labour (specifically the worst of forms of child labour) is undeniably a human right issue. Like the CRC, the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes significantly notable measures that state

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<sup>207</sup> Lubaale, E. C. (2011) Dissertation titled ‘A Human Rights-Based Approach to Child Labour in Africa: Challenges and Prospects in South Africa’. Published Dissertation, 10.

<sup>208</sup> Letuka (1998: 208-209).

<sup>209</sup> Letuka (1998:209).

<sup>210</sup> Letuka (1998:205).

<sup>211</sup> Lesotho Country Analysis Working Document (Final Draft) (2017), the document states that because of the “ lack of government resources enforcement and social programs also remains a major challenge to combatting child labour in Lesotho”

<sup>212</sup> Lesotho civil Society Organisations Complimentary Report to the United Nations Committee on the Rights of the Child (2017). Available at: [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LSO/INT\\_CRC\\_NGO\\_LSO\\_28140\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LSO/INT_CRC_NGO_LSO_28140_E.pdf) (Accessed 16 March 2018), 10.

<sup>213</sup> *Ibid.*

parties need to implement in addressing child labour problems.<sup>214</sup> These measures are clearly articulated in Article 10 (3) of the ICESCR. Article 10 (3) provides that:

“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, 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.”<sup>215</sup>

The Covenant further recognises that all human beings, including children, have the right to enjoy to the fullest, the highest attainment of physical and mental health.<sup>216</sup> Consequently, state parties are required to implement the provisions of Article 12, which advocates for a ‘healthy development of a child’.<sup>217</sup> Moreover, according to Article 13 of the Covenant, children have a right to education, that is, every child should have access to basic, free and compulsory primary education. Contrary to Article 13 is the evident influx of children partaking in child labour. In Lesotho, the majority of children have been forced out of school to take part in the labour force in order to provide for their families; they take part in work that requires long hours of work, for instance, working in farms, as herd boys, and domestic workers amongst others.<sup>218</sup> While others may argue, poor living standards have driven many children in Lesotho into child labour, it is undeniable that the work they find themselves participating in is dangerous and harmful to their wellbeing. This includes working in mines and manufacturing factories, as street vendors, domestic workers and herd boys among others.<sup>219</sup> This constitutes the worst forms of labour. Consequently, it is significant to protect children from such forms of work deemed hazardous.

Fondella<sup>220</sup> rightfully contends that the ICESCR generally expresses two fundamental principles. Firstly, a minimum age should be set for paid employment in order to protect children from harmful and exploitative work; and secondly, all forms of work considered detrimental to the wellbeing/development of the child, or as hindering the child’s education should be prohibited.<sup>221</sup> Observing the first principle, the Covenant does not provide for a

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<sup>214</sup> International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27.

<sup>215</sup> Article 10 (3) of the Covenant on Economic, Social and Cultural Rights..

<sup>216</sup> Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights.

<sup>217</sup>Fodella, A. (2008) Chapter 10: Freedom from child labour as a human right: The role of the UN System in implementing ILO Child labour Sanctions in G Nesi et al (eds) Child labour in a globalised world: A legal Analysis of ILO Action, 206.

<sup>218</sup> Kimane (2006:6).

<sup>219</sup> *Ibid.*

<sup>220</sup> Fodella, A. (2008:205).

<sup>221</sup> *Ibid.*

standard or fixed minimum age of employment. This therefore grants member states the opportunity to choose whatever age. As a result, this can be quite problematic as some states may set the minimum age which refers to 'paid work' to the lowest age, leaving children more vulnerable to human rights abuse. It could also be argued that this principle is applicable to the formal sector as opposed to the informal sector, which constitutes majority of children participating in child labour.<sup>222</sup> Fondella however, argues that state parties should consider obligations provided by the Covenant as prime objectives that require progressive implementation with utilisation of the available resources.<sup>223</sup> This is however not the case for the African continent, particularly the Sub Saharan region, where child labour is the highest.

It is imperative to note that, the attainment of the provisions by ICESR as argued by Fodella require a gradual process.<sup>224</sup> It is however argued that Article 10 (3) can be implemented immediately through judicial or national legal structures.<sup>225</sup> For instance, convictions, fines or sanctions of those in contravention of the law and obligations -as provided by treaties and national laws- can be put in place.<sup>226</sup> However, many African states including the Kingdom of Lesotho continue to fail in enforcing the immediate measures in order to curb the incidences of child labour.<sup>227</sup> Consequently, many children's rights remain infringed upon and the fundamental principle of their right to protection is denied.

The International Covenant on Civil and Political Rights (ICCPR) does not address concerns around child labour, but rather makes provision for the protection of children against all forms of discrimination. This can be understood to protect children involved in child labour from any form of prejudice or unfairness, which is evident in child labour through exploitation and abuse.<sup>228</sup> Fodella further states that, although the Covenant does not entirely deal with issues of child labour, the Human Rights Committee (HRC) (which implements and ensures state parties' compliance to the treaty) states that the provision on non-discrimination suggests that a minimum age of work should be set. It also proposes that any form of exploitation based on labour should be prohibited especially if children are involved. One

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<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

<sup>225</sup> Fodella (2008: 207).

<sup>226</sup> The children's protection and welfare Act of 2011: Part XXIV: Employment of Children: Minimum Age for Hazardous Employment Section 230 (4) (a) see also section 32 of the Constitution of Lesotho.

<sup>227</sup> Report: Lesotho Moderate Advancement available at [https://www.ecoi.net/en/file/local/1273958/4765\\_1457947580\\_lesotho.pdf](https://www.ecoi.net/en/file/local/1273958/4765_1457947580_lesotho.pdf) Accessed (12/03/2018), 3.

<sup>228</sup> International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, See Also Fodella in Child Labour in a Globalized World: A legal Analysis of ILO Action, 205.

could suggest that exploitation is seen as another form of discrimination.<sup>229</sup> Fodella<sup>230</sup> rightly contends that the high prevalence of child labour within the African continent and particularly the Kingdom of Lesotho is evidence of the state's non-compliance to the human rights instruments that advocates for prohibition of, and the protection of children against exploitative work. Enforcing human rights and non-compliance of the law remains a challenge.

The ILO Convention 138: Minimum Age Convention (which established its basis on the CRC and was adopted in 1973) entered into force in 1976 and was ratified by the Kingdom of Lesotho in 2001.<sup>231</sup> The Convention establishes a comprehensive framework, thereby adopting fundamental measures aimed at inhibiting the occurrences of child labour, eradicating child labour practises and ultimately protecting the rights of the children. State parties to the convention are required to set a minimum age for employment and adopt national policies intended to eradicate child labour.<sup>232</sup> These policies are evident in countries such as South Africa and Tanzania, to say the least. The Time-Based Programme and Child labour Plan of Action serve as examples of such national policies adopted by the two countries respectively.<sup>233</sup>

The Convention further provides that the minimum age for employment should be coherent with both the mental and physical development of the children and should not be less than the age of 15 -which is considered the age of compulsory schooling.<sup>234</sup> However, many African states including Lesotho are found to be in contravention of the Convention, as thousands of children below this set age are involved in child labour. Article 3 (1) provides that work or employment that is by nature harmful and detrimental to the health, safety and morals of the young ones should not be allowed for children below the age of 18.<sup>235</sup> This is however not so in countries such as the Democratic Republic of Congo, Lesotho and Ghana where numerous

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<sup>229</sup> Fodella (2008:205-206).

<sup>230</sup> Fodella (2008:205).

<sup>231</sup> ILO C138: Minimum Age Convention, 1973 (No. 138) Convention concerning Minimum Age for Admission to Employment (Entry into force: 19 Jun 1976). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPU:12100:0::NO::P12100\\_ILO\\_CODE:C138](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPU:12100:0::NO::P12100_ILO_CODE:C138) (accessed 21 November 2017).

<sup>232</sup> *Ibid.*

<sup>233</sup> The Hague Global Child Labour Conference 2010 – Towards a world without Child Labour, Mapping the Road to 2016 - Conference Report (2010), Available at: [www.ilo.org/ipec/Informationresources/WCMS\\_146399](http://www.ilo.org/ipec/Informationresources/WCMS_146399) (Accessed 10 March 2017)12 -13.

<sup>234</sup> ILO C138: Minimum Age Convention. See Article 1 Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. And Article 2 (3) The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

<sup>235</sup> Article 1 (3) of the ILO C 138: Minimum Age Convention

children below the ages of 18 work in mines, as street vendors and in farming.<sup>236</sup> This kind of work infringes on their rights as stated in Article 2 (3).

The ILO Convention No. 138 is conscious of the negative effects of child labour and recognises the rights of children and the importance of the realisation of such. For instance, Article 1 recognises the right to physical and mental development. While Article 2 (3) speaks to the right to education, Article 3 makes provision to the right to protection from hazardous work and harmful labour practices. The Convention therefore provides that work that infringes on these rights be abolished. Lubaale rightly states that member states have an obligation to protect children from exploitative work through the adoption of measures that not only go beyond law prohibiting child labour but also address the core causes of child labour.<sup>237</sup>

Given the severity and the increased concern of child labour, Convention 182- Worst Forms of Child Labour was adopted in 1999 and entered into force in 2000. The Kingdom of Lesotho ratified the Convention in 2001.<sup>238</sup> According to the Convention, the worst forms of labour constitutes all forms of slavery or practices similar to slavery. For instance, the sale and trafficking of children; bondage; the recruitment of children in armed conflicts; using children for prostitution or pornography production; drug trafficking; and work that is naturally harmful to the health, morals and safety of children, constitutes the violation of children's rights.<sup>239</sup> The Convention recognises the rights of children, particularly the right of children to be protected against harmful practices for the purpose of labour. Abolishing worst forms of child labour is therefore a matter of urgency.<sup>240</sup> However, it is important to note that the process of eliminating the worst forms of child labour is a progressive one because of compelling conditions such as acute poverty, underdevelopment, as well social and cultural norms that remain the reasons why children engage in child labour.<sup>241</sup> Member states are therefore enjoined to implement ways and measures to respond to the conditions that force

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<sup>236</sup> News 24: Amnesty warns companies on child labour in DRC cobalt mining. Available at: <https://www.news24.com/Africa/News/amnesty-warns-companies-on-child-labour-in-drc-cobalt-mining-20171116>. (accessed 18 October 2017).

<sup>237</sup> Lubaale (2011: 14).

<sup>238</sup> ILO Convention 182: Worst forms of Child Labour ratification status available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327) (accessed 21 November 2017).

<sup>239</sup> Handbook for Parliamentarians No3. (2002) 'Eliminating the Worst Forms of Child Labour' A Practical guide to ILO Convention No. 182. Available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/publication/wcms\\_172685.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/publication/wcms_172685.pdf) (accessed 12 March 2017).

<sup>240</sup> Handbook for Parliament No.3 (2002:29).

<sup>241</sup> *Ibid.*

children into child labour.<sup>242</sup> Subsequently, this implies that both socio-economic needs and the rights of children are met. This includes the right to education, food, shelter, health, and the right to moral and physical development.<sup>243</sup>

Lubaale<sup>244</sup> further contends that member states should also respond to cultural perceptions on child labour. The Kingdom of Lesotho is one of which a cultural perception should be changed in addressing child labour issues. Although culturally it is believed that children ought to work, and that the ability to work is a sign of responsibility, this view is uninformed and overshadows the violation of the rights of children that come with being employed as a child. As a result, such cultural perceptions need to be dealt with in order to address the problem of child labour. The Convention recognises that the solution to child labour is sustainable economic growth as well as education.<sup>245</sup> Furthermore, the Conventions call for all member states to consider instantaneously efficient measures for prohibiting and eradicating the worst forms of child labour.<sup>246</sup> According to Lubaale, child labour is said to be a technical issue requiring, therefore, the adoption of an “integrated framework” that addresses child labour from its roots.<sup>247</sup>

Developing on the concerns of the ILO Conventions in relation to the elimination of child labour and the need to adopt sustainable development globally, the United Nations adopted Agenda 2030 in 2015.<sup>248</sup> Agenda 2030 is premised on four pillars, 17 goals and 169 targets. SDG Target 8.7 calls on the states universally to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”<sup>249</sup> Although adopted recently, sufficient implementation of the target will not only help abolish child labour but restore the rights of children violated by the practice of child labour.

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<sup>242</sup> Lubaale (2011: 12).

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*

<sup>245</sup> ILO Convention No. 182: Worst forms of Child Labour Convention (1999) Preamble.

<sup>246</sup> Article 1 of the ILO Convention: 182.

<sup>247</sup> Lubaale (2011: 15). See also agency report of The Hague global child labour conference on joining forces against child labour of 2010, paragraph 258 both the ILO, UNICEF and World Bank are of the same understanding that child labour should be dealt with from the grassroots because of its technical nature

<sup>248</sup> United Nations Development Programme (UNDP): What are the Sustainable Development Goals? Available at: <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html> (Accessed 10 December 2019).

<sup>249</sup> United Nations Sustainable Development Goals Available at: <https://www.unodc.org/southeastasiaandpacific/en/sustainable-development-goals.html> (Accessed 10 December 2019).

Inspired by the United Nations System the African Charter recognises the importance of the protection and promotion of human rights.<sup>250</sup> However, unlike other international human rights instruments -particularly the CRC- argued to have left out socio-cultural and economic realities of Africans, the African Charter on Human and Peoples' Rights (ACHPR) acknowledges African culture, traditions and virtues thereof.<sup>251</sup> This realisation has led to the African concept of human rights peculiar to Africans. Although the African charter does not explicitly make provision for children's rights, member states are enjoined to protect the rights of the children as stated in other international instruments on human rights.<sup>252</sup> Article 19 further states that all people, including children, are equal with the same rights and shall enjoy equal respect. Furthermore, the charter states, "nothing shall justify the domination of people by another".<sup>253</sup> It could be argued therefore that the realisation of other rights provided in article 19 relates to the issue of child labour. For instance, children suppressed by their employers often fall victim to exploitation as a result. It is noteworthy to state that, although the African Charter on Human and Peoples' Rights does not explicitly address the children's rights, an instrument specific to the rights of children was later adopted. That is the Charter on the Rights and Welfare of the Child.

The African Charter on the Rights and Welfare of the Child (ACRWC) is a fundamental human rights instrument aimed at promoting and strengthening children's rights peculiar to the African child. The Charter builds upon the principles of the CRC.<sup>254</sup> Like CRC, the ACRWC expressly makes provision for the protection of children against child labour and specifically against work that is exploitative.<sup>255</sup> Article 15 of ACRWC directly addresses the issue of child labour.<sup>256</sup> This particular Article also identifies the rights of children that need to be protected. This includes the right to physical, moral, mental and social development. The charter is cognisant of the factors that contribute to the situation of many children in Africa such as poverty, undesirable socio-economic circumstances and cultural practices.

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<sup>250</sup> The African charter on the Rights and Welfare of the Child Preamble. See also D, Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child', *The International Journal of Children's Rights* 10: 127-136, 2002, 128.

<sup>251</sup> Article 22 (1), Article 17 (2) and Article 29 (7) of the ACHPR.

<sup>252</sup> African Charter on Human and Peoples' Rights Article 18 (1). The family shall be the natural unit and basis of society. It shall be protected by the State, which shall take care of its physical health and moral. See also Article 18 (3). The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and convention'.

<sup>253</sup> Article 19 of the African Charter on Human and Peoples' Rights.

<sup>254</sup> The African Charter on the Rights and Welfare of the Child (ACRWC) Available at <http://www.acerwc.org/the-charter/> (Accessed 20 November 2017).

<sup>255</sup> Article 15 of the African Charter on the Rights and Welfare of the Child (ACRWC).

<sup>256</sup> Article 15 The African Charter on the Rights and Welfare of the Child.

These circumstances leave majority of children vulnerable to child labour practices, which ultimately result in the infringement of children's rights such as the right to education, development and good health, to state the least.<sup>257</sup>

Although the member states have a duty and responsibility to ensure that children are protected from circumstances that leave them vulnerable, it is important to note that ACRWC fails to persuade member states to respond to socio-economic conditions, poverty and cultural practises (to state a few) that leave children vulnerable to child labour.<sup>258</sup> As a result, the African region continues to be flooded with child labour, leaving more and more children vulnerable and their rights infringed upon. This is evident in Lesotho today.<sup>259</sup> This therefore compromises what could be regarded as a progressive response to addressing the issues around the prevalence of child labour.<sup>260</sup>

According to Letuka, in an attempt to address the problem of child labour and the rights of children, the Constitution of Lesotho (Supreme Law) has incorporated some of the international human rights conventions or covenants on provisions relating to human rights, particularly the rights of the children.<sup>261</sup> Chapter III, which covers the principles of state policy, also makes provision for child labour.<sup>262</sup> According to Chapter III Section 32 (a) and (b) of the Constitution, the Kingdom of Lesotho provides that policies aimed at protecting children from discrimination, economic and social exploitation shall be adopted. Furthermore, the Constitution states that employment of children in work that is detrimental to the morals and health or hinders normal development shall be punishable by the law.<sup>263</sup> Section 32 (d) implies that paid work for children should be carried out based on the set age limit. Failure to do so will lead to legal implications.<sup>264</sup> Although these provisions have been

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<sup>257</sup> Article 15 The African Charter on the Rights and Welfare of the Child, see also the Preamble of the Charter "Noting with concern that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care".

<sup>258</sup> Ohene-Amoh, C. 'The Uniqueness of the African Charter on the Rights and Welfare of the Child' available at: [https://www.academia.edu/10017380/The\\_Uniqueness\\_of\\_the\\_African\\_Charter\\_on\\_the\\_Rights\\_and\\_Welfare\\_of\\_the\\_Child?auto=download](https://www.academia.edu/10017380/The_Uniqueness_of_the_African_Charter_on_the_Rights_and_Welfare_of_the_Child?auto=download) Accessed (12 March 2018). The charter places no obligation on states to promote and make public the rights of children. As result children remain victims of cultural practices such as FGM and child labour. Furthermore the "The purpose of the many rules in the charter regarding specific aspects of child survival and development does not protect the African child since child right abuses such as defilement; corporal punishment, child trafficking, and child labour are on the ascendancy throughout Africa."

<sup>259</sup> Kimane (2006: 1).

<sup>260</sup> Lubaale (2011:16).

<sup>261</sup> Letuka, P. (1998) Chapter 10: The Best Interest of the Child and Child labour in Lesotho in 'Law, culture, tradition and children's rights in eastern and southern Africa edited by W Ncube. 204.

<sup>262</sup> The 1993 Constitution of Lesotho See chapter III: Principles of State Policy.

<sup>263</sup> Section 32 (c) of the constitution of Lesotho.

<sup>264</sup> Section 32 (d) of the constitution of Lesotho



made, the majority of children are found partaking in child labour with little to no protection.<sup>265</sup> The constitution of Lesotho fails to protect the rights of the children through their lack of legal and policy enforcement. As a result, not only is the Kingdom of Lesotho failing to comply with the human rights principles but is also failing the children altogether.<sup>266</sup> Letuka rightly asserts that the provisions of the Constitution under Section 32 on the protection of children against child labour are not in a “rights” oriented language, but are more focused on the adoption of policies.<sup>267</sup> Child labour remains high in Lesotho. As a result, failure to adopt policies or enforce efficiently adopted policies that recognise human rights (in this case children’s rights) leave thousands of children negatively affected and vulnerable to child labour.<sup>268</sup>

In conclusion, although the language of the Convention on the Rights of the Children (CRC), does not particularly address the issues of child labour,<sup>269</sup> Article 10 of the (ICESCR) and International Labour Organisation Convention 138 (ILO) makes provision and reference to child labour.<sup>270</sup> However, the conventions and covenants put emphasis on the principles of

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<sup>265</sup> Kimane, I ‘Protecting the rights of working children in Lesotho through Legislation’ Available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.697.4416&rep=rep1&type=pdf> (Accessed 28 November 2017). Who emphasises on the need for legislation aimed at promoting the rights of children and protecting children, this led to the adoption of the Child protection Bill that was later enacted into an Act. However, regarding issues of child labour facing the Kingdom of Lesotho, the Act has been ineffective and unable to respond to the plight of child labour thus questioning the Acts enforcement.

<sup>266</sup> See Section 32 of the Constitution of Lesotho, while the Constitution puts an emphasis the protection of children from work that is harmful and dangerous work, the Children’s Protection and Welfare Act provides that child labour should be prohibited. Both pieces of legislation state that employment of children is punished by law, convicted or fined. However, there is no account of convictions or fines for majority of families who have under aged girls working as domestic workers, no protection of children roaming around the streets of Maseru working as street vendors and rural areas populated by children working as herd boys.

<sup>267</sup> Letuka (1998: 204).

<sup>268</sup> See Lesotho Country Analysis Working document final Draft (2017), 26.

<sup>269</sup> Cullen (2007:3).

<sup>270</sup> Article 10 (3) of ICESCR Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

entry into force 3 January 1976, Article 10 (3) ‘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, 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.’ See also Article 32 of the CRC “States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article”

human rights as stated in the Universal Declarations of Human Rights (UDHR).<sup>271</sup> It is evident that child labour infringes on the rights of children. Therefore, it is significant that children are recognised as right holders and are protected from work detrimental to their wellbeing.<sup>272</sup> Based on the human rights instruments discussed above, the member states have an obligation to protect and promote the rights of children regardless of the social or economic context. While measures and approaches to child labour have been clearly articulated in all human rights instruments, the implementation and enforcement of such remain a challenge. Many African countries including the Kingdom of Lesotho recognise the importance of culture and tradition. Culturally, children have duties and responsibilities.<sup>273</sup> Hence, cultural ideologies continue to challenge the principles of human rights. Cultural relativists argued that human rights are Western-centric ideologies and fail to recognise African traditions.<sup>274</sup> It is however crucial to take cognisance of children's rights as important and fundamental. All children equally have the right to education; mental, moral, physical and social development; and protection against work that is hazardous. The best interest of the child should be put first. It is evident that the ratification of all human rights instruments, without enforcement and implementation as well as domestication of the treaties in order to curb and eventually eradicate child labour, proves to be futile. As a result, many children continue to be victims of child labour. One could argue that the lack of enforcement and implementation results from not recognising child labour as a human rights issue. According to the human rights perspective, it is therefore important to establish both social and legal facilities ensuring the protection of children's rights against child labour through effective policy and law enforcements.

### **2.3 Sociological Perspective / Social Science Theory**

It is essential to look at a sociological/ social science approach. This approach will help address the prevalence, persistence and consequences of child labour. The social science viewpoint helps scholars and individuals to understand their place -that is the society in

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<sup>271</sup> Universal Declaration on human Rights: Preamble

<sup>272</sup> Ehlers & Frank (2008: 111).

<sup>273</sup> Letuka (198:207). See Article 31 of the ACRWC.

<sup>274</sup> Donnelly, J. (1984) Cultural Realativism and Human Rights Quarterly [Vol. 6, No. 4 \(1984\)](#), pp. 400-419. Published By: The Johns Hopkins University Press. 406.

which the live in- and how to change it (social change) .<sup>275</sup> According to the social science theory, focus is placed on biographies, social structure and history.<sup>276</sup> According to Mills, the historical background discusses the difference between societies based on their history -that is how, where and when they were established. Biographies on the other hand review individual's problems within their immediate social context. Social structures refer to societal institutions such as families, political parties as well as the work place. It is fundamental to examine how these institutions relate to one another.<sup>277</sup> This is very important when addressing the plight of child labour affecting the African continent. Therefore, social issues such as child labour cannot be addressed out of the three focus points. According to Mills, the sociological/ social science perspective gives individuals freedom to gain understanding on their circumstances thus allowing transformation to take place.<sup>278</sup> However, while the African continent understands the severity of social issues, particularly in relation to child labour, changes remains a problem.<sup>279</sup> The social issues include low levels of income, and little to no access to basic services such as education and health care amongst others.<sup>280</sup>

Historically, the majority of Third World countries were colonised and gained independence in the 1960s.<sup>281</sup> Independence came through the difficult struggle for freedom from oppression and a fight for self-determination. Today, every African state that was under colonial rule is free. However, this freedom is questionable. Many may argue that the “so called freedom” has come with a cost. While many states have been “politically” emancipated, this is not so economically and socially. The political emancipation can also be discussed rather in the light of political independence only. Many African states today are faced with major political problems evidenced by high levels of conflicts and government instabilities amongst others.<sup>282</sup> Many African states, including Lesotho, are economically unstable and poverty stricken, with majority of people living below the poverty line and

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<sup>275</sup> Wright Mills, C. The Sociological Imagination available at: <http://study.com/academy/lesson/the-sociological-imagination-by-mills-summary-lesson-quiz.html> (accessed 20 November 2017).

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*

<sup>280</sup> Chapter 5: Factors Responsible for Child Labour available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/40581/10/14\\_chapter5.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/40581/10/14_chapter5.pdf). (Accessed 21 March 2018), 92.

<sup>281</sup> Hargreaves, J. D. (1996) ‘Decolonization in Africa’ 2<sup>nd</sup> Edition Routledge, Tylor & Farancis New York, 222 gives examples of South Africa, Lesotho and Botswana who received their independence from Britain in the 1960s. See also report on Decolonization of Africa, which gives a list of African countries that gained independence in the 1960s. Available at: <https://www.saylor.org/site/wpcontent/uploads/2011/04/Decolonization-of-Africa.pdf> (Accessed 21 March 2018) 3.

<sup>282</sup> Sako, S. (2001) Paper 1 ‘Africa: Major Development Challenges and their Capacity Building Dimensions’ Available at: <https://www.acbf-pact.org/> (Accessed 12 March 2018), 6 -7.

characterised by inequalities.<sup>283</sup> As a result, many children fall prey to the demands of child labour in order to better their lives and that of their families. Social problems such as poverty, family instabilities (due to separation or divorce), death, culture/customs, and deprivation of schooling opportunities have resulted in child labour practices.<sup>284</sup>

According to the ILO, poverty is one of the greatest causes of child labour.<sup>285</sup> Poverty is closely related to the absence of employment and lack of income. Consequently, the majority of people in Africa, including Lesotho live under the poverty line.<sup>286</sup> This has led to a great number of children participating in child labour. Bhalotra rightly contends that children from poor households are compelled to work in order to provide for their families.<sup>287</sup> While children take up roles of breadwinners, the majority of them leave school early without completing their basic primary education, but children working within the agricultural sector often combine school and work.<sup>288</sup> According to Bhalotra, due to the high prevalence poverty, the cost of education has become dear, resulting in education becoming increasingly inaccessible and therefore leading to a great number of children being forced to drop out and find jobs.<sup>289</sup> This is evident in Lesotho, particularly in the rural areas.<sup>290</sup>

Apart from poverty, Bhalotra<sup>291</sup> argues that children are forced into child labour because of their parents' selfish desires. This is particularly evident in the entertainment industry. According to Dibu, parents take decisions on behalf of the children concerning child labour and schooling.<sup>292</sup> He contends that children (particularly those from poverty-stricken families) are seen as income contributors. Because of the low income in the family, education becomes unaffordable for parents thus forcing children to work in order to compensate for the low income.<sup>293</sup> On the other hand, children in a quest for financial independence, often participate

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<sup>283</sup> Sako, (2001:7).

<sup>284</sup> Dibu, W. "Assessment of the impact of child labour on children educational achievement" Chapter 1 Available at: [file:///F:/Assessment\\_of\\_the\\_impact\\_of\\_child\\_labour.pdf](file:///F:/Assessment_of_the_impact_of_child_labour.pdf). (Accessed 20 October 2017), 2.

<sup>285</sup> International Labour Organisation (ILO) available at: [http://www.ilo.org/moscow/areas-of-work/child-labour/WCMS\\_248984/lang--en/index.htm](http://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_248984/lang--en/index.htm) (accessed 18 November 2017).

<sup>286</sup> *Ibid.*

<sup>287</sup> Bhalotra, S. (2003), "Child Labour in Africa", OECD Social, Employment and Migration Working Papers, No. 4, OECD Publishing, Paris. Available: <http://dx.doi.org/10.1787/582055427126> (accessed 14 October 2017), 14.

<sup>288</sup> Bhalotra, S. & Tzannatos, Z. (2003) "Child Labor: What Have We Learnt?" Available at: <file:///F:/89a18a209782b3833d38b958931dad6e4a13.pdf>, (accessed 10 October 2017), 7.

<sup>289</sup> Bhalotra, S. & Tzannatos, Z. (2003: 9)

<sup>290</sup> Children of Lesotho: realising the children's rights. Available at: <https://www.humanium.org/en/lesotho/> (accessed 14 October 2017).

<sup>291</sup> Bhalotra, S. & Tzannatos, Z. (2003: 4)

<sup>292</sup> Dibu (Chapter 1:8).

<sup>293</sup> *Ibid.*

in work thus increasing the number of child labourers.<sup>294</sup> Although the CRC provides that children have a right to survive and the right to participate in any activities they wish to including child labour,<sup>295</sup> this to an extent makes child labour acceptable. However, the negative effects of such labour on the lives of children cannot be justified. According to Letuka, children's views on child labour in Lesotho show dissatisfaction in terms of the work they partake in especially with herding animals as it leaves them with little time to play. Children are usually lonely and exposed to a dangerous environment.<sup>296</sup>

According to Dibu, the circumstances and size of families play a crucial role in understanding the predominance of child labour.<sup>297</sup> Dibu maintains that large underprivileged families often have more children involved in child labour as opposed to those in smaller families.<sup>298</sup> Due to the great demands of large households, children are forced to work. He further argues that, in such an environment, a female child is most likely to be involved in domestic work. While a girl child becomes a breadwinner, the male child is usually afforded the opportunity to go to school.<sup>299</sup> One can argue that child labour is gender biased. Furthermore, due to the high mortality rate affecting the Sub Saharan region today because of HIV/ AIDS, many children are left as orphans and are susceptible to child labour practices. Orphaned children are usually found in poor households and are not likely to be in school.<sup>300</sup> The majority of children turn to work on the streets as street vendors, or sex workers.<sup>301</sup> Consequently, children are prone to sexual and physical abuse, exploitation and oppression with no protection.

The escalation of political instabilities in the world today, particularly within the African region has also intensified the incidences of child labour. Dibu,<sup>302</sup> rightly asserts that political instability brings about diseases, poverty and damage to the physical, mental and social development of the society. In a quest for better living conditions, many people flee their

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<sup>294</sup>Bhalotra, S. (2000) "Is Child Work Necessary?" Discussion Paper, No. 26. Available at [file:///F:/Is\\_Child\\_Work\\_Necessary.pdf](file:///F:/Is_Child_Work_Necessary.pdf) (accessed 10 October 2017) this could also be seen as the Agency.

<sup>295</sup> Article 6 and Article 9 of the CRC See also Dibi, the addresses the right of children to participation based on the children centered discourse, according to this approach, emphasis is placed on the attitudes of working children towards child labour. Child labour is therefore understood from the perspective of children involved in child labour. This ultimately help understand and find solutions to the predominance of child labour facing the world today, especially the African continent.

<sup>296</sup> Letuka (1998: 210).

<sup>297</sup> Dibu (Chapter 1: 9).

<sup>298</sup> *Ibid.*

<sup>299</sup> *Ibid.*

<sup>300</sup> Bhalotra & Tzannatos (2003:47) See also Dibu (Chapter 1:9).

<sup>301</sup> Dibu (Chapter 1: 9).

<sup>302</sup> Dibu (Chapter 1:10).

countries and settle in other countries where children fall victim to child labour. For instance, the influx of Zimbabweans in South Africa. In conflict-stricken countries like the Democratic Republic of Congo (DRC), families migrate from war-stricken regions to the cities in search for better living conditions. However, children in the cities are inclined to work to survive. Majority of these children are found in cobalt mines.<sup>303</sup> As a result, children are vulnerable to economic exploitation. This, infringes on the basic human rights principle of the right to protection.

In countries like Lesotho, where rural to urban migration is common, many people including children are often found living and working on the streets. Children often become street vendors, and are therefore exposed to human trafficking, sex work and engaging in illegal activities.<sup>304</sup> The influx of rural migration to urban areas has resulted in structural issues including inequality as well as urban poverty that leave many poor. Urban poverty is characterised by unemployment, housing shortages as well as inadequate access to basic needs.<sup>305</sup> Like migration, globalisation has been argued to have led to the intensification of child labour.<sup>306</sup> As many multinational companies move production to other states, especially in Africa, the rise of child labour has been evident. It is argued that globalisation increases exploitation through cheap labour.<sup>307</sup> For instance, these multinational companies include Samsung and iPhone in the DRC.<sup>308</sup>

According to Dibu, child labour is also a result of social exclusion. Dibu, rightly contends that fragmentation and disintegration of the society, nation and family unit -either through death or divorce- has resulted in many children feeling isolated and excluded.<sup>309</sup> While death leaves many children as orphans or as heads of their households, divorce leaves children to be raised by single and broken families. Fragmentation of the family unit and death of family members leave children vulnerable to work that is harmful to their wellbeing. In order to survive, these children are compelled to take part in child labour. Children are often separated

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<sup>303</sup> News 24: Amnesty warns companies on child labour in DRC cobalt mining. Available at: <https://www.news24.com/Africa/News/amnesty-warns-companies-on-child-labour-in-drc-cobalt-mining-20171116>. (accessed 18 October 2017).

<sup>304</sup> Dibu (Chapter 1: 10), argues that political instability and migration constitutes some of the social factors that contribute significantly to the existence of child labour and its predominance, the argument is evident in African states including the Kingdom of Lesotho. Children as a result are often found in undesirable working environments.

<sup>305</sup> *Ibid.*

<sup>306</sup> Dibu (Chapter 1: 11).

<sup>307</sup> Dibu (Chapter 1: 11).

<sup>308</sup> News 24: Amnesty warns companies on child labour in DRC cobalt mining. Available at: <https://www.news24.com/Africa/News/amnesty-warns-companies-on-child-labour-in-drc-cobalt-mining-20171116>. (accessed 18 October 2017).

<sup>309</sup> Dibu (Chapter 1: 8).

from systems that provide social protection, opportunities and participation as a result, asserts Dibi.<sup>310</sup>

It is evident therefore that, due to social problems, as discussed, children are faced with consequences of child labour, with little to no mechanisms of escaping. As many African children are faced with extreme poverty, political, social and economic instability, the wellbeing of children as well as national development remains at risk. It is therefore important for societies and families to ensure that children are protected from harsh realities of child labour by addressing the root causes and social realities that contribute to the prevalence of child labour.

## 2.4 Cultural Perspective

Cultural forces amongst others contribute to the incidences of child labour in the world today, particularly in Africa. Although it has been argued that child labour is a result of poverty, other contributors include culture or traditions, family expectations, ineffective legal systems and low standards of education, to mention but a few.<sup>311</sup> Culture plays a vital role in the growing and declining incidences of child labour.<sup>312</sup> Culturally, many African states including the Kingdom of Lesotho do not regard the notion of child labour, but rather that of child work.<sup>313</sup> Failure to differentiate between child labour and child work has resulted in the lack of mechanisms aimed at protecting the rights of children involved in work detrimental to their wellbeing. It is culturally acceptable for children to work. Culturally, work is a result of enculturation, which every child is born into. Children often engage in agricultural work and household activities that leave them vulnerable and prone to danger/toxic substances. This kind of work constitutes the worst forms of labour, as it is likely to harm the moral and social development of a child, as well as their health and safety alike. Consequently, one would argue that culture does not only justify child labour but also advocates for child labour practices.

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<sup>310</sup> Dibi (Chapter 1: 7).

<sup>311</sup> Child labour: culture or despair? Available at : [www.vartotojai.It/index.php?d=10439](http://www.vartotojai.It/index.php?d=10439) (accessed 22 November 2017).

<sup>312</sup> Dr. Naz, A & Khan, W. 'An analysis of Sociological Causes of Child Labour in FATA: Case Study of Bajaur Agency, Parkistan' available at: <http://frc.org.pk/wp-content/uploads/2014/11/1pdf&ved=0ahUKEwjZ1Nmtk4XYAhWrDZoKHeBGC7oQFggjMAA> (accessed 12 November 2017). 3.

<sup>313</sup> Letuka (1998: 208 - 9).

According to Letuka, the cultural perspective views child work as, carrying out duties, a sign of responsibility, and a rite of passage into adulthood.<sup>314</sup> Furthermore, it is believed that the involvement of children in child labour is not seen as a harmful practice, but rather as a means of supporting their families and learning skills beneficial for the future.<sup>315</sup> Children are therefore traditionally used as sources of income.<sup>316</sup> As they take on the role of a breadwinner, children are deprived of opportunities to be in school. Under the excuse and illusion of training children, parents and employers often subject children to long hours of work and use torture to punish them when they make mistakes.<sup>317</sup> Consequently, child labour leads to oppression and exploitation of children. It is evident that culture takes cognisance of duties and responsibilities of children towards their family as opposed to their rights

According to Nhenga-Chakarisa, in traditional African communities, it is a responsibility of every African child to work in order to sustain his or her family. This put into practice both the physical and intellectual skills of the community and preserves the cultural values.<sup>318</sup> It is argued that child work helps children to avoid idleness. A girl child is therefore expected to perform household duties including, cleaning of the house, cooking, collecting firewood, washing clothes and taking care of siblings. All these chores are said to groom the girl child for motherhood.<sup>319</sup> A boy child on the other hand is supposed to take care of livestock, and labour in the fields.<sup>320</sup> As a result, child work is understood and perceived as a rite of passage into adulthood.<sup>321</sup>

Although the cultural standpoint views work done by children as a sign of maturity, the negative effects resulting from such work are often ignored. While the focus is placed on

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<sup>314</sup> Letuka (1998:209).

<sup>315</sup> Chapter 5: Factors Responsible for Child Labour Available at: [shodhganga.inflibnet.ac.in>bitstream](http://shodhganga.inflibnet.ac.in/bitstream) (accessed 12 November 2017), 101.

<sup>316</sup> Chapter 4 Concept of child labour and factors leading to child labour Available at: [shodhganga.inflibnet.ac.in>bitstream](http://shodhganga.inflibnet.ac.in/bitstream) (accessed 12 November 2017), 149.

<sup>317</sup> Chapter 4: Concept of child labour and factors leading to child labour, 144.

<sup>318</sup> Nhenga-Chakarisa, T.C (2010). 'Who does the law seek to protect and from what? The application of international law on child labour in an African context' African Human Rights Law Journal, 166. The author states that cultural influences play a major role in addressing and understanding child labour within the African context today. Differentiating between developed and developing societies/countries. While developed societies are characterised by nuclear families this is not so for developing societies. In developed countries, value is placed on individuals, promoting independence of a child. However, in developing countries such as Lesotho, Zimbabwe and South Africa reflect a different social system and ideas of child development. African societies are characterised by collectivity, duties and responsibilities. Individual rights are not stressed upon rather duties and responsibilities. From an early age one is socialised to compromise his/ her interest for good of the entire society. Childhood is therefore seen as a period for learning, developing, building one's character and acquiring social and technical skills that equip him/ her for adulthood. Children therefore represent material for family survival. This has resulted in the crisis of child labour evident in today world.

<sup>319</sup> Nhenga-Chakarisa (2010:170).

<sup>320</sup> *Ibid.*

<sup>321</sup> Letuka (1998:209).



developing the skills of children for the future, the rights of children are infringed upon in the process. Children are usually exposed to harmful working environments as a result. For instance, children who work as street vendors and those in the manufacturing and agricultural sectors are often exposed to toxic substances and economic exploitation that negatively affects their health and development.

In conclusion, because of the differences in culture, child labour has proved difficult to define. Instead of child labour, the cultural perspective rather addresses child work. It is evident that child labour or child work is a socially and culturally acceptable norm in African developing countries. Therefore, is not considered harmful to the development of children, but rather a transition from childhood to adulthood.<sup>322</sup> However, this is not the case. Although some work may appear light and harmless, the effects of such work may not be physical but mental. This kind of work therefore constitutes what can be defined as child labour. It is important to note that child labour refers to work harmful to the social, physical and moral development of a child. Forms of work that are culturally accepted as duties and responsibilities carry characteristics of what could be referred to as child labour. For instance, children working in the agricultural sector, that is in the fields or farms, are often vulnerable to exploitation, health problems -due to chemicals utilised in farms- and long hours of work amongst others. Although child labour is seen as a cultural norm, international law recognises that cultural practices are detrimental to the wellbeing of children and call for states eliminate such practices.<sup>323</sup>

The emphasis on adulthood often neglects the negative effects resulting from the training of children receive through work. The rights of children are often not taken into consideration. These rights include, the right to be a child, the right to play, the right to choose and the right to education to state a few. While the focus is on survival of the family, institutions, such as families, and society fail to protect children against the harmful nature of work they are involved in. It is therefore crucial to address cultural issues when dealing with child labour. Culture is evolving.<sup>324</sup> It is therefore important to adopt and emulate cultural practices that protect children from socially and culturally constructed work or norms that pose danger to their wellbeing while attempting to groom them into mature and responsible adults.

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<sup>322</sup> Nhenga-Chakarisa (2010: 170). As above. It is argued that childhood is a period of “training”. Children are forced to perform work aimed at “toughening the up”, thus preparing them for adulthood.

<sup>323</sup> See Article of the ACHPR, Article 21 of the ACRWC and Article 24 (3) among others.

<sup>324</sup> Cultural Evolution Society: What is cultural evolution available at : [https://culturalevolutionsociety.org/story/What\\_is\\_Cultural\\_Evolution](https://culturalevolutionsociety.org/story/What_is_Cultural_Evolution) (accessed 25 November 2020).

## 2.5 Economic Perspective: Supply and demand of child labour

The economic perspective on child labour focuses on the principal reasons for demand and supply of child labour.<sup>325</sup> It is therefore important to first investigate at what causes a rise in the need for child labour. Ambreen<sup>326</sup> asserts that poverty is one of the primary drivers of child labour supply. However, a number of models have been developed in order to understand the evident growing need for child labour globally. According to Ambreen, household decision-making models provide that all members of the family work. Therefore, households or families make decisions, regarding work, based on the income earned by the family. This includes both parents and children. When both parents earn a good income, children are not forced into hard labour that could be potentially harmful, but rather enjoy the privileges of earning wages while performing light work, and gaining good education.<sup>327</sup> However, in instances where children earn more than their parents, this potentially leads to a decrease in leisure time, education and ultimately children leaving school.<sup>328</sup> This therefore results in a trade-off between education and work/labour of children.<sup>329</sup> The trade-off model assumes that the amount a child earns is equivalent to the hours spent working, leading to little and ultimately no time for school. Children in this case trade places with their parents. They take up roles of being breadwinners in the family. Children from poor families are often victims of trade-off, which ultimately leads to the supply of child labour.

Ambreen, further states that the imperfect credit market has given rise to child labour.<sup>330</sup> It is argued that, if poor households had access to credit markets, loans would be easily secured for family consumption and investment in human capital (by taking children to school).<sup>331</sup> However, because of the high levels of poverty and lack of trustworthy financial systems, many poor households fail to acquire loans that will safeguard against unforeseen

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<sup>325</sup> Grootaert, C & Kanbur, R 'Child labour: An Economic Perspective' International Labour Review, Vol. 134, 1995, No. 2, 187.

<sup>326</sup> Ambreen, F. (2003) Economics of child labour.

PhD thesis, University of Nottingham. Available at: <http://eprints.nottingham.ac.uk/12967/1/Final-PhD-Thesis.pdf> (accessed 10 October 2017) 17.

<sup>327</sup> *Ibid.*

<sup>328</sup> *Ibid.*

<sup>329</sup> Ambreen (2013:18).

<sup>330</sup> Ambreen (2013: 20).

<sup>331</sup> *Ibid.* see also Ranjan R. (2001). Simultaneous analysis of Child Labour and Child Schooling: Comparative Evidence from Nepal and Pakistan. Schools of Economics, University of Tasmania, Australia.

expenses.<sup>332</sup> Basu and Chau, further contend that, child labour is cultivated out of institutional arrangements where labour and credit contracts are closely linked. Unpaid debts are usually paid out through child labour.<sup>333</sup> This is evident within the agricultural sector, where children work in farms to pay for their family's debts. Many scholars including Bonnet have argued that failure of education structures have also resulted in child labour practices.<sup>334</sup> Children from poor families who have never been to schools and those who dropped out are susceptible to child labour.

While it is evident, that child labour is a result of underdevelopment, adverse poverty, and undesirable socioeconomic conditions, child labour also constitutes work harmful to the wellbeing of children, which is required for future development and prosperity.<sup>335</sup> Some economic scholars assert that parents from middle class families invest in their children through schooling in order to increase their human capital.<sup>336</sup> Acquisition of human capital is intended to equip a child with the necessary educational skills that will in turn make them employable (as their labour standards are increased through education). Some scholarly work on the economics of child labour, places emphasis on the assumption that the more a child is educated, the higher the human capital.<sup>337</sup> However, the human capital standpoint does not restrict or limit the incidence of child labour. Human capital approach advocates for children to be economically active. This may lead to an education and market trade-off, thus serving as a source of child labour supply.<sup>338</sup>

Nonetheless the human capital approach rightly assumes that upon completion of primary school, children -although below the international standard or age of employment- are more employable given the skills they have acquired through education, as opposed to children who have never been to school. This is evident in domestic work and textile industry. Children involved in this kind of work have basic primary education and often below the ages of 18.<sup>339</sup> It is important to note that investing in children's education is often seen as security

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<sup>332</sup> Basu, A. K, and Chau, N.H. (2003). *Targeting Child Labour in Debt Bondage: Evidence, Theory and Policy Implications*. The World Bank Economic Review. Vol.17, No.2, pp. 255-281. World Bank, Washington DC. 257.

<sup>333</sup> *Ibid.*

<sup>334</sup> Bonnet, M. (1993) 'Child labour in Africa' in *International Labour Review* (Geneva), Vol. 132, No. 3.

<sup>335</sup> Dibu (Chapter 1:1).

<sup>336</sup> Basu, K & Tzannatos, Z (2003) 'The Global Child Labour Problem: what do we know and what can we do?' The World Bank economic review vol 17 no. 2 147- 173, 160.

<sup>337</sup> *Ibid.*

<sup>338</sup> Dibu (Chapter 1: 6), As above see also Edmonds (2008)

<sup>339</sup> Edmonds, E. V. (2008) 'Defining child labour: A review of definitions of child labour in policy research' *International Labour Organisation Working Paper*. See Also Basu in *Child Labour: Causes, consequences and Cure, With Remarks on International labour Standards*; He argues that an increase in child labour leads to a decline in human capital. Children

for parents.<sup>340</sup> Parents invest in children's education so that the child will in turn provide for them. In poor households, parents may invest only up to primary level and force children to find jobs in urban areas.<sup>341</sup> Human capital can therefore be seen as not only beneficial to children, but parents who have expectations too. Increase in human capital is not only beneficial to children and their families but is beneficial to the national economy too.<sup>342</sup> Human capital theory is more related to societies that are able and willing to take children to school, as opposed to poor and poverty-stricken societies where education is unaffordable. It is however important to note that although some children may have completed basic education, their involvement in work within the informal sector leaves them vulnerable to exploitation, abuse and oppression.

It is significant to emphasise that the prevalence of child labour is not only dependent on the need for child labour supply but also the demand of such. There are various reasons for the demand for child labour. This includes the submissive nature of children, their being receptive to commands, traditional norms that encourage them to work, physical structures that make them appropriate for particular tasks and their lack of interest in trade unions.<sup>343</sup> Based on Ambreen's view on the demand for child labour, three economic reasons among them are discussed. These include the nimble finger hypothesis, the technological progress, and the structure of the labour market.

The nimble finger approach views children as people with physical features efficient to accomplish tasks such as making clothes, sports goods, and working in both industrial and manufacturing factories.<sup>344</sup> Elson and Pearson<sup>345</sup> assert that children are able to perform some of the tasks, not because of their features, but because of the training received from their family through socialisation, and not by inheritance. For instance, a girl child is socialised to do household chores that is cooking cleaning and sowing to mention but a few. It is therefore easier for clothing factories to employ children who have been trained to perform the task of

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working the entire day miss out on school and likely to remain uneducated and therefore will be unproductive as an adult as opposed to a child who has been in school.

<sup>340</sup> Parsons, D. O. & Goldin, R. (1989). "Parental Altruism and Self-Interest: Child Labor Among Late Nineteenth-Century American families Economic inquiry Journal vol. 27 No. 4.

<sup>341</sup> *Ibid.*

<sup>342</sup> Weston, B. H & Terrink, M. B (2006) 'Child labour through a human rights glass brightly' working paper no. 35. Both authors argue that human capital views work performed by children as an economic development tool, 35.

<sup>343</sup> Ambreen (2013:1).

<sup>344</sup> Ambreen (2013:23).

<sup>345</sup> Elson, D & Pearson, R. 'Nimble Fingers Make cheap Workers': An Analysis of Women's Employment in the Third World Export Manufacturing Feminis Review Available at: <https://www.researchgate.net/publication/270855620> (accessed 20 November 2017),93.

sowing. The process of socialisation helps to develop skills necessary or required for employment. It can therefore be argued that education in this case is of little significance since some skills are acquired within the family through socialisation or training, as stated by Elson and Pearson.<sup>346</sup> Edmonds however rejects the nimble finger school of thought. He contends that the theory is evident within the industrial sector as opposed to the agricultural sector, where child labour is more prevalent.<sup>347</sup>

While some children were employed based on their skills, some were employed based on size asserts Ambreen. She states that children were employed in mines because of their small stature.<sup>348</sup> One would argue that employment of children does not necessarily depend on size but rather cost. Child labour is often a result of cheap labour and the want to take advantage of poor vulnerable children.<sup>349</sup> With the rise of technology in the 19<sup>th</sup> century, child labour reduced significantly.<sup>350</sup> The agricultural sector that was formerly characterised by unskilled child labourers adopted the technological systems by introduction of machinery. This required skilled labour, thus resulting in a decline in child labour. The substantial decline is however evident within the western world as opposed to the Third World. Child labour remains the highest in Africa.

The structure of the labour market plays a critical role in child labour and understanding the economic value of children. Emphasis is placed on market wages, which ultimately determine how child labour contributes to the income of the family.<sup>351</sup> It is fundamental to understand the roles played by both formal and informal sectors of the economy when examining the structure of labour markets that promote child labour. Ambreen provides that within the formal sector, child labour is limited and controlled. “Instead, majority of children are employed within the informal sector,” asserts Bonnet.<sup>352</sup> Although Ambreen argued that, without a doubt, the formal sector of the economy would not contribute to the prevalence child labour, the evident incidence of subcontracting enterprises has led to the creation of the informal sector, where child labour is apparent.<sup>353</sup>

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<sup>346</sup> *Ibid.*

<sup>347</sup> Edmonds E. V. & Pavcnik N. (2003). *International trade and child labour: Crosscountry evidence*. Journal of International Economics; Vol. 68, pp. 115– 140 as quoted by Ambreen (2013:23).

<sup>348</sup> Ambreen (2013:23).

<sup>349</sup> Ambreen (2013: 51).

<sup>350</sup> *Ibid.*

<sup>351</sup> Ambreen (2013:24).

<sup>352</sup> Bonnet, M. (1993) *Child labour in Africa International Labour Review*, Vol. 132 No. 3, 75.

<sup>353</sup> Ambreen (2013:24).

Ambreen argues that the reason for subcontracting the formal sector into informal, smaller or household enterprises is to primarily escape social regulations and the cost of labour charges.<sup>354</sup> This ultimately results in an intensification of the informal sector and demand for child labour. The informal sector therefore provides children from poor families with opportunity to partake in the labour market. Bonnets asserts that, children below the ages of 15 are often involved in street trades and domestic work.<sup>355</sup> These children are often prone to oppression and economic, social and physical exploitation. Furthermore, both low wages and unemployment of parents are also the main forces behind child labour.<sup>356</sup> It is evident therefore that the prevalence of child labour is intensified by the high levels of demand for child workers. It is therefore important to address the legal strategies and mechanisms to be put in place in order to address the issues of child labour. Consequently, it is significant to examine the legal approach in relation to child labour.

## 2.6 Legal Perspective

According to Cullen, child labour comprises of work prohibited by the law (both international and national laws)<sup>357</sup> Child labour is often linked to criminal activities and violation of the welfare and wellbeing of children.<sup>358</sup> For instance, the use of children in illicit activities constituting the worst forms of child labour such as child pornography, child prostitution and drug trafficking. These activities result in all forms of exploitation.<sup>359</sup> Not only is child labour a human rights issue, but it is also of legal concern.

According to Cullen, the legal definitions of child labour are dependent on the states or political settings. These definitions consider the cultural, socio-economic and political viewpoints. These viewpoints play a vital role in the drafting and implementation of laws.<sup>360</sup> In Lesotho, child labour is recognised and prohibited under Lesotho's national legislation. Although Section 32 of the Constitution does not explicitly define child labour, it recognises the existence of harmful labour practices. Therefore, the Constitution provides that Lesotho

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<sup>354</sup> *Ibid.*

<sup>355</sup> Bonnet (1993: 371 - 372).

<sup>356</sup> *Ibid.*

<sup>357</sup> Cullen (2007: 7).

<sup>358</sup> Cullen 2007: 5).

<sup>359</sup> *Ibid.*

<sup>360</sup> Cullen (2007: 6).

adopt policies that will help protect children against harmful work activities.<sup>361</sup> Furthermore, under statutory law, that is the Labour Code Order 1992 of Lesotho,<sup>362</sup> children are not allowed to work in commercial and industrial activities except in private or family business.<sup>363</sup> It is evident that while this law prohibits the engagement of children in work within the formal sector, the involvement of children in the informal sector is encouraged. It is however crucial to note that, some work within the private or family businesses may constitute harmful labour practices. For instance herding family livestock or working in agriculture all day may hinder the child's opportunity to go to school, therefore infringing on their right to education. Therefore, there is a need to legally address such work particularly if it violates the rights of children. .

Under Customary law,<sup>364</sup> child labour is not recognised. In fact, the law recognises the responsibilities and duties a child has towards the family.<sup>365</sup> This includes working in fields, helping with household chores and herding livestock. Resultantly, under customary law, child labour is not recognised as a legal matter. This explanation fails to consider the rights of children that are or may be infringed upon as well as the negative effects children experience when executing such duties. In most cases, Letuka asserts, in Lesotho, a boy child starts taking care and herding livestock at a very young age- as young as six years.<sup>366</sup> This is below the prescribed age of employment by national and international law. Children involved in herding livestock are often exposed to harsh environmental conditions, health dangers and denied the privilege to be in school as they take care of the animals during the day. This infringes upon the international law that advocates for the right to basic education and welfare. The Children's Protection and Welfare Act prohibits the practice of child labour and recognises this practice as a legal issue that needs to be dealt with in legal terms.<sup>367</sup>

The legal perspective views child labour as an illegal activity to be banned by states. Despite the expansion of these legal standards, the evident intensification and persistence of child labour is attributed to the problem of inadequate enforcement and implementation of laws

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<sup>361</sup> 1993 Constitution of Lesotho Part III: State Policy: Section 32.

<sup>362</sup> Letuka (1998: 204).

<sup>363</sup> *Ibid.* See Also the 1992 Labour Code Order of Lesotho.

<sup>364</sup> Letuka (1998: 205). Customary law is unwritten law of Lesotho; however, the little that is written is enclosed in the Laws of Lerotholi.

<sup>365</sup> *Ibid.*

<sup>366</sup> Letuka (1998: 207).

<sup>367</sup> Section 226 (2) of the Children's Protection and Welfare Act of 2011.

prohibiting harmful child labour practices<sup>368</sup> In countries such as Lesotho, customary law continues to hinder the progress of international and national laws aimed at prohibiting and abolishing child labour, as well as protecting the rights of children. A compromise has to be attained between international law and customary law in recognising child labour as a legal matter, to ensure that children involved in child labour are protected and child labour practice is ultimately abolished. While this may require a progressive approach, it is a possible and achievable goal for African states.

## **2.7 Analysis of the theoretical frameworks**

The different perspectives each give, in detail, an explanation of child labour, focusing on different viewpoints. All perspectives give an insight that help understand the prevalence and persistence of child labour. They therefore, help to: identify strategies that could be adopted in order to protect children involved in child labour; recognise the harmful effects of child labour on children; and ultimately enforce legislation and policies aimed at protecting children against child labour, thereby reducing/abolishing the practise. From all approaches, it is evident that the causes of child labour can be attributed to the unfavourable social, economic and political conditions affecting the world today. According to the perspectives, poverty, culture and adult unemployment amongst others are the major contributors to child labour. According to the different perspectives, children involved in child labour are prone to danger, as child labour constitutes work that is harmful and hazardous.

Based on the international human rights law, the human rights approach recognises the importance of the human rights. Several human rights instruments have been adopted in order to address the different kinds of rights inherent to all human beings regardless of culture, religion, sex or ethnicity. For the purposes of this study, the main instrument is the CRC, which focuses particularly on the rights of children including those involved in child labour. It is fundamental to note that other instruments are also discussed under the human rights perspectives, and they encompass international, regional, and domestic instruments on the rights of children. According to this approach, child labour is detrimental the wellbeing of children, impinges on their rights and should therefore be abolished.

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<sup>368</sup> Silk, J. J & Makonnen, M (2003) 'Ending Child Labour: A Role for International Human Rights law' available at [http://digitalcommons.law.yale.edu/fss\\_papers/4486](http://digitalcommons.law.yale.edu/fss_papers/4486) (accessed 23 October 2017), 359.



The human rights instruments have placed an obligation on member states to ensure that children's rights are protected and children are protected from harmful work. The human rights perspective views children as right holders and that children have a right to choose what work to do. Under the African human rights system, children have duties and responsibilities making child work a commonly accepted practice. However, work that is harmful to children is prohibited under international law. It is however important to note that, in spite of contributions by international human rights laws, millions of children are found participating in child labour in Africa today. It is evident that many states including Lesotho, have failed to adhere to the international human rights law obligations. The failure of implementation, enforcement and domestication of the international law remains a challenge.

The cultural perspective on the other hand argues that child labour is rather a norm in Africa. Children are said to have a responsibility to take care of their family. Therefore, work is seen as equipping them for adulthood. However, this perspective fails to recognise the harmful effects of work on the children's moral, social and emotional development, their health, as well as their education. Cultural practices often impinge on the rights of children. The social perspective, argues that adverse social conditions contribute to the increase of child labour. This includes poverty, HIV/AIDS, dysfunctional families and the lack of educational facilities. It is important to note therefore that, for child labour to be reduced and abolished; these conditions ought to be addressed and dealt with.

The economic perspective addresses the demand and supply of child labour as the main causes for its prevalence. It is argued that the rise in unemployment of parents have forced children into child labour. Due to lack or little income in the family, parents often take decisions on behalf of children to send them to work. As a result, children drop out of school in order to work and provide for their families. As children trade off education for work, majority of children remain illiterate and have limited chances of being employed in the formal sector. Resultantly, majority of children find themselves within the informal sector where they exposed to undesirable working conditions. It is further argued that many employers prefer children to adults because they are more receptive. However, it could be argued that, the primary reason for employing children is cheap labour thus constituting forms of exploitation. It is therefore important that child labour be punishable by the law. The legal perspective recognise that child labour constitutes criminal activities and calls for legal institutions to ensure that such activities are prohibited, and that those found participating or contributing towards it are held accountable by the law.

## 2.8 Conclusion

In conclusion, based on these theoretical explanations, it is evident that child labour cannot be attributed to a single problem. It is in fact a result of a number of related issues including social, cultural, economic and legal problems. While child labour is evidently an inevitable consequence of the poor living conditions children are born into, it is important to ensure that they are protected from any work that is harmful to their well being. Although children have been forced into child labour because of these undesirable issues, it is noteworthy to state that the negative effects of child labour, constituting the violation of their rights have been widely recognised. As a result, this called for global intervention. The adoption of international conventions and covenants that aimed at protecting children against child labour and promoting their rights has been a positive outcome of such interventions. .

In spite of efforts taken to curb child labour, it is evident that issues concerning or arising from economic, social, cultural and legal problems ought to be addressed.

Evidence shows that in poor families with low levels of family income, parents compel children to work, and as a result, children drop out of school and are forced to be breadwinners. However, for most middle class families, this is not the case. These parents often invest in their children's education in order for them to acquire skills that will make them employable in the future. Although investing in children human capital is said to be a positive gesture, it is important to note that parents only invest in education so that children may provide for them in the future. One could therefore argue that parents see children's education as a loan to them. Human capital also contributes to child labour in the case where children are unemployable or only access education at primary level. Most children leaving school at primary level are often below the international age standard of employment, which is 18 years. Children often leave primary school at the age of 15. In Lesotho, this is usually 12 years in urban areas and maybe higher in the rural areas. This may cause a vicious cycle of child labour.

While culture remains one of the crucial contributors to child labour, it is significant to state that culture is not static but evolves. Therefore, cultural practices that force children into child labour, leaving them vulnerable to the negative effects of labour should be reconsidered and eradicated. Culture should be cognisant of the rights of children as well as the need for these

rights to be protected. The high supply and demand of labour markets have forced many children into child labour. The fragmentation and subcontracting of the formal sector has led to the increase of enterprises within the informal sector creating jobs attractive to many children. It has been established that child labour is more dominant within the informal sector as opposed to the formal sector. This sector of the economy remains unregulated; as a result, children involved within this sector are exposed to work that is hazardous with little to no protection. While it is evident that child labour constitutes criminal and illicit activities such as child trafficking and child prostitution amongst others, it should be dealt with through legal measures. Child labour therefore should be understood and recognised as a legal and human right's issue. As a result, I propose for the enactment of a new Act that explicitly addresses child labour, rules and regulations guiding the employment of children particularly those in the informal areas. In addition a commission on the rights of the child that will work with courts should be established in order to hold accountable perpetrators of children's rights violations.

Although both international and domestic laws recognise the negative impacts of child labour on children and national development, and prescribe laws that prohibit child labour occurrences, it is evident that the implementation and enforcement remains a challenge for many countries including the Kingdom of Lesotho. Even though mechanisms have been put in place to hold child employers accountable, these mechanisms have not been effectively employed. For instance, the Children's Protection and Welfare Act of Lesotho<sup>369</sup> states that employers of children or those in contradiction to the Act are liable to fines or imprisonment. There have been no accounts holding those in contradiction of Act accountable by the law. Child labour as a result remains persistent. Furthermore, children must be recognised as right holders and need to be protected against harmful child labour practices. Given the reasons and causes of child labour as discussed in this chapter -through the examination of different perspectives- it is important to look at the responses to child labour outside the scope of Lesotho, and how these responses may be implemented to ensure that child labour is addressed and children are protected from work that is detrimental to their wellbeing.

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<sup>369</sup> Children's Protection and Welfare Act of 2011 of Lesotho.

## **CHAPTER THREE - CHILD LABOUR AND RESPONSES IN LESOTHO**

### **3. Introduction**

Chapter three examines the practice of child labour within the informal sector in Lesotho. The study identifies the primary factors contributing to child labour as well as different forms of child labour practices common and evident in Lesotho. Moreover, the chapter investigates the responses of Lesotho to the practice of child labour by examining both the domestic and international law on rights of children particularly those involved in child labour. The chapter critically analyses national laws, questioning the compliance and commitment of domestic legislation to that of international law. The chapter further looks at recommendations made by the interagency synergies such as UNICEF and IPEC to the Kingdom of Lesotho in addressing child labour and investigates if the recommendations were successfully implemented. The involvement of civil society in addressing child labour and children's rights is also examined. Finally, the chapter identifies gaps in legislation aimed at protecting the rights of children involved in worst forms of labour and recommends that Lesotho should adopt strategies that will better protect the rights of working children and abolish child labour.

### **3.1 Child labour in Lesotho**

Completely surrounded by the Republic of South Africa, the Kingdom of Lesotho is divided into 10 main districts situated in the lowlands, foothills, mountain areas and the Senqu valley.<sup>370</sup> The occurrences of child labour in Lesotho are not new. Like many other African countries such as South Africa, DRC, Ghana, Tanzania to mention but a few, the Kingdom of

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<sup>370</sup> Mokhothu, M.M. (2004). 'Causes of poverty in Lesotho: the role of public services in poverty reduction strategies: challenges and solutions' the 25<sup>th</sup> AAPAM annual roundtable conference. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/aapam/unpan025676.pdf> (Accessed 29 May 2018) 8. The ten districts include, Maseru, Berea, Leribe, Botha-Buthe, Mafeteng, Mohale's Hoek, Quthing, Qacha's Nek, Mokhotlong and Thaba-Tseka.

Lesotho continues to witness persistence of child labour practices that continue to subject many children to exploitation and violation.<sup>371</sup> According to Bass, at least 35 out of 41 Sub-Saharan African countries, including the Kingdom of Lesotho are ranked as the poorest and lowest economies.<sup>372</sup> As a result, the prevalence of child labour is inescapable. Furthermore, due to the rise of unemployment, persistent poverty and the escalation of HIV/ AIDS pandemic facing Africa, particularly the Kingdom of Lesotho, child labour is inevitable, asserts Kimane.<sup>373</sup> Children are often compelled by these circumstances to engage in economic activities to help provide for their families. While some children are often found working on the streets as vendors or domestic workers in urban areas, some work as herd boys or in agriculture in the rural areas. These forms of labour are found within the informal sectors or private settings of families. Many children involved in these sectors are often exposed to hazardous and exploitative work.<sup>374</sup> These kinds of work not only constitute the forms of child labour but the worst forms of child labour. Consequently, child labour not only affects the well-being and development of children negatively, but also further denies children the rights to education, protection, and good health.<sup>375</sup>

Bass rightly contends that child labour should be understood within the economic, historical and cultural context of the region, nation and society if we were to help children escape the worst forms of child labour practices.<sup>376</sup> This understanding will enable and help adopt measures and strategies that will help respond and ultimately abolish the plight of child labour not only in Lesotho but also within the entire African continent. According to Kimane, circumstances that contribute to child labour are interrelated and have over time multiplied.<sup>377</sup>

### **3.2 Factors contributing to the proliferation of child labour in Lesotho**

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<sup>371</sup> Kimane (2006:2).

<sup>372</sup> Lauratta (2004: 4).

<sup>373</sup> Kimane, I. (2006) "Protecting the rights of working children in Lesotho through legislation", 1.

<sup>374</sup> *Ibid.* See also Articles 6, 18, 24, 28 and 31, Children have the right to development a maximum extent possible, the right to protection from all forms of maltreatment and exploitation, the right to proper healthcare, the right to education and the right to rest and leisure or to engage in play and recreational activities as provided in the CRC respectively.

<sup>375</sup> Kimane (2006: 1).

<sup>376</sup> Bass (2004: 6).

<sup>377</sup> Kimane (2006: 3).

Lesotho is one of the poorest and least developed countries worldwide.<sup>378</sup> As a result, it is one of the most vulnerable states thus susceptible to the incidences of child labour. Rapatsa<sup>379</sup> contends that factors responsible for the proliferation of child labour can be categorised into two; that is the primary and secondary factors. Primary factors relate to social scarcities, for instance poverty and secondary factors may be associated with the poor governance or incompetent governments.<sup>380</sup> While there may be numerous factors contributing to the high prevalence of child labour, Kimane identifies poverty, HIV/AIDS and unemployment as three main circumstances contributing to the predominance of child labour in Lesotho.<sup>381</sup>

### 3.2.1 Poverty

Poverty is a multi-faced prodigy, presenting itself in different ways giving different contexts.<sup>382</sup> Based on the World Bank findings, the definition of poverty varies based on a number of factors; this includes gender, age, socio economic circumstances and culture to state but a few.<sup>383</sup> In addition, the 2001 World Bank report defines poverty as “hunger or homelessness, it is being sick and not being able to see a doctor, it is fear for the future, living one day at the time and it is not having power, representation or freedom”.<sup>384</sup> While poverty remains a multidimensional phenomenon, the United Nations Development Programme (UNDP) defines and elaborates poverty in six categories, namely; human poverty, income poverty, extreme poverty, overall poverty, relative poverty and absolute poverty.<sup>385</sup> However,

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<sup>378</sup> Julia Sloth-Nielsen ‘Harmonisation of laws relating to children: Lesotho. African Child Policy Forum (available at: [www.africanchildinfo.net/documents/Lesotho%20Reportfinal%20Sarah.doc](http://www.africanchildinfo.net/documents/Lesotho%20Reportfinal%20Sarah.doc). (Accessed 02 May 2018) 4.

<sup>379</sup> Rapatsa, M. (2017). “Understanding trends in the worst forms of child labour and the state’s legal response: a descriptive analysis” *Judicial Tribune* Volume 7, Special Issue, October, 186.

<sup>380</sup> Rapatsa (2017:186). Governance in this case would refer to the ability or inability of the government to address issues facing children. Rapatsa argues that corruption or lack of state capacity for instance may be factors contributing to the prevalence of child labour.

<sup>381</sup> Kimane (2006):1. See also Rapatsa (2017:194).

<sup>382</sup> Mokhothu, (2004:2).

<sup>383</sup> Chapter 2. ‘The definitions of poverty’ World Bank Group. Available at: [siteresources.worldbank.org/INTPOVERTY/Resources/335642.../1555199.../ch2.pdf](http://siteresources.worldbank.org/INTPOVERTY/Resources/335642.../1555199.../ch2.pdf) (Accessed 29 may 2018), 26.

<sup>384</sup> Mokhothu (2004:5) see also *The World Bank Annual Report* (2001: 42).

<sup>385</sup> Mokhothu (2004: 5-6) According to Mokhothu, the different categories of poverty not only give an understanding to the severity of poverty but also enlighten us as to how scourge of poverty facing a number of countries include the Kingdom of Lesotho should be dealt with, this further enables poverty stricken countries to adopt effective poverty reduction strategies. According to the 1998 UNDP Report, human poverty focuses on the lack of human capabilities to function; these differ from physical capabilities having shelter. Clothes or even participating in community activities. Income poverty relates to inadequate household income. Extreme poverty on the other hand is the inability to provide and satisfy minimum needs such as food. Relative poverty is described on bases of poverty line; this form of poverty is often mistaken for the overall poverty, which rather is defined as inability to provide for food and other basic needs such as education healthcare etc. Absolute poverty is based on a fixed standard poverty line with the aim of comparing other countries. Absolute poverty is often

Baloyi contends that within the Africa context poverty is defined based on three perspectives namely; income basic needs and capability perspectives.<sup>386</sup> One would therefore argue that all these facets of poverty appear to be present in a country deemed least developed and poor such as the Kingdom of Lesotho. It is therefore important to look at poverty within the context of Lesotho, focusing also on the causes of poverty. Moreover, for the purpose of this study it is essential to understand the extent to which poverty breeds to child labour.

According to Callander,<sup>387</sup> the Kingdom of Lesotho is categorised as one of the most undeveloped and poor countries globally, ranked 162 out of 187 countries by the UNDP and World Bank respectively. The population of Lesotho is approximately 2 million of which 57.1 percent lives below poverty line.<sup>388</sup> Callander further states that divided into urban and rural areas, at least 75 percent of the Basotho population reside in the rural areas. While 30 percent of these people live under extreme poverty conditions, 34 percent live below food poverty.<sup>389</sup> Approximately 50 percent of the people are considered poor.<sup>390</sup> Mokhothu rightly asserts that poverty is mostly experienced and is more dominant in rural areas thus considered a rural phenomenon.<sup>391</sup> According to the Lesotho country analysis document, the growing levels of unemployment, limited access to education, basic needs and training, the global economic meltdown, political instabilities and climate change to state the least are some of the major factors that lead to the high prevalence of poverty.<sup>392</sup>

The economy of the Kingdom of Lesotho anchors mainly on agriculture, animal husbandry, manufacturing and small-scale industries as well as migrant labour.<sup>393</sup> Many households depend on subsistence farming and migrant labour where a great number of male workforce

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mistakenly described as relative poverty. See also Mafemani Phanel Baloyi (2013) 'Perceptions on the causes of poverty: field study at Mavambe Village. 18.

<sup>386</sup> Baloyi, M. P. (2013) 'Perceptions on the causes of poverty: field study at Mavambe Village. Available at: [ulspace.ul.ac.za/handle/10386/1164](http://ulspace.ul.ac.za/handle/10386/1164) (Accessed 28 May 2018)18.

<sup>387</sup> Callander, G. (2017). 'The complex causes of poverty in Lesotho' World News. Available at: <http://www.borgenmagazine.com/complex-causes-of-poverty-in-lesotho/> (Accessed 28 May 2018). See also the executive summary of Lesotho Country Analysis Working Document Final Draft September 2017, 5.

<sup>388</sup> Callander (2017). See also M.M Mokhothu (2004:8). The Causes of Poverty: The 25<sup>th</sup> AAPAM Annual roundtable conference: The role of Public service in poverty reduction strategies: challenges and solution. See also Damane, M & Sekantsi, L.P. (2018) The sources of unemployment in Lesotho. 938-939.

<sup>389</sup> Lesotho Country Analysis Working Document Final Draft September (2017) available at: <https://www.undp.org/.../lesotho/docs/Key%20Strategic%20Documents/Lesotho%20C..> (Accessed 10 May 2018) 5.

<sup>390</sup> Callander (2017).

<sup>391</sup> Mokhothu (2004:9).

<sup>392</sup> Lesotho Country Analysis Working Document Final Draft September (2017:5). See also Ueckermann, EM & Blingnaut, JN (2005). The attitude and vulnerability of people as determinants of poverty: the case of Lesotho, South African journal of Economic and Management Sciences NS 8, No 4. 466.

<sup>393</sup> Lesotho Economy: Economic overview available at: [http://www.gov.ls/gov\\_webportal/economy/economy\\_menu.html](http://www.gov.ls/gov_webportal/economy/economy_menu.html) (Accessed 12 June 2018).

(mainly from the rural areas) is employed in South African gold mines. Both migrant labour and farming serve as the main source of revenue and living.<sup>394</sup> However, it is worth noting that, in recent years the Kingdom of Lesotho has witnessed a significant decline in agriculture and mining.<sup>395</sup> While the agricultural sector continues to suffer from severe and heavy drought, there has been huge number of retrenchments for those in mines.<sup>396</sup> Food shortages, high prevalence of unemployment and tremendously skewed distribution of income have been evident,<sup>397</sup> resulting in a sharp decline of the country's economy and consequently forcing thousands of families into grave poverty, leaving many vulnerable, particularly children.<sup>398</sup> Levels of income in inequality have also increased as a result. According to Lubaale, the presence of inequality permits exploitation of certain sections of the population deemed poor and living under poverty line.<sup>399</sup>

According to United Nations Children's Fund (UNICEF), the majority of children in Lesotho experience and live in extreme poverty owing to their dependency on parents or guardians.<sup>400</sup> Due to lack of income, majority of households are forced into a state of poverty thus cannot afford to provide for basic needs such as food, clothing, adequate shelter and education to state the least for their families. Economic hardship has both parents and guardians alike compelled to expose their children to participate in work that is dangerous and exploitative in order to earn a living.<sup>401</sup> As a result of poverty, children are forced into assuming the role of a breadwinner and taking care of the entire family.<sup>402</sup> In order to alleviate difficulties suffered by many families, children are subjected to and coerced into work that is not only harmful but also detrimental to their wellbeing.<sup>403</sup>

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<sup>394</sup> *Ibid.* see also Tamasane, T.

<sup>395</sup> Tamasane, T. (2011) 'Analysis of service for orphan and vulnerable children in Lesotho – A desktop review' PhD thesis available at: [www.hsrc.ac.za/en/research-data/view/5397](http://www.hsrc.ac.za/en/research-data/view/5397) (Accesses 20 April 2018). 6.

<sup>396</sup> Tamasane (2011:6). See also the UNICEF Report on Poverty in Lesotho. The report states that as many male workers were retrenched, female workforce was rather increased in the textile industries in urban areas. Many women left their families and children to take up employment in the urban areas. However not enough money was remitted back home due to low wages and the high cost of living (transport and housing) in the urban areas. Turner as quoted by UNICEF argues that these women not only fail to eradicate or limit prevalence of poverty in rural areas, they add up to what is known as urban poverty. As a result, the vicious cycle of poverty is evident. Children in single headed and child headed households are left with little choice but to be involved in child labour practices.

<sup>397</sup> Lesotho Country Analysis Working Document Final Draft September (2017:26).

<sup>398</sup> *Ibid.*

<sup>399</sup> Lubaale (2011: 20).

<sup>400</sup> *Ibid.*

<sup>401</sup> Lubaale (2011:19).

<sup>402</sup> Lubaale (2011:19 -20).

<sup>403</sup> *Ibid.*



Although much scholarly work provides that poverty is not the only factor contributing to child labour, it however remains one of the principal forces behind children's involvement in work that is harmful and exploitative in Lesotho.<sup>404</sup> The need to survive given the harsh realities of poverty has placed both parents and children under great pressure to condone oppressive, exploitative and harmful labour activities, asserts Lubaale.<sup>405</sup> Therefore, advocating for legislation that prohibit child labour may be impractical and unlikely to be effective contends Lubaale.<sup>406</sup> While the law is mainly focused on abolishing child labour, sufficient attention to the different conditions that contribute to child labour practice as well as conditions under which children engage in child labour are often ignored, which Nhenga-Chakarisa refers to as 'misguided good intentions'.<sup>407</sup> Consequently, legislation aimed at prohibiting child labour becomes misinformed and inefficient.<sup>408</sup>

### 3.2.2 Unemployment

In both advanced and developing nations, issues around the high levels of unemployment are of great concern to economists, policy makers, private sector and international organisations alike contends Damane and Sekantsi.<sup>409</sup> Both authors rightly argue that while the underlying forces of unemployment could be an indication of labour market deficiencies or poverty on one hand, income inequalities as well as social problems on the other hand have resulted in unemployment. High prevalence of unemployment remains the basis of economic uncertainties.<sup>410</sup> The Kingdom of Lesotho is certainly not an exception.<sup>411</sup> Lesotho's labour market is characterised by the low employment compared to the proportion of working age

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<sup>404</sup> ILO Report: Future Without Child Labour (find the proper reference for this) See also Emma on the elaboration of the status of poverty in South Africa and how poverty is one of the reasons for the prevalence of child labour.

<sup>405</sup> Lubaale (2011:19 -20). See also Nhenga-Chakarisa in "Who does the law seek to protect and from what? The application of international law on child labour in an African context", she contends that often employment of children or child labour causes are often ambiguously discussed. As a result, are dealt with, with all simplicity and assuming the same solution and this has become a problem as such assumptions do not take into consideration the different social and economic contexts. A situation where an orphan works and child with parents work cannot be treated the same way, it is therefore crucial to the law is to be cognisant of the two situations and provide for legislation that deals with both problems as separate issues and not the same.

<sup>406</sup> *Ibid.*

<sup>407</sup> Nhenga-Chakarisa, T. C. (2010) 'Who does the law seek to protect and from what? The application of international law on child labour in an African context' African Human Rights Law Journal, 184. Available at: <http://www.scielo.org.za/pdf/ahrj/v10n1/08.pdf> (Accessed 10 April 2018).

<sup>408</sup> Nhenga- Chakarisa (2010: 184).

<sup>409</sup> Damane, M. and Sekantsi, L.P. (2018) The Sources of Unemployment in Lesotho. Modern Economy,9, 937-965. Available at: <https://doi.org/10.4236/me>. <https://doi.org/10.4236/me.2018.950602018.95060> (Accessed 5 July 2018).

<sup>410</sup> Damane & Sekantsi (2018:937-938).

<sup>411</sup> *Ibid.*

population.<sup>412</sup> Both formal and informal sectors play a significant role in the domestic economy of Lesotho. Within the formal sector, the government remains the principal employer and the manufacturing sector being the largest within the informal sector.<sup>413</sup> It is important to note that the public sector is under great pressure to make available employment opportunities due to undeveloped private sector.<sup>414</sup> As a result, the need to increase employment within the public sector has given rise to public expenditure,<sup>415</sup> thus hindering economic growth and opportunities for employment to those trying to join the workforce. Subsequently, unemployment remains the greatest challenge facing the Kingdom of Lesotho.

Despite the evident recovery of the economy driven by flourishing tertiary sector and investments in mining, with the Gross Domestic Product (GDP) of approximately 3.1 percent and outlook for higher growth in 2018, the Kingdom of Lesotho however continues to witness high levels of unemployment.<sup>416</sup> Damane and Sekantsi state that unemployment is predominantly apparent in both lowlands and foothills; and lowest in the mountainous districts of Lesotho.<sup>417</sup> According to the Nseera and Kannan, unemployment particularly youth unemployment (between the ages of 15 and 34),<sup>418</sup> continues to be a major challenge facing the Kingdom of Lesotho irrespective of high literacy and social investments.<sup>419</sup> In addition, unemployment is a result of skills incompatibility in Lesotho contends Nseera and Kannan.<sup>420</sup> In 2013, at least 25 percent of the population was unemployed, with the youth constituting 35 percent across the entire country.<sup>421</sup> While high levels of unemployment is attributed to vulnerability of the household, that is the structure and living conditions of the household as well as the low levels of education attained,<sup>422</sup> Damane and Skantsi rightly

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<sup>412</sup> Damane & Sekantsi (2018:939).

<sup>413</sup> *Ibid.*

<sup>414</sup> Damane & Sekantsi (2018:940).

<sup>415</sup> *Ibid.*

<sup>416</sup> Nseera, E. & Kannan, A.P. (2017): Lesotho. Available at: [www.africaneconomicoutlook.org](http://www.africaneconomicoutlook.org) (Accessed 6 June 2018)1.

<sup>417</sup> Damane & Sekantsi (2018:939).

<sup>418</sup> Lesotho Country Analysis Working Document Final Draft (2017:42). See also Damane, & Sekantsi state that in 2013, over 1 million people were eligible to enter the labour force. The very same year had at least 42.3 percent of the same population were employed and active economically. However, the remainder of the people were neither employed or active. Persons between the age of 25-29 consisted of the majority employed while those unemployed were between the ages of 20-24 and predominantly male. Although the statistics is significant to take into account many more persons are unemployed between the ages of 15 to 34 as stated by the latest/ 2017 reports.

<sup>419</sup> Nseera & Kannan (2017: 2).

<sup>420</sup> Nseera & Kannan (2017: 11). See also Damane, & Sekantsi, due to lack of skills majority of people are unemployment. Limitations in skills has led the increase and persistence of unemployment.

<sup>421</sup> Lesotho Country Analysis Working Document Final Draft (2017:10).

<sup>422</sup> *Ibid.* The author contends that, the prospects of an individual from a poor family with no education being employed are very low. Because of the limited opportunities, lack of access to information about the labour, job market and training one is likely not to be employed.

contends that burdens of HIV/AIDS, Tuberculosis (TB), poor and lack of infrastructure as well as investments are some of the major factors contributing to the prevalence of unemployment.<sup>423</sup> Unemployment in Lesotho remains a structural problem, with at least 29.5 percent of families dependent on survivalist activities and subsistence farming as a source of income compared to the 28.5 percent of those receiving a salary.<sup>424</sup> Damane and Skantsi, give an explanation to unemployment in Lesotho based on two schools of thoughts, the classical theory and Keynesian theory of unemployment.<sup>425</sup> Both theories explain unemployment based on supply of labour and demand by labour market. The Kingdom of Lesotho is characterised by high labour demands with no job opportunities. Both authors argue that there is a clear prevalence of unemployment amongst both adults and youth in Lesotho, consequently resulting in an influx of migrant and child labour.<sup>426</sup>

It is evident therefore that, adult unemployment in many more ways than others is responsible and contributes to the prevalence of child labour.<sup>427</sup> Children are forced to work in order to support their unemployed parents and care for the family. While there is an assumption that work done by children is harmless and nontoxic, children instead find themselves involved in work that impinges on their basic rights and working under hazardous conditions.<sup>428</sup> Children have replaced adults within the labour market, particularly in the informal sector working as domestic workers or street vendors to state the least. Children are easily controlled, have proved to be more efficient than adults and consent to low wages without objections hence the preferred labour force.<sup>429</sup> It is therefore evident that decline in the employment opportunities for both adults and youth alike has led to the incessant circle of unemployment, poverty and consequently child labour, particularly worst forms of child labour.<sup>430</sup>

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<sup>423</sup> Damane & Sekantsi, (2018:940).

<sup>424</sup> Lesotho Country Analysis Working Document Final Draft (2017:10). It is crucial to note that survivalist activities and working in farming have attracted a number of child labourers.

<sup>425</sup> Damane & Sekantsi, (2018:941-942). According to the classical theory, workers are the suppliers of labour and employers are in demand of labour. However, it is essential to note that, the government of Lesotho being the main and primary employer, here is rather more demand for employment as opposed to employers demanding workers thus resulting in high prevalence of unemployment. While many may supply labour, employers demand remains restricted despite skills and education. Many end up working for jobs they are not qualified for resulting in skills incompatibility. On the other hand, the Keynesian theory explains unemployment as a cyclical and involuntary phenomenon, the theory argues that while the demand of jobs may be high, the job opportunities of employment are limited. This is evident in Lesotho.

<sup>426</sup> *Ibid.*

<sup>427</sup> Chapter 5: Factors responsible for child labour, 100.

<sup>428</sup> UNICEF: Poverty in Lesotho, 113. Children's rights to education, the right to development, the right to protection to mention but a few. this includes working as domestic workers or street vendors.

<sup>429</sup> Chapter 5 (100).

<sup>430</sup> UNICEF: Poverty in Lesotho, 113. See also The Lesotho Country Analysis Working Document Final Draft. According to the document, unemployment is one of the major contributors to poverty thus resulting in the prevalence of child labour. Defined by the Lesotho, "worst forms of child labour cover domestic workers, street workers, sex workers and herders.

### 3.2.3 HIV/ AIDS Pandemic

While HIV/AIDS remains a global and major health problem, the Sub-Saharan region continues to be severely affected by the pandemic leaving children in vulnerable and precarious circumstances.<sup>431</sup> The SADC region is faced with the greatest challenge where the spread of the epidemic continues to ravage, killing the youth and old alike with nearly 1 in 25 adults living with the virus.<sup>432</sup> The Kingdom of Lesotho, eSwatini,<sup>433</sup> Zambia, Botswana and South Africa amongst others have endured the hardest hit by the epidemic.<sup>434</sup> The Kingdom of Lesotho has the second highest prevalence of HIV/ AIDS in Africa following the Kingdom of eSwatini.<sup>435</sup> At least 330 000 people live with HIV constituting about 25% and 53% of prevalence amongst adults and those on anti-retroviral respectively. Furthermore, approximately 9900 AIDS related deaths have been reported.<sup>436</sup> The impact of the HIV/ AIDS pandemic has left the country in complete devastation, affecting the economy, families and social structure.<sup>437</sup> Many families in rural Lesotho have been affected by the scourge of HIV/AIDS leaving a number children infected and many as orphans.<sup>438</sup> In addition to this, the prevalence of HIV/AIDS has resulted in an increase of child headed households.<sup>439</sup> Kimane asserts that the growing literature indicates that a great number of children working as

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Children in these four activities are exposed to a range of health hazards including both physical and emotional abuse. Furthermore, these children often work long hours under extremely poor working conditions”

<sup>431</sup> World Health Organisation; HIV/AIDS. Available at: <http://www.who.int/gho/hiv/en/> (Accessed 15 May 2018). See also Bill Rau (2003) Paper No.6: HIV/AIDS and child labour: A state-of-the-art-review with recommendations for action. A synthesis report,1.

<sup>432</sup> World Health Organisation; HIV/AIDS. Available at: <http://www.who.int/gho/hiv/en/> (Accessed 15 May 2018). See also, Southern African Development Community: Towards a common future: HIV/AIDS. Available at: <https://www.sadc.int/issues/hiv-aids/> (Accessed 15 May 2018).

<sup>433</sup> While the name change came unexpectedly, renaming of the Kingdom of Swaziland to eSwatini was announced officially at the 50<sup>th</sup> independence anniversary of the nation in 2018. Available at: <https://www.bbc.com/news/world-africa-43821512> (Accessed 27 December 2019).

<sup>434</sup> Southern African Development Community: Towards a common future: HIV/AIDS. Available at: <https://www.sadc.int/issues/hiv-aids/> (Accessed 15 May 2018).

<sup>435</sup> Arvert: Global information and education on HIV and AIDS in Lesotho Available at <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/lesotho> (Accessed 02 May 2018).

<sup>436</sup> UNAIDS data 2017 (2017) Available at: <http://www.unaids.org/en> (Accessed 02 May 2018), see also the Arvert: Global information and education on HIV and AIDS in Lesotho Available at <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/lesotho> Accessed 02 May 2018).

<sup>437</sup> HIV/AIDS in Lesotho: Impact and Prevalence of HIV in Lesotho available at: <https://www.helplesotho.org/lesotho/lesothohivaids-in-lesotho/> (Accessed 12 May 2018).

<sup>438</sup> Ellen Block (2014). ‘Flexible kinship: caring for AIDS orphans in rural Lesotho’. J R Anthropol Inst. 20 (4) 711-727 Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4389635/pdf/nihms670257.pdf> (Accessed 18 April 2018).

<sup>439</sup> The Ministry of Employment and Labour Lesotho (2006): Programme towards the elimination of the worst forms of child labour (TECL)/ILO: Implementation plan pf the programme towards the elimination of the worst forms of child labour in Lesotho 2004-2007. TECL Paper No. 10. 14.

domestic workers, herders and street vendors are orphans of HIV/AIDS.<sup>440</sup> Kimane therefore rightly contends that there is a clear link between the prevalence of child labour and the HIV/AIDS pandemic in Lesotho.

Children are mostly affected by and continue to be victims of HIV/AIDS. According to Rau, the death of either one or both parents affects the household income as well as the wellbeing of children, including opportunities to be in school, access to good health care, good nutrition, social and physical development.<sup>441</sup> Due to the death of parents, thousands of children are left to fend for themselves, exposing themselves to different forms of exploitation.<sup>442</sup> Consequently, children are enforced into work, often detrimental to their wellbeing.<sup>443</sup> The growing numbers of HIV/AIDS orphans have resulted in an overwhelming responsibility of taking care of the children by those left behind particularly, grandparents and guardians.<sup>444</sup> Often these caregivers have little to no means of providing for these children therefore making it hard to break poverty cycle.<sup>445</sup> In an attempt to help and supplement their families, siblings and guardians, children are forced into child labour.<sup>446</sup> Children often find themselves in work that is exploitative, detrimental to their health, destructive to their development and poorly remunerated.<sup>447</sup>

Most orphaned children also suffer abuse as well as harassment in the hands of the so-called family members or guardians, contends Lubaale.<sup>448</sup> These children are often subjected and exposed to exploitative responsibilities beyond their ages.<sup>449</sup> Some of the children particularly girls are likely to be sexually abused by their caregivers thus resulting in the cycle of

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<sup>440</sup> Kimane (2006).

<sup>441</sup> Bill Rau (2003) HIV/AIDS: A state-of-the-art review with recommendations for action, Synthesis report. Paper N0.6. International Labour Organisation: International Programme on the Elimination of Child Labour (IPEC) Available at: <https://www.streetchildrenresources.org/wp-content/uploads/2013/02/hiv-child-labour.pdf> (Accessed 22 May 2018). Executive summary.

<sup>442</sup> International Labour Organisation (2010). Good Practice: Communities and private sector join hands to adder child labour (Zambia). Available at: [http://www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PU\\_15455/lang--en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PU_15455/lang--en/index.htm) (Accessed 22 May 2018).

<sup>443</sup> *Ibid.*

<sup>444</sup> *Ibid.*

<sup>445</sup> *Ibid.*

<sup>446</sup> Rau (2003:1).

<sup>447</sup> Rau (2003: 1).

<sup>448</sup> Lubaale (2011:21).

<sup>449</sup> *Ibid.* the author further argues that children may be exposed to long hours of work, whether be it in performing domestic chores, working in agriculture or taking care of the animals. This eventually coerces children to drop out of school denying the children the rights to education, affecting the wellbeing of children and social and moral development. Some of the children may even be forced to find their ways into a labour market with the aim of surviving within the formal sector. It is argued that the work is usually dangerous and exploitative.

HIV/AIDS. Given the proliferation of child headed households as result of the HIV/AIDS epidemic, it is evident that child labour is inevitable.<sup>450</sup> However, Lubaale questions the effectiveness of laws aimed at banning child labour given the state in which children find themselves because of the evident consequences of HIV/AIDS pandemic.<sup>451</sup> One could therefore argue that it is imperative to find means and ways of addressing HIV/AIDS if child labour was to be abolished. Other factors contributing to the proliferation of child labour in Lesotho:

### 3.2.4 Orphanhood and Child headed Households

The rapid escalation of HIV/AIDS has led to an increase in the number of orphans as well as a proliferation in child headed households in Lesotho. Consequently, children are forced into a state of complete vulnerability and dependence thus threatening their wellbeing.<sup>452</sup> According to UNSAID Lesotho, approximately 73 000 children are orphans of either one or both parents due to HIV/ AIDS.<sup>453</sup> It is however important to note that, accounting for the prevalence of orphans remains the greatest challenge as there is no definite number of orphaned children.<sup>454</sup> These children are often exposed to abuse, exploitation, and child labour as a result.<sup>455</sup> These circumstances which has resulted in deaths of primary care givers has led to children being forced into the job market to provide and support for their families.<sup>456</sup> Majority of these children are robbed of their childhood, consequently compelling them to take up both motherhood and fatherhood roles as sole breadwinners.<sup>457</sup> As older children take up responsibilities of caring for their younger siblings, many of them drop out

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<sup>450</sup> Lubaale (2011:22).

<sup>451</sup> *Ibid.*

<sup>452</sup> Julia Sloth-Nielsen. Harmonisation of laws relating to children, Lesotho. The African Child Policy Forum. Available at: <http://www.africanchildinfo.net/documents/Lesotho%20Reportfinal%20Sarah.doc> (Accessed 15 May 2018) 7.

<sup>453</sup> UNSAIDS Country Factsheets (2016) Available at: <http://www.unaids.org/en/Regionscountries/countries/Lesotho> (Accessed 24 May 2018). According to SOS international, an alarming number of over 200000 children in Lesotho are orphaned, heading households working or begging in order to survive (available at: <https://www.sos-childrensvillages.org/where-we-help/africa/lesotho>)(accessed 24 May 2018).

<sup>454</sup> Tamasane (2011:11). Tamasane argues that due to lack of uniform or standard methods of acquiring information of orphans in Lesotho, the assumed and approximated number of orphans in Lesotho maybe be in accurate therefore failing to account for the extent of orphanhood.

<sup>455</sup> Julia Sloth-Nielsen, (7-8). See also Lubaale (2011) who asserts that HIV/AIDS has led to the prevalence of orphanhood which has contributed significantly to the proliferation of childheaded households, inevitably exposing children to work that is exploitative due to the deaths of caregivers.

<sup>456</sup> Lubaale (2011:22). See also Tsiliso Tamasane (2011): Analysis of services for orphans and vulnerable children in Lesotho- A desktop Review, the author emphasises that orphaned and vulnerable children are faced with many problems that compel them to take up greater responsibilities of generating income, ensuring provision of food and caring for the family and siblings.

<sup>457</sup> *Ibid.*

of school.<sup>458</sup> Furthermore, the same children are confronted with limited access to adequate nutritious foods, clothing, health care, and housing to state but the least.<sup>459</sup> As a result, these children appear helpless and without coping and survival mechanisms.

Due to poor living conditions, heads of child households are bound by such circumstances not only to find work but to depend also on neighbours and relatives kind enough to help, asserts Tamasane.<sup>460</sup> In spite of the strong traditional family structures, the impact of orphanhood and poverty has resulted in inadequate care for the orphaned.<sup>461</sup> Heads of child headed households therefore resort to work that negatively affects them mentally and physically as a means to respond to their own family needs.<sup>462</sup> Although work undertaken by these children seem harmless, given the informal nature of the activities (work) and not recognised as child labour, such activities may constitute child labour practices thus in need of protection.<sup>463</sup> This includes working on farms, on the streets or as domestic and commercial sex workers. It is crucial to note that orphaned children endure outright violations of human rights.<sup>464</sup> These include suffering from stigmatisation, exploitation, oppression, psychological, physical and sexual abuse by both relatives and employers with little to no protection.<sup>465</sup>

These children are in need of protection therefore, promotion and protection of the rights of orphans particularly those working is crucial. However, unlike the formal sector that is under constant survey and regulation, the informal sector where the high prevalence of child labour is evident remains beyond reach.<sup>466</sup> Lubaale rightly asserts that given the poor living conditions many orphans find themselves in, invoking legal measures directed at prohibiting child labour may not be a sufficient response to the predicament facing these children.<sup>467</sup> Consequently, protection of such children remains a challenge. Nonetheless, adopting a

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<sup>458</sup> *Ibid.* Lubaale further argues that given the long hours children invest in work to provide for their younger siblings or dependents, dropping out of school is inevitable due to fatigue. Children spend long hours working and therefore have little to no time for studies. This is usually more evident in the case of a girl child.

<sup>459</sup> Tamasane (2011:13).

<sup>460</sup> *Ibid.*

<sup>461</sup> Tamasane (2011:12). Tamasane states that the study done by World Food Program (WFP) contends that traditional safety nets, that is the extended family found it difficult to cope with and give care to the orphans due to the prevalence of poverty. Food insecurities have left families vulnerable and completely devastated and unable to provide for children. Both HIV/AIDS and poverty remain the major contributors to children's vulnerability. See also Sloth-Nielsen (2014) Protecting orphans and vulnerable children in Lesotho: an assessment of the Children's Protection and Welfare Act 2011.2.

<sup>462</sup> Lubaale (2011:22).

<sup>463</sup> *Ibid.*

<sup>464</sup> Tamasane (2011:11-15).

<sup>465</sup> *Ibid.*

<sup>466</sup> Lubaale (2011:22).

<sup>467</sup> *Ibid.*

Human Rights Based Approach, for instance ensuring the implementation and enforcement of the CRC, directly addressing child headed households and their engagement in child labour would serve as a significant and efficient way of responding to the needs of such children.<sup>468</sup> Although the Children's Protection and Welfare Act and National Policy on Orphans and Vulnerable Children <sup>469</sup>provides that children's rights should be protected and promoted, orphaned children remain victims of child labour with little to know protection.

### 3.2.5 Migration

Due to the high levels of poverty in Lesotho, the last twenty decades witnessed an influx of male population migrating temporarily to the Republic of South Africa to work in various sectors but predominantly in the gold mines.<sup>470</sup> Remittances from migrants contributed significantly to not only the reduction of poverty but also in supporting families economically.<sup>471</sup> Families were able to access basic needs such as food, education, medical services which would have otherwise not been easily accessible due to lack of sufficient income.<sup>472</sup> The early 1990s saw a drastic decline in the number of males working in the mines due to political and policy changes as opposed to the market induction asserts Mensah.<sup>473</sup> This however, resulted in a massive decline of remittances and an increase in household poverty.<sup>474</sup> With a significant number of male migrants returning back home, women and children alike have been forced to leave their families and take on the role of a breadwinner which was formerly a duty of men. This resulted in the feminisation of migration and child labour.<sup>475</sup> According to Rocchi and Del Sette, the concentration of economic activities in urban areas has made migration of people from rural areas inevitable.<sup>476</sup> Rocchi and Del Sette rightly contends that in search for employment, majority

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<sup>468</sup> *Ibid.*

<sup>469</sup> Julia Sloth-Nielsen,10.

<sup>470</sup> Rocchi, A & Del Sette, P. (2016). Lesotho: rural development and migration. Available at: <http://www.centrosaluteglobale.eu/site/wp-content/uploads/2016/05/Migration-and-Rural-Development-in-Lesotho-PDF.pdf> (Accessed 24 June 2018).5. Women, children and the elderly are often left behind in rural areas.

<sup>471</sup> Rocchi & Del Sette (2016:5).

<sup>472</sup> *Ibid.*

<sup>473</sup> Samauel N. A. Mensah & Vannie Naidoo (2011). Migration Shocks: Integrating Lesotho's Retrenched Migrant Miners. Centre for Migration Studies of New York. The International Migration Review Vol.45. No.4 pp 1017-1042. 1017.

<sup>474</sup> Rocchi & Del Sette (2016:5).

<sup>475</sup> Rocchi & Del Sette (2016:5).

<sup>476</sup> *Ibid.*



of female population migrate to urban areas as domestic workers or working in textile industries.<sup>477</sup> Consequently, children are compelled into taking up household roles.<sup>478</sup>

According to the Lesotho Country Analysis document, while migration seemed to be an answer to many economic problems of Basotho, its negative impacts cannot be denied. Majority of the migrants find themselves in living circumstances that cause them to be susceptible to multiple sexual partners, concurrent and transactional sexual partners thus exposing many to sexual abuse, exploitation and diseases.<sup>479</sup> Furthermore, it has been recognised that due to this behaviour there is a high prevalence of HIV infections amongst male and female migrants alike.<sup>480</sup> In addition to infections, mining migrants in particular are exposed to tuberculosis (TB).<sup>481</sup> The effects of both diseases have had and continue to have devastating effects on children. At least thirteen million children under the age of 15 are orphans of either one or both parents due to the HIV/AIDS.<sup>482</sup>

The negative effects of migration have forced children into taking up responsibilities of caring for their sick parents as well as their siblings, performing household duties, becoming heads and sole breadwinners of the family.<sup>483</sup> Children are therefore compelled to drop out of school and join the labour force in order to generate income and provide for the family. This denies children the opportunity to be at school, forfeiting their rights to education given the new responsibilities. According to the report, in instances where children cannot find a job, they are forced to migrate to urban areas, or engage in early child marriages, sex work, begging and criminal activities to supplement the family income.<sup>484</sup> As a result, these children are often maltreated, violated, oppressed and exploited both physically and

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<sup>477</sup> *Ibid.*

<sup>478</sup> Peberdy, S. & Dinat, N. (2005). Migration and Domestic Workers: Worlds of work, health and mobility in Johannesburg. Southern African Migration Project. Migration Policy Series No.4. 9.

<sup>479</sup> Lesotho Country Analysis Working Document Final Draft (2017:9).

<sup>480</sup> *Ibid.*

<sup>481</sup> *Ibid.*

<sup>482</sup> Children affected by HIV/Aids: An interesting projection made in May 2003 about the impact of HIV/Aids on the children of Africa. (Updated in June 2014). Available at: <http://www.health24.com/Medical/HIV-AIDS/Living-with-HIV/Children-affected-by-HIV-Aids-20120721> (accessed 26 July 2018).

<sup>483</sup> *Ibid.*

<sup>484</sup> *Ibid.* It is evident that although migration has helped curb and bring about poverty reduction, it remains the reason for the high prevalence of HIV and Aids as well as TB. Both diseases have resulted in the high rates of deaths. Many children are left as orphans in devastating conditions of poverty and the demands to take care of their families consequently forcing children to be involved in the economic activity as child labourers. Not only does the negative effects of migration lead to child labour but also has led to impingement of the fundamental rights of the children as they take up roles of breadwinners, caregivers and sole providers. Children are forced to grow up in poor living conditions, with poor nutrition and health and psychological affected by these conditions. Majority of children are forced out of school forfeiting their rights to education and are prone to sexual and physical abuse from family members and the work environment.

sexually.<sup>485</sup> Consequently, this results in the outright infringement on the rights of children, particularly that is the right to protection, freedom from oppression and exploitation, the right to physical, psychological and moral development to mention but a few.<sup>486</sup> It is therefore evident that, negative effects of migration lead to inevitable prevalence of harmful child labour practices and violation of children's rights.

### 3.2.6 Child marriages

Despite great efforts to protect children globally, a girl child continues to be subjected to the appalling traditional practices such as female genital mutilation (FGM) and child marriages to say the least.<sup>487</sup> Although many scholars have not considered the relationship between child marriages and child labour, it is important for the study to note and be cognisant of this relationship. In fact, it has been rightly contended that child marriages are not only harmful traditional practices but regarded as a crime constituting the worst forms of child labour.<sup>488</sup> The alarming statistics of child marriages show that at least 1 in 5 girls in Lesotho marry before the age of 18.<sup>489</sup> Approximately 2 per cent of children in Lesotho marry at age 15 and 19 per cent before turning 18.<sup>490</sup> Constituting a great number of population, children particularly those in rural areas fall victim to early child marriages. Due to the overwhelming prevalence of poverty in Lesotho, children are forced into early marriage.<sup>491</sup> Poor families marry off their children to elderly men in order to receive dowry. The money or any form of dowry is said to help the girl's poor family. Child Marriage is therefore viewed as a transaction between families that is; selling of children for the betterment of the poor family. This however, exposes child brides to sexual, physical and psychological abuse by their

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<sup>485</sup> International Labour Organisation: Migration and child labour. Available at: [https://www.ilo.org/ipecc/areas/Migration\\_and\\_CL/lang--en/index.htm](https://www.ilo.org/ipecc/areas/Migration_and_CL/lang--en/index.htm) (Accessed 08 July 2018).

<sup>486</sup> *Ibid.*

<sup>487</sup> United Nations Women: The Girl Child. Available at: [beijing20.unwomen.org/en/in-focus/girl-child](http://beijing20.unwomen.org/en/in-focus/girl-child) (Accessed 24 July 2018).

<sup>488</sup> AIDS-Free World Report (2015). Child Marriage is child labour: the disappearance of girls from child labour statistics. Available at: <http://aids-free-world.org/Our-Issues/Child-Marriage/~media/Files/Child%20Marriage/Child%20Marriage%20Is%20Child%20Labour%20-%20AIDS-Free%20World%20Report%20May-2015.pdf> (Accessed 24 June 2018). 1.

<sup>489</sup> Child Marriages around the world: Lesotho. Available at <http://www.girlsnotbrides.org/child-marriage/lesotho/> (Accessed 27 July 2018). See also Cecil Languardia (2016) World Vision Article: 'Queen Masenate of Lesotho campaigns with World Vision against early child marriage'. Available at: <http://www.wvi.org/Africa/article/queen-masenate-lesotho-campaigns-world-visio-against-early-child-marriage> (Accessed 27 July 2018).

<sup>490</sup> Languardia, C. (2016). World Vision Article: 'Queen Masenate of Lesotho campaigns with World Vision against early child marriage'. Available at: <http://www.wvi.org/Africa/article/queen-masenate-lesotho-campaigns-world-visio-against-early-child-marriage> (Accessed 27 July 2018).

<sup>491</sup> Languardia (2016).

elderly husband and their families.<sup>492</sup> It invariably affects child wives whom often spend long hours cleaning and preparing food for the family hence robbing them of their childhood.<sup>493</sup> According to UNICEF, the practice of child marriage is an outright violation of human rights, denying children the right to development, education and health as well as exposing them to violations on a daily basis.<sup>494</sup> As a result, work done by child wives constitutes forms of child labour. In other instances, the child wives may be compelled to find work in order to sustain and provide for the family. Putting an end to child marriage will ultimately help reduce the practice of child labour.

### 3.2.7 Culture

Although poverty, economic meltdowns, HIV/ AIDS amongst others have been recognised as forces behind child labour, culture is also one of the crucial contributors to the prevalence of child labour particularly within the African continent including Lesotho. According to Wise and Sanson as quoted by Nhenga, in spite of the western influences evident, traditional and cultural norms, ideals and attitudes remain forces regulating methods of nurturing and educating children.<sup>495</sup> The notion or belief that the development of children is dependent on cultural constructions continues to be accepted by many African or traditional societies.<sup>496</sup> While western ideologies and beliefs are centred on individualism, independence and competitiveness as a character of child development, this is not the case of African/traditional societies. Parents in traditional and cultural societies such as those in Africa believe in the culture of inter-dependence and collectivism, living in harmony with others and serving others.<sup>497</sup> In this kind of cultural set up, children have a responsibility and duty towards their family.<sup>498</sup> While the notion of child labour is disregarded culturally, child work seems to be an accepted norm.<sup>499</sup>

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<sup>492</sup> AIDS-Free World Report (2015). Child Marriage is child labour: the disappearance of girls from child labour statistics

<sup>493</sup> *Ibid.*

<sup>494</sup> *Ibid.*

<sup>495</sup> Charity Nhenga, T. (2008) 'Application of the International Prohibition on child labour in an african context: Lesotho, Zimbabwe and south Africa' Published Phd Thesis by the University of Cape Town, 175. See also Wise & Sanson (2000:22).

<sup>496</sup> Wise, S. & Sanson, A. (2000) 'Child care in cultural context: Issues for new research' Research Paper No. 22, Australian Institute of family studies.

<sup>497</sup> Wise & Sanson (2000:22).

<sup>498</sup> Nhenga-Chakarisa (2010:166)

<sup>499</sup> Letuka (1998:207) 'The Best Interest of the Child and Child Labour' in Lesotho in 'Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa' Ashgate Publishing Limited England.

Letuka states that the ability to perform work is seen as rite of passage into adulthood.<sup>500</sup> While children's views are not accommodated, age is also not taken into consideration asserts Letuka.<sup>501</sup> Lubaale asserts that transition from childhood phase into adulthood goes beyond legal age for a child to be involved in work that could be harmful to their wellbeing.<sup>502</sup> Culture perceives child work as a means of socialisation, training, building and developing children into responsible adults.<sup>503</sup> While this may be a commendable perception, some cultural practices conceal the exploitative nature of work done by children based on the ostensible reason of enculturation and socialisation.<sup>504</sup> It is worth nothing that some of the responsibilities entrusted to children may have a negative impact on their wellbeing and development. Some of the work performed by children whether household chores or working in farms or tending to animals, pose some threat to the education, social, moral, physical and mental development of a child<sup>505</sup> thus constituting harmful child labour practices.

The cultural misconceptions of child work based on the rite of passage or adulthood ideologies, disregards and fail to recognise that some of the responsibilities and duties assigned to children are exploitative and dangerous. The impression that the extent of danger is confirmed by the extent of harm inflicted on the body overlooks the possibilities of mental and moral damages that could be experienced by a child given the work they perform.<sup>506</sup> In situations where children are forced to look after family members who are sick that may affect them psychologically. In other instances, because of the nature, location and the length of hours spend on the work (this includes street vendors, domestic workers and herd boys) children are forced to drop out of school denying them their right to education and mental development.<sup>507</sup> One would argue that the development of children therefore rests upon some of the activities the children partake in. In this case, this would refer to the kind of work children perform. Therefore, failure to take into consideration the harmful nature of other

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<sup>500</sup> Letuka ((1998: 207). Puleng argues that, the ability to perform duties is not necessarily placed on the age of the child but his or her ability to perform the task at hand. While children may be young that is younger than the legal age of majority, culturally age remains just a number nothing less. It is argued that children have no voice in this. No one values or takes into account any of their views regarding the cultural way of doing things, which in turn may be detrimental to their wellbeing.

<sup>501</sup> Letuka (1998: 207).

<sup>502</sup> Lubaale (2011:23).

<sup>503</sup> Lubaale (2011:23).

<sup>504</sup> *Ibid.*

<sup>505</sup> Lubaale (2011:24). See also ILO Report on the future without child labour.

<sup>506</sup> Letuka (1998: 209).

<sup>507</sup> Kimane (2006: 60).

tasks performed by children results in the difficulty to implement legislation aimed at protecting children against harmful cultural practices contends Lubaale.<sup>508</sup>

### 3.3 Forms of child labour in Lesotho

According to the TECL programme,<sup>509</sup> the evident prevalence of child labour within southern Africa varies in nature and size. The Kingdom of Lesotho amongst many countries in the Southern African region continues to fight battles against poor socio-economic conditions, poverty, political instabilities that have left majority of children with no choice but to be involved in the informal sector. This includes working in agriculture, working as herd boys, as domestic workers, taxi conductors and street vendors.<sup>510</sup> As a result, children perform work detrimental to their wellbeing, education, health and development thus constituting worst forms of labour.<sup>511</sup> Rapatsa rightly asserts that, the results of child labour often cause permanent physical and psychological impairments or even worse loss of life.<sup>512</sup>

Letuka describes child labour in Lesotho in five different ways. This includes the traditional and paid labour, traditional non-commercial child labour; labour of children brought up by relatives, labour and children who have been 'loaned' and lastly, paid child labour.<sup>513</sup> The traditional and paid labour forms part of the formal sector, with set rules and regulations under which children may work.<sup>514</sup> Furthermore, labour inspectors are appointed to ensure that laws and regulations under which children may operate are effectively enforced. This includes ensuring that all children working or hired are within the minimum age required for employment.<sup>515</sup> While the law may protect children in traditional and paid labour, this is not

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<sup>508</sup> Lubaale ((2011:23).

<sup>509</sup> International Labour Organisation (TECL Programme): Implementation plan of the programme Towards the Elimination of the worst forms of Child Labour in Lesotho 2004-2007, Paper No. 10. Available at: [www.ilo.org/ipecinfo/product/download.do?type=document&id=4509](http://www.ilo.org/ipecinfo/product/download.do?type=document&id=4509) (Accessed 03/3/2018),1.

<sup>510</sup> *Ibid.*

<sup>511</sup> *Ibid.*

<sup>512</sup> Rapatsa, (2017:194). He argues that due to the kind of work children do children are forced into work that is exploitative, sexually, physically and economically, children are usually involved in force labour that results in slavery or bondage labour while others may be used to commit illicit activities that includes selling of drugs or even recruiting other children into child labour. It is important to note that the Child Act of Lesotho does not address or make mention of illicit activities and how such activities should be dealt with. Ironically, human trafficking constitutes such an activity and yet addressed in some of the national strategic plans to protect and promote the rights of the children in Lesotho. Such an omission should be addressed and further question the transformative nature of the Act that aims to bring about change and development regarding the rights of children as well as protection of the children against harmful economic activities.

<sup>513</sup> Letuka (1998: 210-215).

<sup>514</sup> Letuka (1998; 211).

<sup>515</sup> *Ibid.*

the case for children within informal sectors, this include the domestic work and agricultural sectors. These sectors exist without formal inspection and regulation<sup>516</sup> which leaves a great number of children working either as paid employees or unpaid members of the family without protection asserts Letuka.<sup>517</sup> Although work such as domestic chores may take place within the confines of the home, it is of great significance not to be oblivious of its detrimental nature to the child.<sup>518</sup>

While many are of the assumption that family is a safe place for children to develop and be protected, under traditional non-commercial child labour this is not the case. According to Letuka's study on child labour in Lesotho, evidence show that, many children have to take up household roles of cleaning, cooking and taking care of siblings while parents engage in irresponsible activities such as drinking or indulging in alcohol.<sup>519</sup> Consequently, because of the burden of domestic work, children are forced to drop out of school and care for the family while their parents are out drinking. In the case where family income is little to employ domestic help, children particularly girls are forced to take up household responsibilities thus making child labour a necessity for survival.<sup>520</sup> It is however crucial to state that a child's rights are infringed upon as a result. Letuka further states that many children brought up by relatives suffer grave maltreatment and exploitation from relatives. These children are often forced into hard and long hours of labour either taking care of livestock or undertaking house chores.<sup>521</sup>

For many poor families with little to no income, taking care of children continues to be a challenge. Consequently, such families are compelled to 'loan' their children to their wealthy relatives who will in turn take better care of the children and provide a better standard of living.<sup>522</sup> The relatives may provide food, clothing, shelter as well as education for the children.<sup>523</sup> It is however, imperative to note that education may be provided based on the family's subjectivities. Children in this case often provide unpaid labour as compensation for

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<sup>516</sup> *Ibid.*

<sup>517</sup> *Ibid.*

<sup>518</sup> *Ibid.*, spending a sufficient time on house chores may deny children their right to leisure and childhood thus affecting their psychological development.

<sup>519</sup> *Ibid.*

<sup>520</sup> Letuka (1998:216).

<sup>521</sup> *Ibid.*

<sup>522</sup> Letuka (1998: 212).

<sup>523</sup> *Ibid.*

being taken care of.<sup>524</sup> Loaned children however, take care of their relatives younger children as well performing household duties such as cleaning and cooking.<sup>525</sup>

In other instances, loaned children may be provided for in terms of shelter and food and in turn engage in household duties on a full-time basis. These children are often deprived of educational privileges among others. Letuka contends that these children appear as nothing but unpaid servants.<sup>526</sup> The long hours invested in household work may not only drain a child physically but also emotionally thus constituting a form of exploitation. Although this may be the case, the assumption that the loaned child is just a relative assisting his or her family neglects the exploitative nature of work done by a child.<sup>527</sup> The assumption that loaning a child to relatives is for the betterment of their living conditions fail to recognise infringement on the rights of the child and the need for protection.<sup>528</sup> This may as well constitute forms of child slavery.<sup>529</sup>

While the industrial sector remains the paid and regulated sector in Lesotho, the absence of child labourers within the sector does indicate the absence of paid child labour force within the informal sector or private spheres.<sup>530</sup> In fact, most children are employed and hired out by families to participate in paid labour. This is prevalent in child domestic workers (girl child) and herd boys (boy child).<sup>531</sup> Children involved in domestic work and herding of animals are vulnerable and exposed to harsh and dangerous working conditions asserts both Kimane and Letuka.<sup>532</sup> Children work in extremely exploitative conditions for long hours with no rest and little to no pay, contends Kimane.<sup>533</sup> Furthermore, child domestic workers are exposed to oppression and sexual abuse. On the other hand, child herd boys are exposed to health hazards due dangerous environmental conditions as they spend most time out in either extremely hot or cold weather.<sup>534</sup> The effects of such labour practices affect children not only physically but also psychologically and may ultimately lead to loss of life. The different

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<sup>524</sup> *Ibid.*

<sup>525</sup> *Ibid.*

<sup>526</sup> Letuka (1998:213).

<sup>527</sup> *Ibid.* As a result, families may not see work done by children as child labour.

<sup>528</sup> *Ibid.*

<sup>529</sup> See also the definition of child slavery. According to the Anti-slavery report: "Child slavery is often confused with child labour, but is much worse. Whilst child labour is harmful for children and hinders their education and development, child slavery occurs when a child's labour is exploited for someone else's gain". In the case of loaned children, relatives stand to gain more from the biological families of the children. Available at: <https://www.antislavery.org/slavery-today/child-slavery/> (Accessed 28 July 2018).

<sup>530</sup> Letuka (1998:213).

<sup>531</sup> *Ibid.* See also Kimane "protecting the rights of working children in Lesotho through legislation",4.

<sup>532</sup> Kimane (2006:4) see also Letuka (1998:212).

<sup>533</sup> Kimane (2006:4).

<sup>534</sup> *Ibid.*

forms of child labour in Lesotho take place within the informal sector with the exception of the traditional and paid labour. Due to the existence of work in the private or informal setting, it is evident that such work is not recognised as child labour. However, work done by children loaned, brought up by relatives and those involved in traditional non-commercial constitute forms of worst forms of child labour therefore should be treated as such. Children involved in these forms of child labour should be protected against the evident exploitation and abuse.<sup>535</sup> There is therefore a need for both legal and social responses towards the plight of child labour in Lesotho as well as effective implementation of laws against child labour practices.

### **3.4 Lesotho's responses to circumstances that produce child labour**

Traditionally, performance of different kinds of duties described as work by children has been a longstanding cultural practice acceptable in Lesotho.<sup>536</sup> According to Letuka, every member of the family including children have an obligation and responsibility to ensure the family is provided for. Children usually make their contribution in a form of labour.<sup>537</sup> While it is presumed that performing of duties is a rite of passage to adulthood, this assumption fails to recognise that some activities may constitute worst forms of child labour asserts Kimane.<sup>538</sup> For instance, herding of animals by young boys is viewed as preparing them for manhood. Such a practice is seen as means for young males to accumulate wealth that will enable them to pay bride price.<sup>539</sup> This has culturally resulted in the practice of herding as not being regarded as wrong or harmful to the wellbeing of a child regardless of whether the work is performed under exploitative and oppressive conditions.<sup>540</sup> Under culture, child work is regarded as light work or running of an errand and child labour places more emphasis on what a child owes to the parents and the elderly asserts Letuka.<sup>541</sup> Given this explanation, child labour appears to be an informal transaction between parents and children. It is

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<sup>535</sup> Rapatsa, (2017:186).

<sup>536</sup> Kimane (2006:3).

<sup>537</sup> Letuka (1998:203).

<sup>538</sup> *Ibid.*

<sup>539</sup> *Ibid.* See also UNICEF report: UNICEF. (2001). *Child Workers in the Shadow of Aids, Listening to Children*. Nairobi. Available at: <http://catalogue.safaid.net/publications/listening-children-child-workers-shadow-aids> (Accessed 28 July 2018).

<sup>540</sup> *Ibid.* It is crucial to note that such cultural practises fail to consider the age a child engages in such a job. As a result, cultural practises ignore the oppressive, abusive and exploitative nature of the work done by children. See also Puleng Letuka. According to Puleng in an interview she had with young boys working as herd boys, they stated that the work they do is a little too much therefore denying them time to play.

<sup>541</sup> Letuka (1998:209).



imperative to note that the socio-economic circumstance in which children find themselves in also play a critical role in their labour undertakings. It is crucial to note that in Lesotho many are guided and live by customary law, therefore culture remains the most crucial aspect and reason for child labour's prevalence.

It is therefore significant to critically evaluate the legislation and national policies aimed at promoting and protecting the rights of children and the responses to child labour practices in Lesotho.

### **3.5 Responses: Legislation**

The Kingdom of Lesotho is characterised by a dual legal system consisting of customary and general laws, codified in the Laws of Lerotholi and Roman–Dutch Civilian Law respectively.<sup>542</sup> In 1993, the Kingdom of Lesotho adopted a new Constitution, asserting supremacy above all laws.<sup>543</sup> Any law considered inconsistent with the Constitution shall be observed as null and void.<sup>544</sup> The Constitution has not only set a foundation for the adopting of other pieces of legislation, national policies and strategies but have also incorporated provisions of international law instruments aimed at promoting and protecting human and children's rights.<sup>545</sup> For the purpose of this study, it is empirical to establish as to whether the Constitution, the laws and policies are reflective of the rights of children and whether they effectively address child labour issues evident in Lesotho.

#### **3.5.1 The Constitutional Law Provision the Kingdom of Lesotho: Section 32: The protection of young persons and children**

Chapter III: contains principles of policy that relate to child labour and the rights of children. Furthermore, issues on the protection of children and young persons, provision for health and education, protection of workers' rights and interest to state but a few are dealt with under

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<sup>542</sup> Buhle Angelo Dube (2008). 'The Law and Legal Research in Lesotho'. Available at: <http://www.nyulawglobal.org/globalex/Lesotho.html> (Accessed 27 July 2018). Customary laws constitute Basotho customs and traditions written and codified in the Laws of Lerotholi. These are the laws that guide the Basotho nation and passed down from one generation to the other through oral tradition.

<sup>543</sup> *Ibid.*

<sup>544</sup> *Ibid.* See also the Chapter 1 Section of the Constitution of Lesotho.

<sup>545</sup> The Constitution of Lesotho: Chapter 11: Protection of fundamental Human Rights and Freedoms. See also Letuka (1998:204).

this chapter of the Constitution.<sup>546</sup> The Constitution under Section 32 expressly makes provision for children to be protected against exploitative work as well as work detrimental to their health and development. Section 32 provides that:

“32. Protection of children and young persons

- (a) protection and assistance is given to all children and young persons without any discrimination for reasons of parentage or other conditions;
- (b) children and young persons are protected from economic and social exploitation;
- (c) the employment of children and young persons in work harmful to their morals or health or dangerous to life or likely to hamper their normal development is punishable by law; and
- (d) there are age limits below which the paid employment of children and young persons is prohibited and punishable by law.”<sup>547</sup>

Furthermore, it is important to note while children are involved in child labour, which is clearly prohibited by the Constitution as stated above, children not only fall victim to exploitation but are also denied the right to education. Chapter III: particularly Section 28 (b) provides that:

“ (b) primary education is compulsory and available to all;”

The Constitution of Lesotho clearly prohibits child labour, advocating instead for the promotion and protection of children’s rights particularly the right to basic education, right to health and development under both Section 28 and 32 of the Constitution. Letuka asserts that these are just but state principles aimed at guiding authorities and agencies to perform their duties and therefore, cannot be enforced by the court law and are subject to the country’s economic capacity and development.<sup>548</sup> Letuka rightly contends that unlike the CRC, Constitutional provisions against child labour are not expressed in the language of rights.<sup>549</sup> As a result, the lack of emphasis on the importance and enforcement of rights of the children remains the greatest challenge within the Lesotho legal system. However, the Constitution advocates for the adoption of policies that will ensure protection of children and young persons against economic and social exploitation.<sup>550</sup> The Constitution also encourages government to adopt policies setting out the age below which employment of children would be illegal, policies that prevent employment of children in work that is hazardous, thus making such employment punishable by law.<sup>551</sup> While the Constitution places more emphasis

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<sup>546</sup> The Constitution of Lesotho: Chapter III: Principles of State Policy.

<sup>547</sup> Section 32: The Constitution of Lesotho

<sup>548</sup> Letuka (1998:204).

<sup>549</sup> *Ibid.*

<sup>550</sup> Section 32: The Constitution of Lesotho.

<sup>551</sup> Letuka (1998:204) See of Section 32 of the Constitution.

on the adoption of policies, it fails to account as to how such policies will be implemented, enforced and ultimately bring about punishment to the transgressors of the provisions as stated in the policies. The failure of the Constitution to define a child as well as providing for a minimum age of employment and rather assigning it to policy makers, may hinder implementation and ultimately enforcement of such policies. As a result, the realisation of children's rights involved in economic activities within the informal sector in Lesotho remains the greatest challenge.

### **3.5.2 Statutory Law Provisions: Labour Code Order 1992**

The Labour Code Order 1992 remains the paramount piece of legislation consolidating and codifying all laws concerning employment as well as employment of children in Lesotho.<sup>552</sup> Under Section 124 (1), a child may not be employed or work in commercial or industrial undertaking except if work is done privately with only members of the child's family employed.<sup>553</sup> The Code in addition provides that provisions of Section 124 (1) are not applicable to light work done by children between the ages of 13 and 15 years in technical schools or similar institutions where such work is permitted by the education department.<sup>554</sup> Failure of the employer to comply with these provisions set under Section 124 shall be found guilty and liable on conviction to three months imprisonment or a fine of three hundred maloti or both.<sup>555</sup>

Under Section 125 of the Code, general restrictions on the employment of children and young persons are clearly articulated. According to Section 125 (1), a child or young person shall not be employed in work that is detrimental to his or her health or morals.<sup>556</sup> Moreover, employment of children without parent's or guardian's consent either orally or written is prohibited. No person shall continue to employ such a child.<sup>557</sup> Discontinuing such employment shall be done without prejudice as well as remunerating a child or young person

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<sup>552</sup> Letuka (1998:204).

<sup>553</sup> Lesotho Labour Code Order 1992: Part IX- Employment of Women, Young Person and Children, Section 124 (1).

<sup>554</sup> Lesotho Labour Code Order 1992: 124 (2).

<sup>555</sup> Lesotho Labour Code Order 1992: 124 (3).

<sup>556</sup> Section 125 (1), the code further provides that any work deemed dangerous or unsuitable as declared by the Minister in the Gazette, or notification by the commissioner as directed by the Minister and declared by notice in writing to be injurious to the health of a child and young person, a child may not be employed in such.

<sup>557</sup> Section 125 (2).

wages due to them.<sup>558</sup> It is however important to note that, given poor economic conditions in Lesotho, parents and guardians alike have offered their children to work in order to sustain the family despite the life-threatening conditions, long working hours without rest as in the case of loaned children or traditional non-commercial child labour. It is evident that despite the provisions of the labour code, children continue to engage in prohibited work with no form of accountability or punishment of employers.<sup>559</sup>

The Code provides that no persons under the age of 16 shall be employed in work that requires him or her to work for more than four consecutive hours without at least one-hour break or more than eight hours.<sup>560</sup> While the Code prohibits children below the age of 16 to work in conditions prohibiting him or her to go home or returning at night to a place of residence, this is not so for children employed as domestic workers.<sup>561</sup> Child domestic workers are allowed to sleep at their work place asserts Letuka.<sup>562</sup> However, this provision is rather contrary to Section 125 (4) that prohibits work without a rest as well as Article 32 (b) that calls for regulation of hours of employment.<sup>563</sup> Although the Code states that any person in contravention of any of the provisions shall be found guilty of an offense and liable for conviction with a fine of Six hundred Maloti or six months imprisonment or both<sup>564</sup>, the code appears to be contradictory to its own provisions. Consequently, prohibition and the ultimate abolishment of child labour remains unlikely. The Code further forbids the employment of children or young persons in mining and quarrying sectors.<sup>565</sup> Employment of children and young persons in this sector is contrary to the Code's provisions therefore considered an offence, punishable by law.<sup>566</sup>

According to the Code, a child is defined as a person under the age of 15 and a young person as a person above the age of 15 but below the age of 18 years.<sup>567</sup> It is evident that the minimum age of employment in Lesotho is below the age of 18 years, which is recommended

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<sup>558</sup> Section 125 (3).

<sup>559</sup> Letuka (199:205).

<sup>560</sup> Section 125 (4).

<sup>561</sup> Section 125 (5). See also Section 126 on the restriction on employment of children and young persons on night work.

<sup>562</sup> Letuka (1998:205).

<sup>563</sup> Section 125 (4), see also Article 32 (b) of the Convention on the Rights of Children. Lesotho Labour Code Order see to have a loophole that needs to be addressed in order to promote and protect the rights of children within the economic sector.

<sup>564</sup> Section 125 (6).

<sup>565</sup> Section 127 (1) 'No child or young person shall be employed in any mine or in any quarry or opencast working except a young male person over the age of 16 who is employed otherwise than underground in terms of an apprenticeship agreement approved by the Labour Commissioner and in respect of whom a medical officer has certified that he is fit for such work.'

<sup>566</sup> Letuka (1998:204). See also Section 127 (2) any person who employs children or young persons in the mining and quarrying shall be convicted, imprisoned for six months or fined six hundred maloti or both.

<sup>567</sup> Labour Code Order 1992: Part II- Interpretation and Fundamental Principles: 3. Terms defined.

by the CRC.<sup>568</sup> However, it is important to note that Lesotho's age of employment is in line with Article 2 of the 1973 ILO Convention concerning Minimum Age of Admission for Admission to Employment.<sup>569</sup> Although the Code prohibits the employment of children in industrial and commercial sector, it fails to take into account children involved in the informal sector.

Letuka rightly contends that, the Code is restricted to children employed within the formal sector, bound by a contract between them and their employers. Within this sector, promotion and protection of the rights of children is guaranteed. Protective mechanisms have been put in place to ensure children's protection. While the informal sector remains unregulated particularly in instances where children are employed by family members or working as street vendors. The rights of children in this sector continue to be infringed upon as they face abuse and exploitation. This includes children working as herd boys and domestic workers. Furthermore, the Labour Code Order has failed to put in place mechanisms that ensure protection of children and hold accountable those in contravention of Code particularly within informal sector, where child labour is dominant.

### 3.5.3 Customary Law

Customary law comprises of Basotho customs written and codified in the Laws of Lerotholi.<sup>570</sup> Letuka argues that although some authors have written on Lesotho's customary law regarding issues pertaining to the rights of children, the issue of child labour remains untouched.<sup>571</sup> Therefore perception of child labour under customary law is based mainly on information obtained through interviews conducted by Letuka on the study of child labour carried out a couple of years ago in Lesotho. Under customary law, children have an obligation and responsibility to perform certain duties for the family. This is done as a way of compensating one's family for being taken care of.<sup>572</sup> Traditionally, from an early age of 7 years, boys are expected to look after livestock and girls are expected to help with household

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<sup>568</sup>Article 1 of the Convention on the Rights of Children

<sup>569</sup> C 138- Minimum Age Convention, 1973. Article 2 (3) 'The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.'

<sup>570</sup> Dube, B. A. (2008).

<sup>571</sup> Letuka (1998:205).

<sup>572</sup> Letuka (1998: 206).

chores.<sup>573</sup> It is argued that for girls, the ability and strength to perform such duties is crucial.<sup>574</sup> For both girls and boys, the ability to perform duties signifies growth and preparation for adulthood.<sup>575</sup>

It is culturally acceptable for parents to loan their children to other family members or even neighbours. These children are often kept by such persons in return of the services they provide. Services include taking care of the household and children as well as looking after livestock.<sup>576</sup> The rights of children in such cases are not considered. In fact, it is evident that under customary law, child work is an obligation and does not consider the dangers children may endure while working. According to Letuka, a child has no right to fight against customary practices and therefore said to have no legal personality.<sup>577</sup> Consequently, children's rights are rather tied to those of their parents or guardians thus placing children in vulnerable positions particularly in instances where children's interests are in conflict with those of parents.<sup>578</sup> It is evident that emphasis placed on duty and obligation by customary law fails to recognise rights of children impinged upon as children perform duties. Furthermore, while parents are supposedly grooming children into adulthood, children may be exposed to work detrimental to their wellbeing; as a result the best interests of a child continues to be compromised.

### **3.5.4 The Children's Protection and Welfare Act No.7 of 2011**

The Kingdom of Lesotho received applauding from the United Nations International Children's Emergency Fund (UNICEF) when the long awaited Children's Protection and Welfare Bill was enacted in 2011 given the inadequacy of the Children's Act of 1980.<sup>579</sup> Unlike its predecessor, the Children's Protection and Welfare Act (CPWA) responds to the 21<sup>st</sup> century needs of children including reports of child abuse, bringing together all policies

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<sup>573</sup> Letuka (1998: 206). This traditional practice is also evident in many other traditional countries such as South Africa. South African customary law advocates as the Kingdom of Lesotho encourages children to work within the family as duties and responsibilities but not as work.

<sup>574</sup> *Ibid.*

<sup>575</sup> *Ibid.*

<sup>576</sup> *Ibid.*

<sup>577</sup> *Ibid.* See also Bekker (1989:239) as quoted by Letuka on children's rights under customary law.

<sup>578</sup> *Ibid.*

<sup>579</sup> UNICEF report (2010). Lesotho moving towards enacting the Children's Protection and Welfare Bill. Available at: <https://reliefweb.int/report/lesotho/lesotho-moving-towards-enacting-childrens-protection-and-welfare-bill> ( Accessed 10 June 2018).

and regulations aimed at protecting the welfare of children at its core thus proving to be a novel development.<sup>580</sup> The primary objectives of the Act include promoting and protecting the rights of children as stated in the CRC and ACRWC and other international instruments rules and standards to which the Kingdom of Lesotho is a signatory.<sup>581</sup> In addition, the Act shall be implemented to ensure that protection, promotion and realisation of children's rights and welfare is enhanced.<sup>582</sup> Finally, Section 2 (4) provides that in instances where there are any piece of legislation which demonstrates insufficiency in protecting and promoting the rights of children, the Act shall supersede such a law.<sup>583</sup>

Part III of the CPWA places an obligation upon parents and state to ensure that the rights of the children are protected and promoted. This includes the right to education and health, social activity, opinion, protection from exploitative labour, torture and degrading treatment and harmful cultural rites, customs and traditional practices among others.<sup>584</sup> The CPWA further places great emphasis on the obligation of parents and the state to ensure that social services are provided for and capacity of families and communities are strengthened in order to protect and care for the children in Lesotho.<sup>585</sup> Under the Act, three major aspects, which are the protection of vulnerable and orphaned children, regulation of residential care and justice for children were strengthened thus recognising the importance of promoting rights of and protecting welfare of such children is documented.<sup>586</sup>

The CPWA prohibits child labour, particularly exploitative child labour practices.<sup>587</sup> According to the Act, exploitative labour entails labour that deprives or hinders children's access to health, education and development.<sup>588</sup> Like the Labour Code Order, the Act provides that no child shall be employed in any industrial undertakings or in night work.

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<sup>580</sup> *Ibid.* See also 'Costing the Children's Protection and Welfare Act, 2011 of Lesotho' 2014 Report by Save the Children Resource Centre. Available at: <https://resourcecentre.savethechildren.net/library/costing-childrens-protection-and-welfare-act-2011-lesotho> (Accessed 14 June 2018).

<sup>581</sup> Children's Protection and Welfare Act No. 7 2011: Part 1- Preliminary Section 2(1).

<sup>582</sup> Children's Protection and Welfare Act No. 7 2011: Part 1- Preliminary Section 2(3).

<sup>583</sup> Children's Protection and Welfare Act No. 7 2011: Part 1- Preliminary Section 2(4).

<sup>584</sup> Children's Protection and Welfare Act No. 7 2011.

<sup>585</sup> UNICEF report (2011). 'Lesotho enacts Children's Protection and Welfare Act'. Available at: [https://www.unicef.org/esaro/5440\\_Lesotho\\_childrens\\_protection\\_act.html](https://www.unicef.org/esaro/5440_Lesotho_childrens_protection_act.html) (Accessed 10 June 2018).

<sup>586</sup> *Ibid.* Under Vulnerable and orphaned, children the Act focuses specifically on the protection of orphaned children's estates, criminalising child labour, child abduction, child sexual abuse and trafficking as well as harmful cultural practices. The Act also makes provision for legal placement for children without parental care; adoption and ensuring that residential care institution for children are registered and monitored. Finally, justice for children entails a holistic approach that deals with children as either victims, witnesses or perpetrators. The Act has also raised the age of criminal responsibility from the age of 7 to 10 years old.

<sup>587</sup> Section 226 (1).

<sup>588</sup> Section 226 (2).

However, it is important to note that majority of children employed as domestic workers and herd boys are often found doing the latter.<sup>589</sup> These children often work until late in the night without rest.<sup>590</sup> The Act identifies two types of labour and minimum ages of employment thereof. Section 228 of the Act states that the minimum age of child employment shall be 15 years, therefore no child below the age of 15 shall be employed.<sup>591</sup> Furthermore, any person in contravention of this section will be found guilty of offence and liable to a fine of twenty thousand maloti or jail term of twenty months or both, or may be convicted for two years without an option of a fine.<sup>592</sup> It is however important to note that, while the Act clearly states the minimum age of 15 as a standard age for employment, it endorses employment of children at age 13 years or above to engage in light work.<sup>593</sup> Light work constitutes work that is unlikely to be harmful to the development and health of a child and has no effect on the child's education.<sup>594</sup> Although the Act permits children below the age of employment to engage in light work, it does not clearly state what this kind of work constitutes of and does not stipulate the number of hours. Under Section 230 (1), the CPWA prohibits employment of children below the age of 18 in hazardous work.<sup>595</sup> According to the Act, hazardous work is detrimental to the development, safety, health and morals of a person.<sup>596</sup> Hazardous work includes working in mines and quarries, manufacturing and industries producing or using chemicals, places that utilise dangerous machines and portorage of heavy loads, working in bars, hotels or entertainment areas where children may be exposed to immoral behaviour, herding animals, commercial sex work and in the production of tobacco and trafficking.<sup>597</sup> Although the Act prohibits this kind of work, many children between the ages of 5 and 17 engage in one or the other. In Lesotho, herding of cattle and domestic work remains dominant. The Act further states that violation of this provision is considered an offence and

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<sup>589</sup> Section 227 (1)

<sup>590</sup> International Labour Organisation: Child Labour and Domestic Work. Available at: <https://www.ilo.org/ipec/areas/Childdomesticlabour/lang--en/index.htm> (Accessed 22 June 2018). According to ILO, children working as domestic workers are often exposed to hazardous conditions, this include working for long hours, being exposed to utensils that are harmful such as knives. Furthermore, this kind of work denies children access to education, health, care, psychological, physical and moral development to mention but a few. In the case of herd boys, many may be forced to stay at the cattle posts, which are usually far from their homes guarding livestock throughout the night from any imposters or thieves. This puts the lives of the young boys in danger. Such children are exposed to harsh environmental conditions that causes harm to their health. Many of these children, like domestic workers are denied education, time to rest, leisure and development and exposed to degrading treatment, verbal, sexual and physical abuse. Although this is culturally acceptable, this kind of work remains exploitative and infringes on the rights of children as stated in the Act.

<sup>591</sup> Section 228 (1) & (2).

<sup>592</sup> Section 228 (3) (a) & (b).

<sup>593</sup> Section 229 (1)

<sup>594</sup> Section 229 (2)

<sup>595</sup> Section 230 (1)

<sup>596</sup> Section 230 (2)

<sup>597</sup> Section 230 (3) (a), (b), (c), (d), (e), (f), (g) and (h).



any person found guilty of such an offence is liable to a fine not exceeding twenty thousand maloti or may be imprisoned for a period not exceeding twenty months or both or imprisonment of two years without a fine.<sup>598</sup> It is noteworthy to state that none of these provisions have been enforced or implemented.<sup>599</sup> Majority of children continue to be victims of child labour and exploitation with no legal and social protection.

In Lesotho, it is culturally acceptable for children to engage in work, whether light or hazardous as a form of enculturation and rite of passage into adulthood. Condoning these harmful practises of child labour not only leave children deprived of education and negatively affected mentally, morally and physically by work but in contravention of the CPWA provisions. The Act provides that children should not be subjected to injurious cultural rites, customs or traditional practices that may detrimental to the wellbeing of a child as it is with child labour practice in Lesotho.<sup>600</sup> Furthermore, while Section 44 (a) prohibits the use of children on streets for the purpose of begging or receiving alms; whether or not under pretence of singing, playing or offering some things for sale.<sup>601</sup> Majority of children in Lesotho, particularly poor children have been found selling either fruits or sweets on the streets thus violating provisions of Section 44 (a). Although Section 14<sup>602</sup> of the Act permits children to express their opinions freely on matters affecting them such as child labour, this is not so in cases where a child either is loaned to relatives or neighbours. In fact children are often not consulted. The child's consent is not considered.<sup>603</sup> In other instances, where the parents are unemployed, sick, or deceased, children's opinions may not matter<sup>604</sup> therefore making child labour inevitable. Thus engaging in labour may seem as a matter of urgency given the need to survive and provide for the family in need. As a result, due to the evident circumstances, children's opinions remain unuttered thus failing to achieve the desired goal. In order for the provisions under Section 14 to be sufficiently achieved, there is a need for inclusive community or societal forums where children are engaged by the society's law-makers and policy makers and opinions heard.

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<sup>598</sup> Section 230 (4) (a) and (b).

<sup>599</sup> The 2018 Findings on the Worst Forms of Child labour,3. See also the 2013 Findings on the Worst Forms of Child Labour in Lesotho, 449 -451.

<sup>600</sup> Section 17

<sup>601</sup> Section 44 (a).

<sup>602</sup> Section 14 (1)

<sup>603</sup> Letuka (1998: 205 -206).

<sup>604</sup> A Future Without Child Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (2002) 42.

The Act provides that it is important to ensure that all actions concerning a child be in the best interest of a child. It further states that institutions such as courts, families and other bodies should ensure that the realisation of the best interest of a child remains the primary objective.<sup>605</sup> While it is evident that protecting the rights of children; and protecting them also against harmful labour practices remains the objective of domestic law, violations of children's rights as result of child labour remains a challenge. This cannot be attributed only to persistent socio-economic problems but challenges also lie with the inadequate implementation of the national legislation. Furthermore, emphasis on socialising children into adulthood by continually forcing children into child labour exposes them to abuse and exploitation which hinders effective enforcement of legislation aimed at protecting the rights of children, particularly the CPWA.<sup>606</sup> While the above discussed national pieces of legislation address child labour, the study examines other relevant laws that indirectly addresses and respond to the problem of child labour practice by ensuring the protection of rights violated by the practice.

Relevant Legislation that address the rights of children responding to child labour and protect the rights of children in Lesotho include:

### **3.5.5 Education Act 2010 No.3 of 2010**

According to the ILO, the persistent existence of child labour remains a hindrance in the attainment of education for all children.<sup>607</sup> ILO contends that in order to achieve education for all, there is a great need for eradicating child labour.<sup>608</sup> Furthermore, Lubaale rightly asserts that access to basic education remains a fundamental element that will help decrease child labour supply.<sup>609</sup> It is argued therefore that the increase in children's school attendance

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<sup>605</sup> Part II- Principles, Section 4 (1) and (2)

<sup>606</sup> Part VI- Offences in Relation to Health and Welfare of Children, Section 44 (1). The Act under this Section provides that parents or guardians may not abuse, neglect or expose a child in a manner likely to harm a child physically, psychologically or emotionally or permit the child to be abused, neglected. Such a person commits an offence and liable to a fine or conviction not exceeding two thousand maloti and a period of not more than two months respectively. Many children engaged in child labour are often exposed to abuse, neglect and injury whether physical, psychological or emotional by both their parents and employers with no protection.

<sup>607</sup> International Labour Organisation: Child Labour and Education for all. Available at: <https://www.ilo.org/ipec/Action/Education/ChildlabourandEducationforAll/lang--en/index.htm> (Accessed 24 June 2018).

<sup>608</sup> *Ibid.*

<sup>609</sup> Lubaale (2011:28).

is likely to reduce the engagement of children in work that is exploitative.<sup>610</sup> However, children with no access to basic education have no choice but to engage in the labour market, exposing themselves to injurious and exploitative working conditions.<sup>611</sup> Being cognisant of these factors, the Kingdom of Lesotho adopted policies and laws guaranteeing education for all children. The enactment of the Education Act 2010 marks great efforts by the Kingdom of Lesotho towards the achievement of universal primary education.<sup>612</sup> The Education Act provides for free and compulsory education at primary level.<sup>613</sup> The Act obligates the minister and parents to ensure that all children from the age of six receive free primary education and guidance to complete primary education.<sup>614</sup> Furthermore, the Act states that the minister, principal secretary of the government, teachers and school boards to state but the least shall ensure that education is promoted and that learners (children) shall be provided with opportunities as well as facilities that will enable them to develop mentally, physically, spiritually, socially and morally<sup>615</sup> thus placing the best interest of a child at the centre.

The Education Act not only strengthened progress in free and compulsory primary education but also increased the level of enrolment in many schools, particularly in lower basic education.<sup>616</sup> Between the years of 2000 and 2010, enrolment of learners in lower basic education increased from 82 to 95 percent, with 98 percent grade one enrolment in 2014.<sup>617</sup> While a decline in dropouts has been evident, it is stated that many boys, poor children and the orphaned are unlikely to complete primary school.<sup>618</sup> Furthermore, many children in the rural areas; particularly mountainous regions have limited to no access to schools.<sup>619</sup> These

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<sup>610</sup> *Ibid.*

<sup>611</sup> International Labour Organisation: Child Labour and Education for all.

<sup>612</sup> United Nations International Children's Emergency Fund (UNICEF): Free education becomes legally compulsory in Lesotho. Available at: [https://www.unicef.org/media/media\\_53653.html](https://www.unicef.org/media/media_53653.html) ( Accessed 10 July 2018).

<sup>613</sup> Education Act, 2010 Section 3 (a). see also Section 4 (6) and Section 6 on compulsory attendance.

<sup>614</sup> Education Act, 2010 :Part II- Administration of the Act, Section 4 (1) (a). This provision is applicable to public schools as opposed to independent schools.

<sup>615</sup> Education Act, 2010, Section 4 (2) (a)

<sup>616</sup> Global Partnership for Education Report (2018) 'Education in Lesotho'. Available at: <https://www.globalpartnership.org/country/lesotho> (Accessed 20 August 2018). See Also World Bank Document on Free Primary Education (FPF) in Lesotho for more statistics. Available at: <http://documents.worldbank.org/curated/en/488081468056377395/pdf/506840PAD0Leso1ox0349463B01PUBLIC1.pdf> (Accessed 20 August 2018) 21- 22.

<sup>617</sup> *Ibid.* See also the Lesotho country analysis working document final draft (2017), 33.

<sup>618</sup> Lesotho country analysis working document final draft (2017), 34.

<sup>619</sup> World Bank Document on Free Primary Education (FPF) in Lesotho for more statistics. Available at: <http://documents.worldbank.org/curated/en/488081468056377395/pdf/506840PAD0Leso1ox0349463B01PUBLIC1.pdf> (Accessed 20 August 2018) 5. It is also argued that, many of the schools in the mountainous regions are populated by unqualified teachers and in appropriate classrooms made out of mud huts. Due to the lack of space and appropriate classrooms, many children are often forced to drop out of school or be absent for a number of days. Both absenteeism and dropping out schools may expose children to work that is detrimental to their wellbeing, for instance taking care of livestock,

children are unfortunately left with no option but to partake in economic activities thus contributing to the proliferation of child labour. In other instances, children combine both school and work. In Lesotho this is common; children attend school in the morning and go work on farms or herd livestock after. It is therefore evident that school attendance does not necessarily stop children from taking part in exploitative work.<sup>620</sup> Although the Education Act plays a vital role and remains one of the prime contributors to the abolishment of child labour, it fails to respond to other conditions such as poverty and unemployment that coerce children to engage in exploitative child labour practices.<sup>621</sup> It is evident therefore that addressing the problem of child labour through education does not entirely solve the problem. All children's rights need to be taken into consideration for child labour to be eradicated contends Lubaale.<sup>622</sup>

### **3.5.6 The sexual Offence Act No.3 of 2003**

Children engaging in child labour are not only exposed to social and economic exploitation but also sexual exploitation. Therefore, child labour is a criminal offence punishable by law.<sup>623</sup> While the Kingdom of Lesotho has made moderate progress in eradicating child labour through national policies and legislation, children continue to be engrossed in worst forms of child labour, performing duties under exploitative and oppressive circumstances.<sup>624</sup> Sexual abuse or exploitation also emerges as one of the gross violation children endure particularly for young girls working as domestic workers. Although not directly addressing child labour, the Sexual Offence Act prohibits an act of sex with a child.<sup>625</sup> In addition, anyone who sexually abuses a child repeatedly is guilty of an offence and liable for conviction.<sup>626</sup> Furthermore, under Section 7, the Act prohibits sex with a child for financial

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domestic work or even move to urban areas and undertake on the streets as street vendors, taxi conductor to state but a few. As a result, contributing to the explosion of child labour.

<sup>620</sup> Lubaale (2011:28). For instance, many children after school take care of livestock, work in farm, perform domestic chores and sell fruits, vegetable or sweets on the streets. Children are denied the right to rest and leisure as a result. This constitutes forms of exploitative and oppressive labour.

<sup>621</sup> *Ibid.*

<sup>622</sup> *Ibid.*

<sup>623</sup> See the Section 32 of the Constitution of Lesotho and Section 226 of the Children's Protection and Welfare Act.

<sup>624</sup> Kimane (2006:4).

<sup>625</sup> Section 8 (1) the Sexual Offence Act, NO.3 of 2003: Part III- Sexual Offences against Children.

<sup>626</sup> Section 9 (1) of the Sexual Offence Act NO. 3 of 2003. Section 31 and 32 outline convictions under the Act depending on their severity varies from a conviction or imprisonment of perpetrators from five to fifteen years to life imprisonment and death penalty.

reward, favour or compensation.<sup>627</sup> Children sexually abused are often affected mentally and physically. It is however, important to note that the Act does not address other factors such as poverty and unemployment that may lead to children engaging in child labour particularly commercial sex work for survival as well as measures to help eradicate these factors. One would therefore contend that because of the Act's failure to consider or recognise other reasons for children's engagement in work that exposes them to sexual offences does not sufficiently help address issues on child labour, particularly the worst forms of child labour such as commercial sex work.

### 3.5.7 Anti-trafficking Persons Act of 2011

In 2015, the government of Lesotho formed implementation strategies for the National Action Plan on the Elimination of Child Labour in an attempt to abolish worst forms of child labour.<sup>628</sup> This included the establishment of the Anti-Trafficking in Persons Task Force for human trafficking data collection and implementation of Anti-Trafficking regulations.<sup>629</sup> According to ILO, one of the worst forms of child labour is child trafficking.<sup>630</sup> Child trafficking is defined as an illegal act of selling or buying of children for labour or sexual purposes internally and externally.<sup>631</sup> Forced labour and recruitment of children as soldiers to state but the least are reasons why children are trafficked.<sup>632</sup> Given this definition, one would argue that loaning of children to neighbours or relatives for the purpose of labour constitute characteristics of child trafficking. Nhenga rightly contends that although it may not appear as trafficking given the absence of organised criminal syndicates, internal trafficking of children in Lesotho is evident.<sup>633</sup> She states that some narratives possibly suggest that trafficking of children is practised with the family's consent. For instance, a boy child is

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<sup>627</sup> Section 10 (1) and Section 14 (1).

<sup>628</sup> Lesotho country analysis working document final draft (2017).

<sup>629</sup> *Ibid.*

<sup>630</sup> International Labour Organisation (ILO): The Worst Forms of Child Labour. Available at: <https://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm> (Accessed 12 June 2018).

<sup>631</sup> *Ibid.* See also United Nations Education, Scientific and Cultural Organisation (UNESCO) Policy Paper No. 146 (E) (2007). 'Human Trafficking in Lesotho: Root caused and recommendations'. Available at: <http://unesdoc.unesco.org/images/0015/001528/152824e.pdf> (Accessed 12 June 2018).

<sup>632</sup> *Ibid.*

<sup>633</sup> Nhenga, T. C. (2008: 169). 'The application of the international prohibition on child labour in an African context: Lesotho, Zimbabwe and South Africa. Published Doctoral Thesis.

traded for cattle herding and sold to others to sell goods on the street and girls traded for domestic work or commercial sex exploitation.<sup>634</sup>

Nhenga asserts that granted at a lower scale, Lesotho continues to be the breeding ground for child domestic workers and prostitutes for the Republic of South Africa.<sup>635</sup> One of the shortest international trafficking routes is between Maseru in Lesotho and Ladybrand in South Africa.<sup>636</sup> According to United Nations Education, Scientific and Cultural Organisation (UNESCO) Policy Paper, women and children are trafficked into South Africa for the purpose of cheap or forced unpaid labour in both farms and homes as well as sex work.<sup>637</sup> Children and women fall prey to violence and sexual, physical exploitation or abuse.<sup>638</sup>

The Anti- trafficking in Persons Act of 2011 in the same view as the CPWA not only aims at prohibiting trafficking of children but also its prevention.<sup>639</sup> The Act provides that anyone found responsible for human trafficking, for the purpose of this paper trafficking of children or related offences, such a person shall be punished and prosecuted.<sup>640</sup> Pursuant to section 7 of the Act<sup>641</sup>, an aggravated trafficking is a heinous crime whose gravity is much greater than the crime of trafficking as defined in section 5 thereof. Accordingly, its sentence is more severe and harsher in terms of sub-section 2. The statutory categories of offences pertaining to an aggravated trafficking are outlined in section 7(a) to (f) of the Act.<sup>642</sup> However, for the purpose of this paper, the focus will be on section 7(c) which addresses a form of child labour evident in Lesotho. In accordance with section 7(c), an aggravated offence is defined as an offence that is committed by a person who is in authority of the trafficked person including a parent, a legal guardian, a sibling or a relative. This is evident in Lesotho as Nhenga stated above.<sup>643</sup>

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<sup>634</sup> Nhenga (2008:170). The author further states that children especially those in children brothels are offered food and shelter by the ‘madams’ running brothels in exchange of sex work. Other girls become prey to domestic child labour or prostitution in South Africa, according to UNICEF report of 2005.

<sup>635</sup> Nhenga (2008:169).

<sup>636</sup> *Ibid.*

<sup>637</sup> United Nations Education, Scientific and Cultural Organization (UNESCO) Policy Paper No. 146 (E) (2007). ‘Human Trafficking in Lesotho: Root caused and recommendations’ 25.

<sup>638</sup> UNESCO Policy Paper (2007:26).

<sup>639</sup> Anti-Trafficking in Persons Act, 2011 and Section 66 of the Children’s Protection and Welfare Act No.7 of 2011.

<sup>640</sup> Anti-Trafficking in Persons Act No of 2011.

<sup>641</sup> Section 7 of Anti-Trafficking in Persons Act No of 2011.

<sup>642</sup> Section 7 (a) to (f) of Anti-Trafficking in Persons Act No of

<sup>643</sup> Nhenga (2008:170). “Nhenga, rightly contends that although it may not appear as trafficking given the absence of organised criminal syndicates, internal trafficking of children in Lesotho is evident. She states that some narratives possibly suggest that trafficking of children is practised with the family’s consent. For instance, a boy child is trafficked for cattle herding and street vending and girls for domestic work or commercial sex exploitation.”

The Act shall be applicable whether an act of trafficking took place within or outside the Kingdom of Lesotho,<sup>644</sup> if:

- “(a) Lesotho is the receiving country or the exploitation takes place in Lesotho;
- (b) The receiving country is a foreign county but the trafficking or smuggling starts in Lesotho; or
- (c) Lesotho is a country of transit, or the trafficked person actually resides in Lesotho at the time of the commission of the offence.”

Furthermore, the Act provides that trafficking offense committed outside the Kingdom of Lesotho by a citizen or permanent resident shall be dealt with as though the offense was committed in Lesotho.<sup>645</sup> The Act prescribes under section 5(1), a fine of one million maloti or 25 years of imprisonment for adult trafficking and up to 2 million fine or life imprisonment for trafficking of children.<sup>646</sup> The Anti-Trafficking Act makes provision for rehabilitation and reintegration of victims of trafficking. However, such services have not been extended to children in forced labour working as domestic workers, herd boys and street vendors. Such children are often regarded as breadwinners, therefore encouraging and regarding child labour as a necessity for survival. Although the country has tried to fight against human trafficking especially trafficking of children, cultural practices remain a challenge. Culture fails to consider the severity and implications of child labour through the loaning of children to relatives has on children. Furthermore, it fails to recognise loaning of children to relatives for the purpose of labour as trafficking of such children. As a result, children remain victims of forced labour, sexual exploitation and child labour which constitutes worst forms of trafficking.

### **3.6 National policy framework**

The Kingdom of Lesotho through its support from the state’s resources has made remarkable progress in responding to the challenges facing children, particularly vulnerable children.<sup>647</sup> The drafting and enactment of the various pieces of legislation recognise that children are

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<sup>644</sup> Section 3 of Anti-Trafficking in Persons Act No of 2011: The scope of application of Act.

<sup>645</sup> Section 4 of the Anti-Trafficking in Persons Act No of 2011: Extra-territorial Jurisdiction.

<sup>646</sup> Section 5 of the Anti- Trafficking in Persons Act of 2011.

<sup>647</sup> National Strategic Plan on Vulnerable children (April 2012-2017).

amongst others the most vulnerable group within the society therefore in need of protection. The need to protect and promote the rights of children, have greatly informed the adoption of these legislations. Furthermore, the Kingdom of Lesotho did not only ensure the domestication of both regional and international law as to adhere to the prescribed standards of realising the rights of children but also adopted national policies that will effectively enable achieve the desired goals. Lesotho has also put in place protective units to ensure and guarantee safety of children as stated in accordance with international, regional and national laws.

### **3.6.1 National Policy on Orphaned and Vulnerable Children (NPOVC) 2005**

The lack of legal protection of orphans and vulnerable children remains a challenge in Lesotho. Many of these children have little to no access to basic services placing them at a greater risk of being deprived of their rights; engaged in child labour and exposed to abuse, neglect and exploitation.<sup>648</sup> Lesotho however, adopted the National Policy on Orphaned and Vulnerable Children (NPOVC) aimed at ensuring protection and safety of orphans and vulnerable children in Lesotho.<sup>649</sup> The Kingdom of Lesotho has further taken steps towards addressing and responding to issues affecting children by taking part in both regional and international fora.<sup>650</sup> However, the implementation and enforcement of the law remains questionable. The Policy provides an outline, which will guide strategic action for all stakeholders on issues concerning children, particularly orphans and vulnerable children (OVC).

According to the NPOVC, an orphan is anyone below the age 18, who has lost one or both parents.<sup>651</sup> A vulnerable child is anyone under the age of 18 who has been abandoned or neglected by one or both parents and is without means of survival and is exposed to exploitation and abuse, therefore in need of protection.<sup>652</sup> Vulnerable children include but not limited to, orphans, “children involved in child labour” (author’s emphasis) and commercial sex work, children living on streets, children that have been emotionally, sexually,

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<sup>648</sup> National Policy on Orphans and Vulnerable Children, 6.

<sup>649</sup> Lesotho: Child rights references in the universal periodic review, (2010). Available at: <https://www.crin.org/en/library/publications/lesotho-child-rights-references-universal-periodic-review> (Accessed 29 July 2018).

<sup>650</sup> *Ibid.*

<sup>651</sup> National Policy on Orphans and Vulnerable Children, 5.

<sup>652</sup> *Idem*, 6.



psychologically abused.<sup>653</sup> Guided by the four core principles of the CRC, the NPOVC aims to ensure that children, described above are protected and not discriminated against. These children are also encouraged to participate in national activities, thus placing the best interest of a child first.<sup>654</sup> It is imperative to note that the NPOVC provides a guideline for the protection of the rights of orphans and vulnerable children. The policy advocates for the development of national policies, strategies and the implementation of these through strengthening of relations and capacity between civil societies, Non-governmental organisations (NGOs), families and children. The purpose of this is to ensure protection of OVCs by ensuring that they have access to education, health care and information amongst others.<sup>655</sup> The policy also advocates for the empowerment of government and families, so as to ensure that sustainable care is provided to orphans and vulnerable children. Further to this the policy also addresses issues concerning the elimination of child labour, all forms of child abuse, exploitation and protection of OVC's rights.<sup>656</sup> It is evident that issues concerning child labour are not dealt with in isolation but also in relation to other issues affecting children.<sup>657</sup> However, with the advent of child labour having increased amongst orphans and vulnerable children in addition to children's rights being violated has shown that the Lesotho government has failed to meet the objectives as set out by the policy.

### **3.6.2 National Strategic Plan on Vulnerable children (2006-2010 and April 2012-2017).**

The Kingdom of Lesotho developed and introduced the National Orphans and Vulnerable Children (OVC) Strategic Plan in 2006 and was assessed in 2009<sup>658</sup>. Aimed at steering and informing the multi-sectoral responses for OVCs, achievements and challenges were notable during the period of the National OVC Strategic Plan's implementation.<sup>659</sup> Some of the greatest achievements include the reviewing of the Child Protection Act (1980), the establishment of National Coordinating Committee and District Child Protection Teams

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<sup>653</sup> *Ibid.* this children also include children with challenging behaviour, children in need of legal and other forms of protection children who frequent the company of immoral persons, children infected or affected by HIV and AIDS and other chronic diseases, children whose parents are delinquent and/or children who cannot be supervised by their parents or guardians.

<sup>654</sup> National Policy on Orphans and Vulnerable Children, 8.

<sup>655</sup> *Ibid.* See also, 11.

<sup>656</sup> National Policy on Orphans and Vulnerable Children, 12. These rights include inheritance.

<sup>657</sup> National Policy on Orphans and Vulnerable Children, 8. This includes, inheritance issues, children with disabilities and special needs, children in company of immoral people to state but the least.

<sup>658</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017: 1.

<sup>659</sup> *Ibid.*

(DCPT). Furthermore, defining services package for OVCs that include health, education, protection, food security and support and establishment of child help line in 2008 to mention but a few.<sup>660</sup> However, with all these efforts put in place, the implementation process was faced with a number of challenges. National Orphans and Vulnerable Children (OVC) Strategic Plan of 2006 failed to clearly define the mandate and roles of the National Orphans and Vulnerable Children's Coordinating Committee (NOCC) thus resulting in the committee being ineffective and weak in its operations with the DCPT in particular.<sup>661</sup> In addition, because of the slow and fragmented execution of the National strategic plan, lack of financial assistance, weak guiding principles and legal framework and poor reporting system, the quality and sustainability of services continues to be devastating and formidable.<sup>662</sup> Discrimination and stigma against OVCs continues to be a major obstacle in the executing and implementing the National Strategic Plan.<sup>663</sup>

Cognisant of the achievements and challenges of the outgoing National OVC Strategic Plan on Vulnerable Children, the current National OVC Strategic Plan on Vulnerable Children 2012-2017 was developed as a means of intervention and addressing challenges of the past through the adoption and implementation of quality and inclusive services.<sup>664</sup> Although the Kingdom of Lesotho's focus was, primarily on child orphans excluding other vulnerable children such as those involved in child labour, abandoned children, abused children and children with disabilities<sup>665</sup>, there has been a notable paradigm shift with the current Strategic Plan. Guided by seven principles,<sup>666</sup> the national response to vulnerable children has rather moved to a results-based approach, adopting also a human rights-based approach particularly a child rights-based approach with the best interest of a child at the core.<sup>667</sup> According to the

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<sup>660</sup> *Ibid.* Some of the achievements include 'M&E Unit was established in 2008 that was followed by the development of the a) OVC Monitoring Plan (2008-2011) b), a draft Manual for Social Welfare Indicators, and c) draft Procedure Manual for Social Welfare Routine Information Systems (SWRIS). Attempts were made to develop a national OVC database'

<sup>661</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017: 1-2.

<sup>662</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017: 2.

<sup>663</sup> *Ibid.*

<sup>664</sup> *Ibid.*

<sup>665</sup> National Policy on Orphaned and Vulnerable Children (NPOVC) 2005:6.

<sup>666</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017: 2, 6. these principles include, taking in account the best interest of the child, empowering families and communities, encouraging participation of children, ensuring the political commitment, that is commitment of government through the implementation and enforcement of the constitution and vision of Children's Protection and Welfare Act (2011). Considering gender issues with special attention to a girl child who is more prone to sexual abuse. Lastly multi-sectoral and decentralisation responses of stakeholders, private sectors and civil society to ensure harmonised and effectively coordinated responses to vulnerable children's issues.

<sup>667</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017: 2-3. It is however important to note that, the current strategic plan has shifted from a number of aspects to others as means of addressing the issues affecting vulnerable children. This includes a shift from welfare to social development, focus on the vulnerability of a child as opposed to orphanhood, focusing also on the life cycle of the vulnerable child, family- focused approach, Systems strengthening,

2012-2017 National Strategic OVC Plan, “Vulnerable children are those whose rights to survival, development, protection and participation are not met because of certain conditions or circumstances beyond their individual control.”<sup>668</sup> The prevalence of poverty, exploitation, economic and food insecurities, chronic illnesses and child trafficking practices are identified as the major causes for a child’s vulnerability and their need to engage in child labour practices.<sup>669</sup> As a result, the National strategic plan aims to ensure social and legal protection of vulnerable children. For the purpose of this paper, vulnerable children will refer to children engaged in child labour.

Over fifty percent of Lesotho’s population lives below the poverty line.<sup>670</sup> Majority of people live in dire poverty conditions with limited access to food, shelter and clean water,<sup>671</sup> as a result igniting the need for social protection. However, due to lack of sufficient knowledge about social protection systems, limited financial and human resources, access to social protection continues to be a challenge.<sup>672</sup> Furthermore, the culmination of gender-based violence, discrimination, physical, emotional and sexual abuse amongst others have intensified the challenges of attaining social protection.<sup>673</sup> Having identified these challenges, the government of Lesotho endeavours to scale up social protection mechanisms within the Social Protection Framework.<sup>674</sup> The framework outlines ways in which social protection could be achieved and enhanced. This includes implementing transformative, preventative, protective and promotive approaches.<sup>675</sup> While, the transformative approach aims at addressing the power disparities creating and aiding vulnerability, the preventative approach aims at alleviating deprivation through the development of social protection schemes such as grants and bursaries.<sup>676</sup> The protective approach provides social relief and protective system for the vulnerable. This includes food supplies, school feeding scheme and child justice

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Making use of indigenous practices and Gender dimensions of the response. For the purpose of the thesis, a child rights-based approach, that is the respect, promotion and protection of the rights of vulnerable children remains crucial.

<sup>668</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017:6.

<sup>669</sup> *Ibid.*

<sup>670</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017:17

<sup>671</sup> *Ibid.*

<sup>672</sup> *Ibid.*

<sup>673</sup> *Ibid.*

<sup>674</sup> *Ibid.*

<sup>675</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017:18. See also Social Protection In East and Southern Africa: A Framework and Strategy for UNICEF, 2008 as quoted by the author.

<sup>676</sup> *Ibid.* under transformative approach, the government further seek to ensure that social policies are adopted, reformation of regulations and laws in order to address the issues of the vulnerable. Furthermore, promote change in behaviour through social communication and lastly invigorating the legal systems to protect the rights of vulnerable children, in this case children involved in child labour. Preventative measures include the introduction of grants, pensions, insurance affordable to all, burial societies and public assistance.

committees.<sup>677</sup> Finally, the promotive approach aims to improve skills and abilities of children and families in need.<sup>678</sup> The study recognises that the sufficient implementation of the last two approaches will help eradicate the plight of child labourers and protect the rights of children involved in harmful labour practices to survive.

Although the implementation of the Social Protection Framework was successful, notable hiccups were also evident. Some of the key achievements include government's ability to establish the Child and Gender protection unit within the police department thus providing protection and support for neglected, sexually and physically abused children.<sup>679</sup> Moreover, the government has successfully put in place social protection programmes such as Old Age Pensions, free primary education, school feeding schemes and child grants to state but a few.<sup>680</sup> Nonetheless, issues around the inadequacy of implementation, enforcement of and compliance to the framework's objectives remain the greatest challenge that government is confronted with.<sup>681</sup> Furthermore, failure to sufficiently recognise the social protection strategies resulted in constrained execution of social protection interventions.<sup>682</sup>

Moreover, despite positive achievements and progress in addressing children's rights through social protection mechanisms, issues concerning child labour are not addressed. It is evident that children engaged in child labour continue to benefit less from these programmes as many of them continue to partake in work detrimental to their wellbeing with little to no protection. The Child and Gender Unit have not reported cases of victims of child labour.<sup>683</sup> For instance, concerns around violations of the rights of children found working on streets as street vendors, herd boys and domestic workers in Lesotho have been reported to the Unit.<sup>684</sup> Many of these children have not benefited from child grants, let alone free education, given that many are forced to drop out of school and work in order to survive and take care of their families. Furthermore, the social protection programmes fail to address cultural practices that

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<sup>677</sup> *Ibid.*

<sup>678</sup> *Ibid.* the National strategic plan through social protection framework strive for promotion of individual's life skills, offer conditional cash transfer and developing one's livelihood.

<sup>679</sup> *Ibid.* the Child and Gender Protection Unit may also refer victims of sexual abuse or abandoned children to other places of safety offered by other service providers, e.g. SOS village for children.

<sup>680</sup> *Ibid.*

<sup>681</sup> *Ibid.*

<sup>682</sup> *Ibid.* The National Strategic Plan report further states that, the Social Protection Framework's failure to review the National OVC Policy and the Social Welfare Policy and develop regulations to operationalise CPWA 2011 remains other reasons for challenges met encountered while executing the national strategic plan, therefore need to be addressed.

<sup>683</sup> The 2018 Findings on the Worst Forms of Child labour, 4. See also the 2013 Findings on the Worst Forms of Child Labour in Lesotho, 451

<sup>684</sup> *Ibid.*

have compelled children to engage in hazardous practices that include child labour and child marriages.

It is significant to note that, the National Strategic Plan, not only advocates for social protection but also for the legal and judicial protection of vulnerable children. Cognisant of the relationship between the two systems and function in providing child protection, the National Strategic Plans intends to support and enhance the protective measures of both systems of law.<sup>685</sup> While the Constitution makes provision of social development and protection of child in broad terms<sup>686</sup>, the CPWA lays the legal foundation for the protection of children.<sup>687</sup> The legal mechanisms are therefore essential in guiding and informing advocacy, planning and mobilising of resources to protect and support vulnerable children.<sup>688</sup> Moreover, the CPWA reformed the justice system through the adoption of child sensitive legislation, recognising children's vulnerability.<sup>689</sup> According to the Strategic Plan report, protection of children through the judicial system depends on sufficiently capable law enforcement bearers such as the police and the courts of law.<sup>690</sup> Community participation in is paramount to enforcing the law because it is the community that will be required to report cases of neglect, child exploitation, violence and abuse remains crucial asserts the report.<sup>691</sup> The establishment of Village Justice Committees and the Child and Gender Protection Unit at local and national levels respectively demonstrates the police and community's legal response to issues affecting vulnerable children.<sup>692</sup>

While the National Strategic Plan aims to support initiatives that help understand better the legal and judicial systems, mobilising and sensitising communities on the importance of legal and children's social rights,<sup>693</sup> many children continue to be victims of human rights violations; particularly child labourers with little to no legal or social protection. It is argued that this is a result lack of legal enforcement; mainly of the CPWA, inadequacy of monitoring

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<sup>685</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017:19.

<sup>686</sup> Article 32 of the Constitution of Lesotho.

<sup>687</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017:16. This includes other pieces of legislation addressing different rights of children and other aspects of child wellbeing in need of protection from violations. For example, the Education Act 2010 and The Sexual Offences Act.

<sup>688</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017:17.

<sup>689</sup> National Strategic Plan on Vulnerable Children April 2012-March 2017:19.

<sup>690</sup> *Ibid.*

<sup>691</sup> *Ibid.*

<sup>692</sup> *Ibid.* the Village Justice Committees on one hand operate at village level facilitating children's legal protection and ensuring that children receive restorative justice. On the other hand, the Child and Gender Protective Unit is founded within the Police department with a mandate of addressing children's cases constituting criminal offences and may refer other cases to other organisations dealing with children's issues.

<sup>693</sup> National Strategic Plan on Vulnerable Children April 2012-March (2017:19).

legal processes, deficient community and law enforcement systems and under-staffed courts in charge of protection of children's rights.<sup>694</sup> In addition, although legal institutions are well acquainted with children's right and the great need for their protection; the courts continue to fail in efficiently managing and handling cases on the violation of human rights and child labour that have never been reported.<sup>695</sup>

It also evident that National Strategic Plans, fail to adequately address issues concerning or directly dealing with the prevalence of child labour. According to the Lesotho Country Analysis Working Document, despite development efforts on policies, laws and programmes by the government of Lesotho aimed at addressing the rights of children, child labour issues remain an untouched area.<sup>696</sup>

### **3.6.3 The National Action Programme towards the elimination of child labour**

With recommendations from the International Labour Organisation, the Kingdom of Lesotho drafted a National Action Programme aimed at the elimination of child labour; particularly worst forms of child labour (WFCL). The document describes the forms of work deemed injurious to health and development of children.<sup>697</sup> Furthermore, outlining strategic plans to be followed in addressing child labour issues.<sup>698</sup> The Programme Towards the Elimination of the worst forms of labour (TECL) prioritises and describe worst forms of labour to include herding of animals, commercial sexual exploitation of children, the use of children in illegal activities, children working in streets as street vendors, taxi conductors as well as children used for collecting water or wood from distant places.<sup>699</sup> While poverty, unemployment and HIV/AIDS have been identified as primary contributors to child labour<sup>700</sup>, the absent recognition of children's rights and child labour incidences has resulted in the increase of child labour.<sup>701</sup> Therefore, the programme intends to create awareness, increase knowledge about the worst forms of child labour practices and help the government develop an action

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<sup>694</sup> National Strategic Plan on Vulnerable Children April 2012-March (2017:20).

<sup>695</sup> *Ibid.*

<sup>696</sup> Lesotho Country Analysis Working Document Final Draft (2017:26).

<sup>697</sup> Lesotho: Child rights references in the universal periodic review, (2010).

<sup>698</sup> *Ibid.*

<sup>699</sup> International Labour Organisation (TECL Programme): Implementation plan of the programme Towards the Elimination of the worst forms of Child Labour in Lesotho (2004-2007: 7- 4).

<sup>700</sup> Kimane (2006:1).

<sup>701</sup> International Labour Organisation (TECL Programme): Implementation plan of the programme Towards the Elimination of the worst forms of Child Labour in Lesotho (2004-2007: 14-15).

plan towards the elimination of child labour; particularly the worst forms of child labour.<sup>702</sup> This includes addressing policy issues and economic situation through the, consultation processes and assessment of legislation and policies, identifying gaps in the law and proposing reformation..<sup>703</sup> It is expected therefore that issues on child labour will attract not only the public but also government and policy maker's attention.<sup>704</sup> The TECL further aims to encourage all parties to act against worst forms of child labour as stated in the ILO C182.<sup>705</sup>

In spite of efforts made by the Kingdom of Lesotho by devoting time in implementing programmes of action advocating for the protection of children's rights and against worst forms of child labour, including the implementation of National Action Plan on the Elimination of Child Labour, Anti- Trafficking of in Person's Act regulations and the establishment of Anti- Trafficking in Persons Task Force; it is worth noting that the Kingdom of Lesotho does not prohibit the use of children illicit activities and child labour continues to be a problem.<sup>706</sup> Many children are economically active.<sup>707</sup> It is evident that Lesotho welcomes all the recommendations, most policies merely suggested the way forward but lacked sufficient implementation of these policies. This remains the greatest challenge facing the Kingdom of Lesotho. It is worth stating however that the National Strategic Plan on other hand of was successfully implemented although with a number of challenges in addressing issues relating to children and the need for their protection. However, child labour was not sufficiently addressed.

### **3.6.4 Child and Gender Protection Unit (CGPU)**

Founded in 2002 within the Lesotho Mounted Police Service (LMPS), the Child and Gender Protection Unit was established to respond to the continuing acts of violence against both

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<sup>702</sup> *Ibid.*

<sup>703</sup> *Ibid.*

<sup>704</sup> *Ibid.*

<sup>705</sup> *Ibid* See also the C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

<sup>706</sup> Lesotho Country Analysis Working Document Final Draft (2017:26)

<sup>707</sup> *Ibid.* According to statistics, at least 3% of the country's children between ages 6 to 16 are involved in child labour. Approximately 66% and 13.4% of boys and girls respectively are engaged in some or other form of economic activity.

women and children.<sup>708</sup> The unit's prime objective is to protect women and children by means of investigating domestic violence, persecuting perpetrators and informing communities about gender based violence through awareness campaigns.<sup>709</sup> The unit also provides a temporary place of safety. Legal, psychological, medical and mediation assistance for the victims of sexual assault and gender based violence are also provided.<sup>710</sup> Many children involved in child labour suffer economically, they are also sexually exploited and abused and the Gender Protection Unit has not offered any of them support.<sup>711</sup> One could argue therefore that child labour is not of concern given that the unit has not investigated nor identified cases on harmful child labour practices.<sup>712</sup>

The scope of the Gender Protection Unit would therefore need to be extended to include child labour. Many children engaged in child labour including those employed as domestic workers, herd boys and street vendors fall prey to violence and exploitation with little to no legal and social protection.

### **3.7 Response by the Civil Society Organisations (CSOs): Non-governmental organisations (NGOs) towards the prevalence of child labour in Lesotho**

The evident increase in the violations children's rights has caught the attention of both CSOs and NGOs in Lesotho.<sup>713</sup> As a result, a number of CSOs particularly, NGOs have been involved in various programmes aimed at protecting the rights of children and vulnerable children against the impacts of poverty and HIV/AIDS in Lesotho.<sup>714</sup> According to Tamasane, civil society organisations are organised as 'safety nets' protecting child victims of the

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<sup>708</sup> Lesotho: Child rights references in the universal periodic review, (2010). National report 8<sup>th</sup> Session. Available at: <https://www.crin.org/en/library/publications/lesotho-child-rights-references-universal-periodic-review#aa> (Accessed 24 July 2018).

<sup>709</sup> United Nations Women (2002). 'Global database on violence against women'. The Government of Lesotho, National Review on Beijing +20 2014, 26. Available at: <http://evaw-global-database.unwomen.org/en/countries/africa/lesotho/2002/child-and-gender-protection-unit>. (Accessed 24 July 2018).

<sup>710</sup> *Ibid.*

<sup>711</sup> The 2018 Findings on the Worst Forms of Child labour,3. See also the 2013 Findings on the Worst Forms of Child Labour in Lesotho, 449 -451

<sup>712</sup> *Ibid.*

<sup>713</sup> Lesotho Council of Non-Governmental Organisations (2016) 'Statement of Civil Society in relation to the current situation of child abuse in Lesotho'. Vulnerable children including orphaned children, children living with disabilities, and children from poverty-stricken backgrounds to state but the least continue to be victims of the violation of rights. Available at:

[www.lcn.org.ls/news/Statement%20of%20Civil%20Society%20in%20relations%20to%20current%20situation%20of%20child%20abuse%20in%20Lesotho%20-%20Lesotho%20Council%20of%20NGOs.pdf](http://www.lcn.org.ls/news/Statement%20of%20Civil%20Society%20in%20relations%20to%20current%20situation%20of%20child%20abuse%20in%20Lesotho%20-%20Lesotho%20Council%20of%20NGOs.pdf) (Accessed 28 July 2018).

<sup>714</sup> Tamasane (2011:29).



HIV/AIDS pandemic and poverty.<sup>715</sup> This includes the Women and Children Commission, World Vision International, Sentebale and Save the Children (SOS) to mention but a few.<sup>716</sup> The Women and Children commission is calling upon all stakeholders to act against the perpetrator of sexual abuse against women and children due to the unsettling events of sexual abuse amongst vulnerable children. The police have therefore been requested to scale up their protection measures as CPWA.<sup>717</sup> Moreover, violations against children's rights should be reported and legal action enforced.<sup>718</sup> However, it is noteworthy to state that, while efforts have been put in place to address the rights of children, little to no attention has been placed on curbing the involvement of children in the economic sector as child labourers. Although, World Vision International does not address child labour concerns, it makes provision to assist the Kingdom of Lesotho in the fight against circumstances that breed child labour, such as poverty. World Vision International not only helps in the adoption of poverty reduction strategies but also offers humanitarian assistance and justice to families and children.<sup>719</sup> The SOS village on the other hand provides shelter and support for abandoned and orphaned children as means of protecting children from abuse and exploitation.<sup>720</sup> Furthermore, efforts by Sentabale to provide education to herd boys through non-educational methods (that is not through schools) have benefited a great number of such children.<sup>721</sup> However, although vulnerable include children involved in child labour; these 'safety nets' have not been extended to all of them. As a result, child labour remains a problem.

It is evident that while the Lesotho government has an obligation to protect the rights of children, much has not been achieved. As a result, there has been an evident shift towards civil society organisations taking up on some of government's functions such as addressing

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<sup>715</sup> *Ibid.*

<sup>716</sup> UNICEF Annual Report (2013)- Lesotho. Available at: [https://www.unicef.org/about/annualreport\\_files/Lesotho\\_COAR\\_2013.pdf](https://www.unicef.org/about/annualreport_files/Lesotho_COAR_2013.pdf). (Accessed 02 August 2018).

<sup>717</sup> Lesotho Council of Non-Governmental Organisations (2016). According to the civil society report, the evident negotiations between police and perpetrators, concealing information of reported cases by the police fuels sexual abuse of children. As a result, such children are denied access to justice and enjoyment of their human rights.

<sup>718</sup> *Ibid.*

<sup>719</sup> Sehloho, M. E. (2013). 'The role of networks in civil society in Lesotho: A case study of World Vision Lesotho'. Master's Thesis published, 2. "World Vision International, which has a country office in Lesotho, which is referred to as World Vision Lesotho. World Vision International is an Evangelical Christian relief development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice'. Available at ([www.wvi.org](http://www.wvi.org)).

<sup>720</sup> Tamasane (2011:29).

<sup>721</sup> Lesotho civil Society Organisations Complimentary Report to the United Nations Committee on the Rights of the Child (2017). Available at: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LSO/INT\\_CRC\\_NGO\\_LSO\\_28140\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LSO/INT_CRC_NGO_LSO_28140_E.pdf) (Accessed 30 August 2018), 39. See also Emily Wither: 'Child Shepherds flock to night school' Available at: <http://edition.cnn.com/2011/WORLD/africa/07/07/lesotho.herd.boys/index.html> (Accessed 30 August 2018).

the rights of children.<sup>722</sup> A number of NGOs have taken upon themselves to ensure that children's rights are realised.<sup>723</sup> This is evident in Lesotho given the above-mentioned work done by the various organisations. While the NGOs<sup>724</sup> reach out and respond to some of the needs of vulnerable children, children engaged in child labour continue to endure grave injustices due to the lack of legal and social enforcement and protection. The absence and inadequacy of precise policies and structures dealing with different forms of child labour presents a challenge for CSOs to take action against such labour practices.<sup>725</sup> For instance, there are no specialised organisations offering emotional or psychological support to children working or living in the streets.<sup>726</sup> Consequently, these children may be exposed to sexual and economic exploitation as well as being used in illicit activities,<sup>727</sup> thus increasing the prevalence of child labour.

### **3.8 Response of the United Nations Agencies and International Labour Organisation Agencies to child labour in Lesotho**

The Kingdom of Lesotho in collaboration with United Nations Agencies and International Labour Organisations Programs have made a great impact in addressing and protecting the rights of children. The agencies have placed more focus on humanitarian assistance, addressing factors contributing to the prevalence of child labour. However, in spite of the efforts made, the Kingdom of Lesotho continues to witness devastating child labour practices that have left children exploited, abused and psychologically, socially and morally affected.

Given the alarming records of child labour universally, UNICEF reports provide that millions of children are caught in work that is harmful and exploitative thus infringing on their rights.<sup>728</sup> While child labour is a combination of a number of factors including poverty, which is widely accepted as cultural or social practices, migration and unemployment to state are

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<sup>722</sup> Lubaale (2011:9).

<sup>723</sup> *Ibid.* Lubaale further states that both the Optional Protocol of the CRC and ACRWC obliges non-state actors (NGOs) to ensure the full realisation of children's rights as well as the promotion and protection of children's rights from labour harmful to their wellbeing.

<sup>724</sup> Tamasane (2011:30) this includes non-profit organisations/ ministry; The Centre for the Poor and Less Privileged, Mants'ase Children's Home, Beautiful Gate Care Centre and Charity Hospital OVC Centre at community level.

<sup>725</sup> Lesotho civil Society Organisations Complimentary Report to the United Nations Committee on the Rights of the Child (2017: 41).

<sup>726</sup> *Ibid.*

<sup>727</sup> Lesotho civil Society Organisations Complimentary Report to the United Nations Committee on the Rights of the Child (2017: 42).

<sup>728</sup> UNICEF 'Child protection from violence, exploitation and abuse' Available at: [https://www.unicef.org/protection/57929\\_child\\_labour.html](https://www.unicef.org/protection/57929_child_labour.html) (Accessed 29 August 2018).

also contributors. UNICEF advocates for the immediate eradication of the worst forms of child labour.<sup>729</sup> UNICEF and partners have consolidated child protection systems, which have led to inclusive response to children's concerns in several countries and regions.<sup>730</sup> UNICEF further seeks to approach a multisector approach towards child labour through the legal reformations; access to basic needs, social protection and adoption of child labour reduction strategies.<sup>731</sup> This has been evident in Lesotho.

The government of Lesotho in partnership with UNICEF and other stakeholders have under a number of humanitarian assistance projects accomplished good results. UNICEF addresses critical areas of health, education, nutrition and protection.<sup>732</sup> The inadequacies of these areas contribute greatly to the prevalence of child labour. Addressing the issues of drought, poverty, food insecurities and nutrition, UNICEF implemented a national Child Grant Programme (CGP) as means to extend help to the poorest, elderly; HIV infected and disabled people as well as children.<sup>733</sup> Furthermore, the government of Lesotho with support from UNICEF has taken action to intensify life-saving health and child protection interventions; this includes the protection of boys and girls against forms of violence, abuse and exploitation.<sup>734</sup> Government interventions also seek to reduce poor attendance in schools, low education outcomes as well as preventing levels of school dropouts.<sup>735</sup> Having ended in December 2016, UNICEF provided families affected by drought with cash-top.<sup>736</sup> With the help of UNICEF the Ministry of Social Development intended to offer, the remaining household and children who could not be assisted in 2016 the emergency Cash Grant Top-ups.<sup>737</sup> In providing social protection, two main communities were sensitised on the prevention and response to gender-based violence, particularly violence against children.<sup>738</sup> While there has been progress in addressing the rights and protection of children, it is evident

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<sup>729</sup> *Ibid.*

<sup>730</sup> *Ibid.*

<sup>731</sup> *Ibid.*

<sup>732</sup> UNICEF Humanitarian Action (2007): Lesotho. Available at: [https://www.unicef.org/har07/files/countrychap\\_Lesotho.pdf](https://www.unicef.org/har07/files/countrychap_Lesotho.pdf) (Accessed 20 August 2018).

<sup>733</sup> UNICEF Humanitarian Situation Report (2017): Lesotho. Available at: [https://www.unicef.org/appeals/files/UNICEF\\_Lesotho\\_Humanitarian\\_SitRep\\_April\\_2017.pdf](https://www.unicef.org/appeals/files/UNICEF_Lesotho_Humanitarian_SitRep_April_2017.pdf) (Accessed 28 August 2018).

It is important to note that, the Child Grant program is funded by the European Union and World Bank.

<sup>734</sup> *Ibid.*

<sup>735</sup> *Ibid.*

<sup>736</sup> *Ibid.*

<sup>737</sup> *Ibid.* This was done in four communities that were identified as affected by food insecurities and affected negatively by drought.

<sup>738</sup> *Ibid.* 'Total of 420 community members (80 males, 120 females, 110 youth and 110 children) in Ha Maphohloane community (in Mofale's Hoek district) and Ha Raliemere community (in Mafeteng district) were reached with child protection in emergencies'

that child labour as an issue is not directly addressed. It is therefore important for UN agencies like UNICEF to help address child labour as a source for exploitation and abuse that should be addressed and also adopt measures to prevent and ultimately abolish its existence.

While human trafficking remains one of the highest criminal offences and worst forms of child labour in Lesotho, many people have been trafficked internally and between the Kingdom of Lesotho and South Africa.<sup>739</sup> According to a UNESCO policy paper, lack of education, high levels of migration, open borders, poverty and inadequate legislative and policy frameworks have contributed to the increase in human trafficking.<sup>740</sup> However, UNESCO plays a pivotal role in addressing a

and contributing towards the fight against human trafficking. Cognisant of the harmful cultural practices and absence of legal enforcement in countries such as Lesotho among other African states, UNESCO encourages countries to adopt culturally sensitive and efficient responses towards human trafficking and the participation of the communities.<sup>741</sup> Furthermore, the fight against human trafficking should be given precedence, sensitising and educating the nation about the dangers of trafficking humans.<sup>742</sup> While Child and Gender Protection Unit has been put in place to help prohibit occurrences on human trafficking, many cases are unreported thus creating breeding grounds for the worst forms of child labour.<sup>743</sup> According to UNESCO a holistic approach is need to fight against human trafficking.<sup>744</sup>

The ILO in collaboration with the government of Lesotho under the Ministry of Labour implemented a decent work country programme as a means to enhance obligations to the ILO conventions and reducing poverty.<sup>745</sup> However, for the purpose of this study, an investigation will be done on the implementation of the Action Programme on the Elimination of Child Labour (APEC) as a means to respond to the worst forms of child labour, in Lesotho. While

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<sup>739</sup> UNESCO Policy Paper (2007:12). See also Nhenga (2008:170).

<sup>740</sup> UNESCO Policy Paper (2007:12)

<sup>741</sup> UNESCO Policy Paper; Foreword.

<sup>742</sup> UNESCO Policy Paper (2007:54), according to the report various means of media that is radios, newspaper etc. should be used to inform communities of human trafficking. Furthermore, hold trainings for government, traditional leaders and other stakeholders.

<sup>743</sup> The 2018 Findings on the Worst Forms of Child labour,3. See also the 2013 Findings on the Worst Forms of Child Labour in Lesotho, 449 -451

<sup>744</sup> Gender Links for Equality and Justice (1970) 'Lesotho fertile ground for human traffickers' Available at: <http://genderlinks.org.za/programme-web-menu/lesotho-fertile-ground-for-human-traffickers-2007-06-13/> (Accessed 29 August 2018) (republished in 2007). Although this was a recommendation made in the 1970's, similarly, given the high levels of human trafficking in Lesotho, the same recommendation is applicable in the current situation.

<sup>745</sup> ILO: Lesotho Decent Work Country Programme Phase II (2012-2017) 'Making decent work a reality in Lesotho'. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_mas/---program/documents/genericdocument/wcms\\_561054.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_561054.pdf) (Accessed 30 August 2018).

child labour remains one of the biggest concerns, not much has been done to regulate the informal sector where child labour continues to be dominant.<sup>746</sup> As a result, the ILO's aims at strengthening government and civil society's capacity as well as the implementation of legislation provisions aimed at addressing child labour.<sup>747</sup> Furthermore, in an attempt to respond to child labour, the government of Lesotho through the support of ILO and other stakeholders will evaluate and analyse existing drafts on National Strategic Development Plan (NSDP), National Policy on Orphans and Vulnerable Children and relevant pieces of legislation in order to investigate effective ways of tackling child labour.<sup>748</sup> Consequently, the outcomes and suggestions of the Action Programme on the Elimination of Child Labour will help in the adoption of capacity building interventions by all parties in charge for the execution of APEC.<sup>749</sup> It is therefore expected that the child labour unit will be established, labour inspectorate developed and child labour surveys conducted in order to address the problem of child labour.<sup>750</sup> Furthermore, it is expected that the capacity of government and partners will be strengthened to ensure compliance with both ILO Convention No. 138 and No. 182.<sup>751</sup> It is evident that the ILO program on the elimination of child labour awaits implementation, therefore cannot be assessed. However, measures to address and respond to child labour, particularly the worst forms of child labour in Lesotho are evident.

### **3.9 Application of international and regional law as a response to child labour in Lesotho**

The adoption of the Convention on the Rights of a Child (CRC) and the International Labour Organisation Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C.182) by the international community indicates concern for the rights and welfare of the child, asserts Nhenga.<sup>752</sup> Therefore, the ratification of international and regional conventions by the Kingdom of Lesotho signifies support for the promotion and protection of the rights of child; particularly (for the purpose of

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<sup>746</sup> ILO: Lesotho Decent Work Country Programme Phase II (2012-2017: 13).

<sup>747</sup> ILO: Lesotho Decent Work Country Programme Phase II (2012-2017: 28). This includes ensuring the implementation of provisions of the Children's Protection and Welfare Act as well as the Anti-Human Trafficking Act

<sup>748</sup> *Ibid.* It is imperative to note that, "the revision process will involve broad participation and consultation of stakeholders, government departments, social partners and civil society organizations".

<sup>749</sup> Lesotho Decent Work Country Programme Phase II (2012-2017: 29).

<sup>750</sup> *Ibid.*

<sup>751</sup> *Ibid.*

<sup>752</sup> Nhenga (2008), Abstract.

this study) those involved in child labour.<sup>753</sup> Furthermore, Lesotho is also party to the Optional Protocol on the involvement of children in armed conflicts and Optional Protocol on the sale of children and child prostitution and child pornography.<sup>754</sup> Both Protocols prohibit some of the worst forms of child labour.<sup>755</sup> In an effort to implement the CRC, the Kingdom of Lesotho enacted Children's Protection and Welfare Act (2011), the Education Act (2010) and the Anti-Trafficking in Persons Act (2010) and adopted policies aimed at protecting the rights of children.<sup>756</sup> However, while there have been evident efforts through adoption of new legislation, policies and programs to eliminate child labour, however, addressing issues of child labour continue to be a challenge. While the CWPA is in line the CRC on the definition of a child, this is not so in the case of Lesotho Labour Code Order.<sup>757</sup> Therefore, the inconsistencies in the definition of a child within the domestic laws remain a problem thus, making it difficult to be consistent with CRC provisions on the definition of a child. According to the Committee on the rights of a child, due to lack of resources the process of establishing children's unit as well as implementing APEC has been tremendously slow.<sup>758</sup> In addition, the Minimum Employment guidelines for herd boys remain unknown to the larger public.<sup>759</sup> The lack of legal protection or policies specific to the situation of children living and working on the streets remains a concern.<sup>760</sup> The lack of statistical data on child labourers particularly those in rural areas have led to the utmost violations of children's rights. Many children continue to be exposed to the worst forms of child labour, this includes herd boys and domestic workers.<sup>761</sup> Consequently, children are subjected to exploitation and abuse.

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<sup>753</sup> National Policy on Orphans and Vulnerable Children, 4. This includes Convention on the Rights of the Child (CRC), ILO Convention No. 138 on the Minimum Age for Admission to Employment (1973) and ILO Convention No. 182 on Prohibition of the Worst Forms of Child Labour (1999). Furthermore, the Kingdom of Lesotho took part in the regional and international sessions such as Outcome Declaration of the UN General Assembly Special Session on HIV and AIDS (2001), the UN General Assembly Special Session on Children (2002) and the Maseru Declaration (2002) from the SADC Summit on HIV and AIDS platforms.

<sup>754</sup> United Nations treaty collections: Chapter IV: Human Rights. Available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (Accessed 24 August 2014).

<sup>755</sup> Article 4 of the Optional Protocol on the involvement of children in armed conflicts and Article ..prohibits the use of children in conflicts and in pronography and prostitution respectively.

<sup>756</sup> United Nations Committee on the Rights of the Child (2018).

<sup>757</sup> The Children's Protection and Welfare Act 2011 (Part I- interpretation of the Act), see also the 1992 Labour Code Order of Lesotho (Definition of terms) and Article 1 of Convention on the Rights of a child. While both the CRC and CPWA defines a child as anyone below the age of 18, the Labour code Order defines a child as anyone below the ages of 15. As a result, one would argue that the contradictions in the definition of a child hinders the application of international law. Furthermore, this encourages the use of and exposes children to take part in economic activities at a young age.

<sup>758</sup> United Nations Committee on the Rights of the Child (2018).

<sup>759</sup> *Ibid.*

<sup>760</sup> *Ibid.*

<sup>761</sup> *Ibid.*

While it is patent that the protection of children's rights is crucial, the CPWA has failed to adequately implement the provisions of the CRC.

The government of Lesotho with help from ILO programs, for instance the program Towards the Elimination of the Worst Forms of Child Labour (TECL) laid groundwork in the fight against child labour.<sup>762</sup> Pursuant to the ratification of ILO Convention 182 and Convention 138 concerning Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and Minimum Age for Admission to Employment respectively, the Kingdom of Lesotho expressed its concern towards protection of children from child labour or work detrimental to their wellbeing. The enactment of CPWA came about as a response to the conventions and programs put in place to achieve environment free of child labour. Article 3 of ILO convention 182, provides that offering, using or procuring children for activities, specifically for producing or trafficking drugs should be prohibited. Furthermore, section 45(b) not only prohibits illicit activities but also provides that anyone found in contravention with section shall be liable for fine or imprisonment.<sup>763</sup> However, many children were used to carry out illegal activities such as housebreakings.<sup>764</sup> It is crucial to note that the government of Lesotho fails to adequately provide measures as to how the of application of section 45(b) of CPWA will be implemented. Furthermore, failure of CPWA to recognise domestic work as hazardous and form of child labour remains a concern. Many child domestic workers are denied the opportunity to be in school and susceptible to physical and sexual abuse.<sup>765</sup> It is evident therefore that, with gaps and non-compliance of domestic law to international law, the plight of child labour will remain unsolved.

Aligned with the provisions of the ILO C.138 on the Minimum Age of Employment, Lesotho's Labour Code Order provides that no child below the age 18 years shall be employed or recruited for employment; particularly work detrimental to their health, morals or safety.<sup>766</sup> Furthermore, parallel to the convention, the CPWA provides that children

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<sup>762</sup> The Ministry of Employment and Labour Lesotho (2006): Programme towards the elimination of the worst forms of child labour (TECL)/ILO: Implementation plan pf the programme towards the elimination of the worst forms of child labour in Lesotho 2004-2007. TECL Paper No. 10. 14.

<sup>763</sup> ILO Convention 182 Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

<sup>764</sup> Observation (CEACR) - adopted 2015, published 105th ILC session (2016) Worst Forms of Child Labour Convention, 1999 (No. 182) – Lesotho. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3247834:YES](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3247834:YES) (Accessed 02 September 2018).

<sup>765</sup> *Ibid.* Section on the employment of children does not make mention of domestic work, however section 226 prohibits exploitative labour and allows for engagement of children in work considered light in section 229.

<sup>766</sup> Article 3 (1) of the ILO C. 138 and Section 148 (1) and 125 (1) of the Lesotho Labour Code Order. See also the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 10 (3) "...Children and young persons

between the ages of 13 to 15 years may engage in light work.<sup>767</sup> Based on the convention's obligation on all member states including Lesotho to adopt national policies that ensures effective eradication of child labour.<sup>768</sup> The government of Lesotho complied, adopting successfully of the Action Plan for the Elimination of Child Labour (APEC). However, the absence of detailed information on APEC's progress and results achieved thereof, questions the government's fulfilment of APEC's objectives in eradicating child labour.<sup>769</sup> According to the International Labour Conference 2016 report, the Labour Code Order excludes from its application, self-employment and those working within the informal sector.<sup>770</sup> It is worth noting therefore that, this labour legislation is only limited to the formal sector but fails to take into account incidences of employment within the informal sector where child labour is evident. For instance, a number of children within the informal sector are self-employed working as child street vendors. Failure for the Code to recognise this form of employment leaves children without legal protection. Consequently, the eradication of child labour within the informal sector remains a challenge.

In an effort to eliminate child labour, ILO C.138 provides that minimum age of employment set by member states shall not be lower than the age of completion of compulsory schooling.<sup>771</sup> In Lesotho, a child completes compulsory primary education between the ages of 12 and 13 years. Therefore, children below this age employed whether within the formal or informal is in contravention with the ILO convention on the minimum age. Although the Lesotho's Education Act of 2010, makes provision of free and compulsory education at primary level.<sup>772</sup> Many children below the age of completion of compulsory schooling are found engaging in work. Despite an increase in school attendance since the introduction of free and compulsory primary education in 2000,<sup>773</sup> the majority of children particularly those

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should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, 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.”

<sup>767</sup> Section 229 (1) of the Children's Protection and Welfare Act of 2011 and Article 7 (1) of the ILO C.1 38. This kind of work is not harmful and not likely to be injurious to the development or health of a child.

<sup>768</sup> Article 1 of the ILO C. 138 – Minimum Age Convention.

<sup>769</sup> International Labour Conference, 105th Session, (2016) 'Application of International Labour Standards 2016 (I)' :Report of the Committee of Experts on the Application of Conventions and Recommendations. Available at: [http://ioe-emp.org/fileadmin/ioe\\_documents/publications/ILO\\_ILC/2016\\_ILC/EN/2016-04-22\\_2016\\_ILC\\_ILC\\_Report\\_III\\_Part\\_1A\\_-\\_Report\\_of\\_the\\_Committee\\_of\\_Experts\\_on\\_the\\_Application\\_of\\_Conventions\\_and\\_Recommendations.pdf](http://ioe-emp.org/fileadmin/ioe_documents/publications/ILO_ILC/2016_ILC/EN/2016-04-22_2016_ILC_ILC_Report_III_Part_1A_-_Report_of_the_Committee_of_Experts_on_the_Application_of_Conventions_and_Recommendations.pdf) (Accessed 02 September 2018) 269.

<sup>770</sup> International Labour Conference, 105th Session (2016: 270).

<sup>771</sup> Article 2 (3) Of the C.138- Minimum Age Convention.

<sup>772</sup> Section 3 (1) of the Education Act of 2010. According to the Act, children from the age of six years shall start with primary education.

<sup>773</sup> Lesotho Country Analysis Working Document (2017:33).



in rural areas are often combined work with school. For instance, boys continue with their work as herd boys after returning from school or work in farms or family business in order to help and contribute to the family income.<sup>774</sup> Despite the Education Act's efforts to ensure all children are in school many children in the rural Lesotho continue to find themselves in labour activities. As a result, child labour continues to be rampant in rural Lesotho.

In August 2019, the Kingdom of Lesotho ratified the Protocol of 2014 to the Forced Labour Convention of 1930, conveying the country's commitment to confronting all forms of child labour.<sup>775</sup> The ratification of the Protocol signifies a step towards the attainment of decent work and delivering on the goals of the United Nations (UN) Agenda 2030, particularly Sustainable Development Goal (SDG) Target 8.7.<sup>776</sup> While this development is fairly recent, following up on the success of UN SDG implementation in Lesotho shall be investigated in the near future.

On a regional level, the Kingdom of Lesotho ratified the African Charter on Human and People's Rights (ACHPR) and the African Charter the Rights and Welfare of the Child (ACRWC) aimed at promoting and protecting human rights and also recognising traditions unique to African countries; as well as protecting the rights of children respectively.<sup>777</sup> The Kingdom of Lesotho therefore undertakes to implement the provisions of both the ACHPR and ACRWC. In accordance with the ACHPR provisions, both the Constitution of Lesotho and the CPWA undertake to ensure the protection of fundamental human rights including the rights of children without discrimination.<sup>778</sup> Article 11 (1) of ACRWC provides that every child has a right to education.<sup>779</sup> Consequently, all state parties to the charter have an obligation to ensure that appropriate measures are taken to make available free and compulsory education for all children as well as encouraging the development of secondary education of which over time will be free and accessible.<sup>780</sup> Not only is the enactment of the Education Act consistent with the provisions of ACWRC but has also achieved some of the

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<sup>774</sup> Letuka (1998:213).

<sup>775</sup> International Labour Organisation. Forced Labour: Lesotho joins efforts to combat forced child labour. Available at: [http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS\\_71800/lang--/index.htm](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_71800/lang--/index.htm) (Accessed 21 December 2019).

<sup>776</sup> *Ibid.*

<sup>777</sup> African Charter on Human and People's Rights: Preamble and African Charter the Rights and Welfare of the Child: Preamble.

<sup>778</sup> Article 18 of the African Charter and Article 3 of the ACRWC; See also the Section 6 of Children' Protection and Welfare Act and Chapter of the constitution on the Protection of the fundamental human rights and freedoms.

<sup>779</sup> Article 11 of the ACRWC

<sup>780</sup> Article 11 (3) (a) and (b)

objectives provided in Article 11 (3) (c) of the ACWRC.<sup>781</sup> For instance, there has been a sharp increase in school attendance and a decline in children dropping out of school.<sup>782</sup> However, not all children, particularly those involved in child labour have access to education.

Following the provisions of Article 15<sup>783</sup> of ACRWC, the Kingdom of Lesotho under section 226 of the CPWA undertakes to ensure the protection of children against child labour and the prohibition of work likely to be dangerous and injurious to the child's wellbeing, physical, social and moral development.<sup>784</sup> The Act further provides that the minimum age of employment shall be 15 years; however, no child below the age of 18 shall partake in work deemed hazardous.<sup>785</sup> The Act declares therefore that anyone found in contravention of the above sections shall be liable to imprisonment or a fine.<sup>786</sup> In spite of section 228 provisions, the Act states that children between the ages of 13 and 15 may engage in light work.<sup>787</sup> While it is evident that the Kingdoms of Lesotho conforms to the Article of ACRWC, it is worth noting that national legislation does not make provisions for the regulation of the hours and conditions of employment within the informal sector where child labour is proliferating. Furthermore, due to limited dissemination of information regarding child labour occurrences, addressing the issues of child labour at community level remain a problem.

The Adoption of National Policies, enactment of legislation and establishment of Child and Gender Protection Unit aimed at protecting children against abuse and torture seem to be in harmony with Article 16 of the ACRWC and the SADC Code of Conduct on Child Labour.<sup>788</sup>

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<sup>781</sup> Article 11 (3) (c).

<sup>782</sup> Lesotho Country Analysis Working Document (2017:33).

<sup>783</sup> Article 15 (1) and (2) (a) - (d) of the ACRWC on, Child Labour states that "1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development. 2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular: (a) provide through legislation, minimum ages for admission to every employment; (b) provide for appropriate regulation of hours and conditions of employment; (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article; (d) promote the dissemination of information on the hazards of child labour to all sectors of the community".

<sup>784</sup> Section 226 of the Children's Protection and Welfare Act. This provision is in conformity with Article 15 (1) of the ACRWC. This includes work that is economically and socially exploitative.

<sup>785</sup> Section 230 of Children's Protection and Welfare Act.

<sup>786</sup> Section 228 of Children's Protection and Welfare Act.

<sup>787</sup> Section 229 of Children's Protection and Welfare Act.

<sup>788</sup> Article 16 of the ACRWC. See also Section 4 of the Southern African Development Community (SADC) Code of Conduct on Child Labour.

However, millions of children within the African continents are still stuck in child labour.<sup>789</sup> According to the SADC report, at least 73 million children between the ages of 5 and 14 years are involved in work that is injurious and detrimental to the wellbeing of children. This includes work in the agricultural, mining and construction sectors.<sup>790</sup> Nhenga argues that, although the Kingdom of Lesotho, like many other Africa countries that is South Africa and Zimbabwe have ratified international instruments, given the cultural setting of these African countries, the application of international law continues to be a challenge.<sup>791</sup> As a result, children, continue to be victims of child labour.

### 3.10 Conclusion

Despite legal and social measures taken by the Kingdom of Lesotho in addressing the rights of children as well as responses to violations children's rights, laws and policies relating to child labour remain in some way limited. While the laws and policies are relevant, their application thereof remains poor and unsatisfactory. Furthermore, domestication of international law continues to be a challenge. Instead, culture plays a pivotal role to the prevalence of child labour. Not only does culture influence the incidences of child labour, it also defines the duties and responsibilities of children towards their families. Culturally, children are expected to work to in order to care for their families thus encouraging child labour practices. Nhenga, rightly contends that in Lesotho based on the cultural conceptions of child labour, 'international law on child labour lacks relevance and meaning'<sup>792</sup> however, the domestication of such laws have been evident. In view of other factors contributing to the proliferation of child labour, it is fundamental for the Kingdom of Lesotho to adopt inclusive approaches responsive to such circumstances, considering the rights of children; particularly those in child labour. While conformity to the international law has been evident, the inconsistencies have also been evident. However, the evident lack of the adequate implementation and enforcement of international law as well as national legal and policy

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<sup>789</sup> Statement by the Executive Secretary of SADC on the occasion of World Day against Child Labour (2018) Available at: <https://www.sadc.int/news-events/news/statement-executive-secretary-sadc-occasion-world-day-against-child-labour/> (Accessed 02 September 2018).

<sup>790</sup> *Ibid.*

<sup>791</sup> Nhenga (2008), Abstract.

<sup>792</sup> Nhenga (2008), Abstract.

frameworks cannot be stressed enough. There is therefore a need for sufficient implementation and enforcement of international and national law as well as the implementation of policies on child labour for the effective eradication of the practice and protection of children.

## CHAPTER FOUR - COMPARATIVE ANALYSIS

### 4. Introduction

While Child labour incidences remain dominant within the Sub-Saharan region, the majority of children's rights continue to be compromised and undermined. Nhenga contends that child labour is an emotive phenomenon, invoking imageries of unclean, hungry children walking with loads of blocks on their backs and being whipped by gigantic looking men or employers.<sup>793</sup> As a result, such images have not only incited interest in children's activities universally but have also impelled the need to address the rights of children globally, asserts Nhenga.<sup>794</sup> The advent of international movements through an array of forces aimed at abolishing child labour within the Sub-Saharan Africa region has been evident.<sup>795</sup> Although it has been argued that drafters of the international instruments/ law have failed to take into account challenges involved in the application of international law within African states given the cultural setting,<sup>796</sup> countries including South Africa (SA), Tanzania and Morocco seem to have incorporated such laws successfully. Being part of the continent that accounts for the majority child labour incidences, the above-mentioned countries have been positively impacted by the international forces and laws aimed at eradicating child labour and have made great progress in addressing and curbing the prevalence of child labour.<sup>797</sup> It is however worth noting that child labour incidences continue to persist within the African continent<sup>798</sup>, particularly the Sub Saharan region including the three referenced countries.

This chapter makes a distinctive comparison between the Kingdom of Lesotho and the above-mentioned countries. Addressing particularly, social and legal positions on the rights of children, strategies and measures adopted as means of reducing child labour as well as the application of international laws aimed at eradicating child labour practices. Furthermore, the chapter sets out positive practices in South Africa, Tanzania and Morocco given the evident progress in the reduction of child labour. In light of the progress made by South Africa,

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<sup>793</sup> Nhenga, T.C. (2008) Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa. Published Thesis.

<sup>794</sup> Nhenga (2008:1).

<sup>795</sup> *Ibid.*

<sup>796</sup> *Ibid.*

<sup>797</sup> The Hague Global Child Labour Conference 2010 – Towards a World without Child Labour, Mapping the Road to 2016 – Conference Report

<sup>798</sup> Madziwa, T. (2014) 'A critical analysis of child labour protective laws in Southern Africa: A case study of Malawi, South Africa and Zimbabwe' Published Thesis, 4.

Tanzania and Morocco, this chapter will critically evaluate the practice of child labour and the circumstances that breed such practices in these countries. Examining existing laws and policies on child labour in all countries as well as assessing the application of international laws thereof. Moreover, The investigation shows the application of both international and domestic laws has resulted in the reduction of child labour. The chapter therefore concludes by advocating for the emulation of good practices by the Kingdom of Lesotho with an objective of protecting the rights of working children as well as reducing and ultimately abolishing child labour.

#### 4.1 Background of child labour in South Africa

The Republic of South Africa borders Mozambique, Zimbabwe, Namibia and Botswana on both the northern and north-east parts of Africa respectively. The Republic South Africa also completely surrounds the Kingdoms of Lesotho and eSwatini (formerly known as Swaziland). The Republic of South Africa therefore covers the southern most parts of the African continent.<sup>799</sup> Like the Kingdom of Lesotho, the Republic of South Africa accounts for a substantial number of children engaged in labour.<sup>800</sup> At least 72.1 million of children in African are found partaking in child labour.<sup>801</sup> 31 million of these children engage in extremely dangerous work.<sup>802</sup> While child labour or child slavery dates back to the 1600s, scholars have questioned the justice system regarding this invisible brutality.<sup>803</sup> Upon the fall of apartheid, the Republic of South Africa emerged with one of the greatest and influential Constitutions, recognised as laudable universally.<sup>804</sup> While the Constitution advocates for the protection of children's rights, thousands of children continue to be victims of human rights violations evidenced by the current incidences of child labour.<sup>805</sup> Foisted upon by adverse socio-economic, cultural and developmental ills, children are continually coerced into

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<sup>799</sup> Southern African Development Community: South Africa. Available at: <https://www.sadc.int/member-states/south-africa/> Accessed 13 November 2018.

<sup>800</sup> Nhenga (2008:1-2), this is drawn from the conclusion made by international organisations such as the ILO aimed at reducing the number of child labourers and ultimately abolishing child labour asserts Nhenga.

<sup>801</sup> Ten facts about child labour in South Africa, available at: <https://borgenproject.org/10-facts-about-child-labor-in-south-africa/#:~:text=Approximately%2072.1%20million%20African%20children,million%20are%20working%20hazardous%20j obs.&text=Nine%20percent%20of%20African%20children,high%20as%20any%20other%20region> (accessed 25 November 2020).

<sup>802</sup> *Ibid.* .According to the report, “ one-fifth of all African children are child laborers, with nine percent of African children are working in hazardous jobs.”

<sup>803</sup> Susan Levine (2013) ‘Children of a bitter harvest: Child labour in the Cape winelands’ HSRC Press, Foreword.

<sup>804</sup> Kannapathi, S. M. (2015) ‘Reconciling child labour practices in south Africa with international standards: prospects and challenges’ Published Dissertation, 52.

<sup>805</sup> Kannapathi (2015). The realities of poverty, shackles of class and race domination in South Africa have led to majority of children in South Africa, for example those in the Western Cape to partake in work exploitative in the Cape winelands and many other places. See also Susan Levine (2013) ‘Children of a bitter harvest: Child labour in the Cape winelands’ Preface.

economic activities detrimental to their health, development and wellbeing.<sup>806</sup> Furthermore, some scholars have argued that the prevalence of child labour in South Africa is directly linked to the apartheid system, contends Madziwa.<sup>807</sup> The alarming statistics of child labour in South Africa have not only called on government's immediate attention but also calls for a complete ban of child labour has been demanded by the South African Federation of Trade Unions (Saftu).<sup>808</sup> As a result, calls for the abolishment of child labour cannot be emphasised enough.

Child labour in South Africa is reported to have significantly declined since the year 2015.<sup>809</sup> However, despite the evident advancement in the elimination of child labour, hundreds of thousands of children are found partaking in some form of work that is not only exploitative and injurious but also work that requires long working hours.<sup>810</sup> At the writing of the paper, Statistics South Africa (StatsSA) submitted that, 577 000 children from the ages of 7 years are engaged in child labour.<sup>811</sup> It is however evident that although presented in March 2017, statistics presented on child labour reflected that of 2015, stating that 577 000 children from 7 years are involved in child labour.<sup>812</sup> It is evident therefore that, like many African countries South Africa continues to grapple with an enigma of child labour. Furthermore, the apparent gaps and weaknesses in legislation on the rights of children, particularly relating to child

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<sup>806</sup> Kannapathi (2015:1). See also Nhenga (2008:3).

<sup>807</sup> Madziwa (2014:15). As a result, child labour is defined as a racial problem as majority of black and coloured children are employed and work in white owned plantations and factories at low wages, under harsh and unfavourable working conditions. Diminishing further any prospects of achieving prospects of equality. Thus, violating the right of children to achieve and enjoy equality.

<sup>808</sup> Mabuza. E. (2018) 'Union calls for ban on child labour following StatsSA report'. Times live South Africa. Available at: <https://www.timeslive.co.za/news/south-africa/2018-03-30-union-calls-for-ban-on-child-labour-following-statsa-report/> (Accessed 9 September 2018). See also Sowetan live.

<sup>809</sup> *Ibid.* Statistics South Africa (StatsSA) "The number of children who appeared to be doing work prohibited by the BCEA declined by 41 000 in 2015.

Children who appeared to have worked excessive hours for their age when all types of work are combined declined by 68 000 to 349 000 in 2015.

Those who were doing market production activities that interfered with their schooling declined by 10 000 to 1 000 in 2015 from 11 000 in 2010.

Children who appeared to be absent from school or experienced difficulties at school because of work-related activities declined by 31 000 to just 4 000 in 2015.

The number of children who reported being injured at work also declined by 88 000 to 202 000 in 2015."

<sup>810</sup> Statistics South Africa (StatsSA), (2015) 'Survey of Activities of Young People' Available at: <http://www.statssa.gov.za/publications/P0212/P02122015.pdf> (Accessed 9 September 2018) 38. See also Kannapathi (2015:32), children are often found working for more 40 hours per week, as result many children miss out of school.

<sup>811</sup> Mabuza (2018) 'Union calls for ban on child labour following StatsSA report'. Times live South Africa. See also Statistics South Africa (StatsSA), (2015) 'Survey of Activities of Young People'

<sup>812</sup> 2017 Findings on the Worst Forms of Child labour: South Africa. Available at: <https://www.refworld.org/pdfid/5bd05af12.pdf> (accessed 25 November 2020).

labour have called for serious attention asserts Madziwa.<sup>813</sup> While the South African Law Commission advocates for the adoption of measures beyond banning of child labour practices,<sup>814</sup> Lubaale and Kannapathi advocate for an adoption of a human rights based approach as well as a child centred approach respectively.<sup>815</sup> Furthermore Nhenga, advocates for an approach that is reverential and sensitive to the indigenous culture within the African continent.<sup>816</sup>

## 4.2 Causes and Forms of child labour in South Africa

In Africa, child labour continues to be aggravated by the frivolity and inadequate explanation of childhood asserts Nhenga.<sup>817</sup> While the western conception of childhood embraces innocence, physical fragility, immaturity and vulnerability; childhood within the African continent is conceptualised as a phase of developing both practical and social skills as well as building of character essential for executing roles aimed at preparing children for adulthood.<sup>818</sup> Consequently, children are socialised through performing of duties into adulthood. These duties may include engaging in paid or unpaid work. However, the socialisation process fails to take into account the extent of danger imposed on children as a result. Therefore, endorsing socialisation as acceptable norm results in an inevitable practice of child labour. Generally, the majority of children in Africa are commonly found working as street vendors, domestic helpers, employed in farms as well as herding livestock among others, contends Lubaale.<sup>819</sup>

In South Africa, the prevalence of child labour is not confined to a specific geographical location. It is apparent in both the rural and urban areas.<sup>820</sup> According to the Survey of Activities of Young People (SAYP) 2015 report, urban areas have the lowest incidences of child labour compared to the rural areas; with KwaZulu- Natal province recording the highest

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<sup>813</sup> Madziwa (2014) Abstract.

<sup>814</sup> South African Law Commission Discussion Paper 103 of project 110 on the review of the Child Care Act (2001) 579. See also as quoted by Emma C. Lubaale (2011). "A Human Rights-Based Approach to Child Labour in Africa: Challenges and Prospects in South Africa" Published Dissertation, 1.

<sup>815</sup> Lubaale (2011:1) and Kannapathi (2015:5).

<sup>816</sup> Nhenga (2008), Abstract.

<sup>817</sup> *Ibid.*

<sup>818</sup> *Ibid.*

<sup>819</sup> Lubaale (2011:19).

<sup>820</sup> Mambi, A. S. (2016) 'Implementation of child labour policy in South Africa' Published Master's Thesis (University of the Witwatersrand) 47.



occurrences of child labour.<sup>821</sup> While gender and race play a pivotal role in understanding child labour in South Africa, the SAYP report states that the engagement in labour between boys and girls marked a minimal difference.<sup>822</sup> That said, both genders alike were involved in some sort of economic or social activities constituting child labour practices. The report further described child labour in South Africa as racially biased. Majority of children likely to be entangled in child labour practices are black South Africans.<sup>823</sup> In 2015 49.3% of children were involved in economic activities particularly, trade industry.<sup>824</sup> Although this marked a decline in child labour practices from 58.1% in 2010, at least 34.2 % of children between the ages of 7 and 17 years continue to work and continue to be exposed to work detrimental to their wellbeing.<sup>825</sup> Manifestations of child labour in South Africa are visible within the commercial agriculture, trade industry, street trading, taxi industry, entertainment and modelling industry, domestic services as well as prostitution.<sup>826</sup> Children engaged in these forms of labour are exposed to hazardous working conditions; this includes prolonged working hours, harsh environmental conditions, dangerous use of machinery and tools and exposure to harmful chemicals.<sup>827</sup> It is significant to note that in recent years there has been an evident increase in forced begging. This form of child labour also constitutes the worst form of labour as children are subjected to harsh climatic conditions, danger and prone to sexual exploitation.<sup>828</sup> These forms of child labour practices not only constitute the worst forms of labour and hence the need for social and legal interventions.

While no child gladly or willingly engages in work that is exploitative, socio-economic circumstances beyond their control often compels them to. A number of scholars have identified high prevalence of poverty, HIV/AIDS pandemic, unemployment, influx of child-headed households /orphan hood, ineffective government and legal systems, absence of social safety nets, globalisation, inequality, poor education and culture as some of the primary ills

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<sup>821</sup> Statistics South Africa (StatsSA), (2015) 'Survey of Activities of Young People'. 7. Approximately 2.0% of children in urban areas are involved in child labour.

<sup>822</sup> Statistics South Africa (StatsSA), (2015:6).

<sup>823</sup> *Ibid.*

<sup>824</sup> *Ibid.* According to the SAYP report, within the period of five years, there has been a significant decline of child labour within the trade industry from 58.1% in the year 2010 to 49.3% in the year 2015. However, this is only under the trade industry.

<sup>825</sup> *Ibid.* According to the 2015 statistic presented in 2017, 34,2% of working children were exposed to at least one hazardous working condition. Boys (35,5%) were more likely to be exposed to hazardous conditions compared to girls (32, 9%).”

<sup>826</sup> Lubaale (2011:19).

<sup>827</sup> Statistics South Africa (StatsSA), (2015:26).

<sup>828</sup> 2017 worst forms of child labour South Africa, available at: <https://www.refworld.org/pdfid/5bd05af12.pdf> (accessed 25 November 2020).

and reasons that have led to child labour practices in South Africa and the entire African continent.<sup>829</sup>

#### 4.2.1 Poverty

High levels of poverty have driven many children to work asserts Lubaale.<sup>830</sup> Although incidences of child labour cannot be attributed solely to poverty it however remains the primary push factor within the African continent and has added to the child labour predicament.<sup>831</sup> While the Republic of South Africa (RSA/ SA) is ranked a middle-income economy, it is ironically the most unequal nation in the world. The inequality is characterised by significant wealth discrepancies, with many living under extreme and shocking levels of poverty,<sup>832</sup> thus drawing a thin line between SA and the so-called poor or least developing countries.<sup>833</sup> According to Kannapathi, the extreme levels of inequalities in South Africa, contribute significantly to the persistence of poverty and this can be attributed to the discriminatory laws of past apartheid government.<sup>834</sup> Consequently, children today have inherited the injustices of the past, placing them in vulnerable positions of poverty and lack of income.<sup>835</sup> In addition, because of the evident inequalities based on class, race and wealth as well as the high levels poverty, children are compelled to engage in labour practices detrimental to their wellbeing in order to contribute towards their family income.

According to the 2015 Stats SA report, despite the evident decline of poverty between the years 2006 and 2011, a sharp increase in the levels of poverty was witnessed in 2015.<sup>836</sup> In the recent statistics, it stated that in the year 2020 more than 60% of children in South Africa

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<sup>829</sup> Mambi (2016:16). See also Lubaale (2011), Kannapathi (2015) and Madziwa (2014) on the circumstances that breed child labour in South Africa.

<sup>830</sup> See also Lubaale (2011:19-20). See also the United Nations Development Programme (UNDP) 'Human development report: human development index' (2007/2008), according to (UNDP)'s human development report, the poverty index, South Africa is ranked number 55 out of the 108 developing countries thus placing south in a place growing economies

<sup>831</sup> Kannapathi (2015:1). See also Lubaale (2011).

<sup>832</sup> Nico Gous (2018) 'SA most unequal country in world: Poverty shows Apartheid's enduring legacy' Times Live newspaper. Available at: <https://www.timeslive.co.za/news/south-africa/2018-04-04-poverty-shows-how-apartheid-legacy-endures-in-south-africa/> (Accessed 08 February 2019.) See also Kannapathi (2015:36).

<sup>833</sup> Lubaale (2011:20).

<sup>834</sup> Kannapathi (2015:36). According to Times Live newspaper, "poverty remains concentrated in previously disadvantaged areas, such as the former homelands" that is Eastern Cape (Trankei), Bophuthatswana (North West) and KwaZulu Natal amongst other, Natal which has the highest number of child labourers according to the SAYP 2015 report.

<sup>835</sup> *Ibid.*

<sup>836</sup> Statistics South Africa 'Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015' Available at <https://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf> (Accessed 10 February 2018).

were found to be poor.<sup>837</sup> While poverty reduction measures have been put in place, many continue to live under intense levels of poverty. In addition, at least half of the South African population lives in chronic poverty that is living below the poverty line.<sup>838</sup> While the overwhelming persistence of poverty has left many families with no option but to compel children to engage in income generating activities, the need to survive has forced parents to condone exploitative labour practices.<sup>839</sup> Many children are often found working in unregulated and informal commercial and agricultural sectors where they suffer abuse and exploitation.<sup>840</sup>

Poverty in South Africa continues to coerce poor children take up duties and responsibilities of parenthood, taking care of their parents and siblings, providing food, shelter and clothes among others.<sup>841</sup> The protection of children against exploitative and hazardous working conditions remains the greatest concern. Although the complete eradication of child labour is without a doubt the ultimate goal, it is important to note that laws directed at banning child labour may not be sufficient to address the conditions of poverty asserts

Lubaale. In fact, poverty-stricken families may lose their only means of survival resulting in many hungry people and ultimately loss of life. However, the protection of children against work that is detrimental to their wellbeing as well as the protection children's rights remains at the core.

#### 4.2.2 Unemployment

The Republic of South Africa like many African countries continues to struggle with high levels of unemployment.<sup>842</sup> According to Kannapathi, the persistent challenge of

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<sup>837</sup> Department of Statistics South Africa: Media release. "More than 60% of South African Children are poor" available at: <http://www.statssa.gov.za/?p=13438> (accessed 26 November 2020).

<sup>838</sup> World Bank report 'Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities' Available at: <http://documents.worldbank.org/curated/en/530481521735906534/pdf/124521-REV-OUO-South-Africa-Poverty-and-Inequality-Assessment-Report-2018-FINAL-WEB.pdf> (Accessed 10 February 2019). Levine in 'children of the bitter harvest: Child labour in the Cape winelands' states that the agricultural sector is dangerous to children, many of children are prone to harm. For instance, in 2003 a young girl lost her leg in a tractor related accident.

<sup>839</sup> Lubaale (2011:20).

<sup>840</sup> Human Sciences Research Council Final Report (2007) 'The causes, nature and impact of child work and labour in South Africa: A study of three purposively selected sites' Available at: <http://www.hsrc.ac.za/en/research-data/view/3382> (Accessed 05 February 2019).

<sup>841</sup> Nhenga (2008:176).

<sup>842</sup> Plecher, H. (2020) available at: <https://www.statista.com/statistics/370516/unemployment-rate-in-south-africa/> (accessed 25 November 2020). states that the current unemployment rate around 24.8 % compared to the 2018 report by the Citizen, this has increased. The Citizen (2018) 'SA has the highest youth unemployment in the world' Available at: <https://citizen.co.za/news/south-africa/2025384/sa-has-highest-youth-unemployment-in-the-world/> (Accessed 10 February 2019). See also Stats SA 'Youth unemployment still high in Q1:2018'.

unemployment in South Africa proves to be one of the main contributors to the prevalence of child labour.<sup>843</sup> While the startling levels of unemployment are evident among the youth.<sup>844</sup> Statistics indicate that, generally unemployment in South increased from 26.92 to 28.18 between 2018 to 2020,<sup>845</sup> resulting in the rise of unemployment. Unlike in 2018 where there was a rise in employment<sup>846</sup> However, high levels of unemployment remain highest amongst the poor,<sup>847</sup> increasingly adding pressure on families to survive. Consequently, children are often compelled by their poor and unemployed parents to engage in economic activities.<sup>848</sup> Parents therefore become dependent on children as they take on a role of a provider and become the source of income as well as their means of survival.<sup>849</sup> In such conditions, children are often denied full enjoyment of their rights, therefore calling for social and legal interventions.<sup>850</sup> However, Kannapathi rightly contends that, given the circumstances in which unemployment persists, legislation aimed at banning child labour without alternative provisions for survival may not only be inadequate but fails to safeguard the best interest of children involved in child labour.<sup>851</sup> For instance the child's right to survival and participation that not only benefits him but the entire family. However, such children should engage in work that ensures safety and are not exploitative. Furthermore, the kind of work one engages in should be under constant inspection, with protection of children at the centre.

### 4.2.3 HIV/AIDS Pandemic

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<sup>843</sup> Kannapathi (2015:36). Not only does unemployment contributes to child labour but also to poverty and inequality.

<sup>844</sup> The Citizen (2018) 'SA has the highest youth unemployment in the world'. According to the report, South Africa has the highest levels of unemployment, particularly youth unemployment. It is reported that about 71 million youth aged between 15 and 24 years are unemployed thus facing long-term unemployment. Although it appears alarming that children aged below 18 years (i.e. 15 and 17 years) are unemployed in South Africa, one may conclude that this rather encourages child labour practices. Children between ages of 15 and 18 should be in school completing their secondary and high school studies not working. Including children between the ages, 15 and 18 under employable or labour force is in contravention with the children's rights, including the right to education, right to childhood and the right to development among others.

<sup>845</sup> Plecher, H. (2020).

<sup>846</sup> Trading Economics 'South Africa unemployment rate' Available at: <https://tradingeconomics.com/south-africa/unemployment-rate> (Accessed 10 February 2019). According to the report, unemployment decreased to 6.14 million and increased employment to 16053 million. It is argued however that the increase can be attributed to the festive season, as there is higher job activity.

<sup>847</sup> World Bank report 'Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities', 3.

<sup>848</sup> Kannapathi (2015:36) More often than not, children engage in exploitative and dangerous work detrimental to their health and well-being. This kind of work is found within the informal sector of the economy. In South Africa, child labour is high within the trade and agricultural sectors to state but a few.

<sup>849</sup> Kannapathi (2015:36-37).

<sup>850</sup> The Constitution of South Africa: Section 28. Child labour practices are in contravention with provisions under section 28 of the Constitution on the rights of children.

<sup>851</sup> Kannapathi (2015:36)

The rapid growth of HIV epidemic in South Africa has placed the country at third place within the African continent.<sup>852</sup> Not only does the prevalence of HIV and AIDS have socially devastating effects but also economic ones, thus affecting the productive majority asserts Nhenga.<sup>853</sup> While the Republic of South Africa has invested greatly on antiretroviral treatment programme, at least 7.06 million people live with HIV.<sup>854</sup> It is reported that in 2017, about 270 000 people were infected by HIV and 110 000 people died from illnesses associated with AIDS.<sup>855</sup> According to Nhenga, loss of parents and guardians alike to HIV and AIDS results in economic loss and parental supervision.<sup>856</sup> Consequently, the responsibility of taking care of sick parent(s) as well as providing for the family where a parent or both parents have lost their lives to HIV and AIDS related illnesses has been placed on the elderly child despite age. Children are therefore coerced by these circumstances to drop out of school and assume both parental and breadwinner roles.<sup>857</sup> The scourge of HIV/AIDS remains one of the key factors compounding and intensifying the prevalence of child labour practices in South Africa asserts Lubaale.<sup>858</sup> Children assume new responsibilities which includes performing domestic chores, herding and tendering livestock, working in agricultural, formal and informal sectors.<sup>859</sup> However, the effects of the HIV pandemic are not equally felt across the country, poor families remain most affected.<sup>860</sup> The stigma attached the HIV/ AIDS has not only affected family ties but has also resulted in discrimination against HIV/AIDS orphans.<sup>861</sup> Often children (HIV orphans) are shunned and

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<sup>852</sup> HIV and AIDS in South Africa. Available at: <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/south-africa> (Accessed 10 February 2019).

<sup>853</sup> Nhenga (2008:178). Nhenga further contends as majority of the productive population fall sick and die as a resulting from the HIV epidemic, many families not only breakdown but also are deprived of sustenance. Children are therefore forced into being self-reliant thus engaging in child labour practices for survival. Direct link between child labour and HIV/ AIDS related disease is therefore evident.

<sup>854</sup> Statistic South Africa (STATS SA) (2017), Mid-year population estimates. Available at: <https://www.statssa.gov.za/publications/P0302/P03022017.pdf> ((Accessed 10 February 2019). See also HIV and AIDS in South Africa. Available at: <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/south-africa> (Accessed 10 February 2019).

<sup>855</sup> *Ibid.*

<sup>856</sup> Nhenga (2008:7).

<sup>857</sup> Nhenga (2008:4, 178). “They have to look after the dying parents or younger siblings. The high cost of treatment for the disease, and associated costs, such as medical and funeral expenses, may use up a family’s entire savings, especially when more than one family member dies within a short period. This has increased the pressure on children to work”.

<sup>858</sup> Lubaale (2011:21).

<sup>859</sup> *Ibid.*

<sup>860</sup> *Ibid.* Families affected by the HIV epidemic are often faced with financial constraints affecting also the vulnerable that is children. According to the 2000 report by UNICEF, children particularly boys as young as 4 years old are employed by their relatives to work in undesirable and dangerous conditions herding livestock in highland asserts Nhenga. Lubaale further contents that, the loss of parents and care-givers not only serves to deepen poverty among orphaned children but also exposes them to labour activities that ultimately place them in vulnerable positions in order to survive. This includes harsh working and environmental conditions.

<sup>861</sup> Nhenga (2008: 179).

driven to the streets by their relatives, to fend for themselves in order to survive<sup>862</sup> and consequently exposing them to all sorts of exploitation.<sup>863</sup> In many instances, Nhenga rightly contends that, the harsh burdens of having to provide care and domestic services for the family are usually placed on a girl child.<sup>864</sup> Consequently, a girl child may find herself at a risk of prostitution, unplanned pregnancy and sexually transmitted diseases (STDs) including HIV/AIDS<sup>865</sup> thus creating an unending cycle of HIV/AIDS related illnesses and deaths. Although STATS SA states that, the rate of HIV infections are said to have declined from 1.9% million in 2002 to 0.9% in 2017.<sup>866</sup> The increased and direct impact of the epidemic on child labour cannot be denied. With parents losing their lives to HIV/AIDS, orphan hood and child-headed households are inevitable; therefore, resulting in the escalation of child exploitation contends Lubaale.<sup>867</sup> While measures have been taken by the Republic of South Africa to reduce HIV/AIDS through treatment programmes, creating awareness and providing education on the epidemic<sup>868</sup> to state but a few, affected children remain victims of child labour. Lubaale<sup>869</sup> asserts that in such circumstances laws banning child labour maybe incapable and insufficient. However, one would argue that banning of child labour given the circumstances may not entirely be impossible but rather requires a progressive solution, which can be achieved over time. Considering this, ensuring both legal and social interventions particularly protection of children against violation of their human rights, exploitation, abuse and oppression while engaging in child labour practices remains crucial.

#### **4.2.4 Orphanhood and child-headed households**

Mturi rightly asserts that HIV/AIDS pandemic have had negative social consequences including drastically changing types and composition of households within the African continent.<sup>870</sup> With the heavy burden of HIV/AIDS, an increase in the deaths of parents has

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<sup>862</sup> *Ibid.* See also Lubaale. The author asserts that while other children may take refuge in relative's households, some children have no place to go but streets.

<sup>863</sup> *Ibid.* This include sexual exploitation as some engage in sex work, economic exploitation and physical exploitation or abuse by those who find them vulnerable and weak.

<sup>864</sup> Nhenga (2008: 178).

<sup>865</sup> Nhenga (2008: 119). See also Avert report. According to the report approximately 280 000 children between the ages of 0 – 14 years in 2017 were living with HIV of only 58% is receiving medical attention.

<sup>866</sup> Statistic South Africa (STATS SA) Mid-year population estimates (2017).

<sup>867</sup> Lubaale (2011:22).

<sup>868</sup> HIV and AIDS in South Africa. Available at: <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/south-africa> (Accessed 10 February 2019).

<sup>869</sup> Lubaale (2011:20).

<sup>870</sup> Mturi, A. J. (2012) Child-headed households in South Africa: What we know and what we don't, Development Southern Africa, 29:3, 506-516. 506.

been witnessed thus leaving many children as orphans.<sup>871</sup> Although the number/ statistics of orphans in SA remains unclear, given different figures from different sources. StatsSA however reports that, at least 2, 2 million children in South Africa are orphans, with paternal orphans as the highest group.<sup>872</sup> Orphan hood has resulted in the massive influx of child headed households (CHHs). In the past orphaned children were taken in by the extended family members as a safety net.<sup>873</sup> However, this has changed as more adults lose their lives to HIV/AIDS and leaving children to fend for themselves.<sup>874</sup> Many children may receive little to no grief support; they may have resource shortages and are at a risk of starvation and malnutrition.<sup>875</sup> Consequently, because of these circumstances children are forced to work and provide for themselves. Therefore contributing greatly to the prevalence of child labour.

The loss of a parent or both parents exposes children to dangerous working conditions owing to unanticipated and immediate parental roles children have to now assume.<sup>876</sup> Children despite age assume parenthood roles and are coerced to surrender and sacrifice their childhood in order to provide for their siblings and those dependent on them.<sup>877</sup> This includes, but is not limited to giving up education privileges, leisure time and good health.<sup>878</sup> Pillay suggests it is also crucial to be cognisant of the strong resilience of children within CHHs display as opposed to focusing only on the challenges they face.<sup>879</sup> It is however rather impossible to overlook the challenges faced by the majority of children. Majority of children

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<sup>871</sup> UNICEF South Africa 'protection for orphans and vulnerable children' Available at: [https://www.unicef.org/southafrica/protection\\_6633.html](https://www.unicef.org/southafrica/protection_6633.html) (Accessed 10 February 2019).

<sup>872</sup> Statistics South Africa (STATS SA) 'Vulnerable group series III Report: The social profile of children aged 1-17 years 2002-2016). Available at: <http://www.statssa.gov.za/publications/Report%2003-19-04/Report%2003-19-042016.pdf> (Accessed 11 February 2019). In 2016, a total number of children South Africa between the ages of 7-17 was recorded at 11, 4 million. While other sources provide that approximately 3 million or just over 3 million children are recorded as orphans, News24 reports that this number increased by 30% to at least 5.4 million children. See also Pillay 'Problematising child-headed households: the need for children's participation in early childhood intervention' (2016) the author argues states that there is evidence of child headed households in a SA despite contestation over the actual statistics.

<sup>873</sup> Mturi (2012:506).

<sup>874</sup> *Ibid.* Mturi further states that due to the high rate of deaths amongst adults, safety nets are failing and many families cannot longer absorb orphaned children. Pillay (2016), also contends that because of inadequate support from the families and communities, children continue to experience high levels of poverty and social disempowerment. Without the care and support of family and care-givers, children are compelled to engage in activities that will help them survive. This includes working, even if it is engaging in work that is harmful to their wellbeing.

<sup>875</sup> Pillay, J. 'Problematising child-headed households: the need for children's participation in early childhood intervention' (2016). *South African Journal of Childhood Education* 6(1), a359. <http://dx.doi.org/10.4102/sajce.v6i1.359>. 2 (fix this citation)

<sup>876</sup> Lubaale (2011:22). This includes providing financially, performing house chores that is cooking, cleaning and providing care for younger siblings.

<sup>877</sup> *Ibid.*

<sup>878</sup> *Ibid.* Lubaale further contends that, in instances where children are privileged enough to access basic free and compulsory education, learning becomes affected as children have little to no time to do their schoolwork. Others may be fatigued from working thus affecting their performance in school. As a result, dropping out of school to focus on work and providing for the family is inevitable.

<sup>879</sup> Pillay (2016: 2).

in CHHs have no option but to display strong resilience to younger siblings who are dependent on them.<sup>880</sup> Given the conditions orphaned children are faced with, eradicating child labour through legislation only may be ineffective, it is however important to note that, the Children's Act 38 of 2005 not only recognises the existence of CHHs, but it is also regulated in accordance with the Children's Amendment Act 41 of 2007.<sup>881</sup> However, the question of addressing issues of child labour practices within CHHs remains an unsolved conundrum. It is therefore crucial to adopt a human rights approach and other social protection mechanisms in order to address challenges faced by the children engaging in child labour.<sup>882</sup>

#### 4.2.5 Migration

Approximately 214 million people worldwide are international migrants.<sup>883</sup> The process of migration has led to an influx of people migrating from all walks of life both globally (externally) and internally in search of better living conditions and refuge.<sup>884</sup> While many, particularly those migrating externally may be escaping from undesirable and deteriorating socioeconomic conditions and political unrests prevalent in their own countries, many migrate from rural to urban areas internally in search for better standards of living.<sup>885</sup> Van De Glind asserts that migration globally is considered a survival strategy as well an economic coping mechanism for many across the world.<sup>886</sup> Although migration presents new opportunities for many migrants, many may also be exposed to circumstances that leave them vulnerable.<sup>887</sup> Furthermore, migration has resulted in destruction of household compositions and structures as well as fragmentation of the family unit.<sup>888</sup>

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<sup>880</sup> *Ibid.*

<sup>881</sup> Andra le Roux-Kemp 'Child-headed households in South Africa: The legal and ethical implications when children are the primary caregivers in a therapeutic relationship' (2013).

<sup>882</sup> Lubaale (2011:22).

<sup>883</sup> Van de Glind, H. International Labour Office (2010) 'Migration and child labour: Exploring child migrant vulnerabilities and those of children left-behind' working paper.

<sup>884</sup> Migration Data in th Southern African Community Development Community (SADC) approximately 4.2 million migrants resided in South Africa at mid-year 2019, available at: [https://migrationdataportal.org/regional-data-overview/southern-](https://migrationdataportal.org/regional-data-overview/southern-africa#:~:text=An%20estimated%204.2%20million%20migrants,of%20education%20and%20better%20opportunities)

[africa#:~:text=An%20estimated%204.2%20million%20migrants,of%20education%20and%20better%20opportunities](https://migrationdataportal.org/regional-data-overview/southern-africa#:~:text=An%20estimated%204.2%20million%20migrants,of%20education%20and%20better%20opportunities). (accessed 25 November 2020).

<sup>885</sup> Hugh Dingle 'Migration' University of Carlifonia, Daris. Available at: [https://ac.els-cdn.com/B9780123741448001764/3-s2.0-B9780123741448001764-main.pdf?\\_tid=e239e4e7-eaad-4718-bb7a-](https://ac.els-cdn.com/B9780123741448001764/3-s2.0-B9780123741448001764-main.pdf?_tid=e239e4e7-eaad-4718-bb7a-4df2118a334e&acdnat=1552646131_4ac350cb7f57ad414358a4e15f9e9ca0)

[4df2118a334e&acdnat=1552646131\\_4ac350cb7f57ad414358a4e15f9e9ca0](https://ac.els-cdn.com/B9780123741448001764/3-s2.0-B9780123741448001764-main.pdf?_tid=e239e4e7-eaad-4718-bb7a-4df2118a334e&acdnat=1552646131_4ac350cb7f57ad414358a4e15f9e9ca0). (Accessed 11 February 2019). 628. The author asserts that migration entails a movement that allow insects (for the purpose this study, this will entail the movement of people), to escape deteriorating habitats to take territory over new areas or seek temporary shelter.

<sup>886</sup> *Ibid.*

<sup>887</sup> Lubaale (2011:24).

<sup>888</sup> Nhenga (2008:145).



With the demise of the apartheid system, the republic of South Africa witnessed an influx of migrants globally, African counterparts being the highest in number.<sup>889</sup> According to Lubaale, with the end of apartheid government, economic progress and opening of South African borders, transnational movements increased in search for better living conditions,<sup>890</sup> resulting also in new vulnerabilities and costs of living. While those migrating may do so as a whole family, some parents migrate temporarily leaving either their husbands or wives together with children at home, thus resulting in social, psychological as well as economic changes of the family unit.<sup>891</sup>

It is important to note that, not only do parents migrate, but children as well. According to Save the Children report, millions of children are currently on the move, within and between different countries.<sup>892</sup> Children as young as 7 years old are said to be migrating alone into South Africa.<sup>893</sup> While children move for different reasons that is, out of their own accord or involuntarily, either with or without parents and caregiver,<sup>894</sup> this places children in vulnerable positions, exposing them to economic and sexual exploitation, violence and abuse.<sup>895</sup> According to the report, approximately 30% of 3 million migrants in Africa are children and adolescents.<sup>896</sup> Although there is no definite statistics of children entering South Africa through illegal border crossing, there is however evidence of child migrants in the different parts of South Africa.<sup>897</sup> The majority of children who migrate out of duty to care for their poor families and in search for a better life; are compelled by these circumstances to engage child labour practices that leave them vulnerable.<sup>898</sup> With little to no basic services

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<sup>889</sup> Lubaale (2011: 24).

<sup>890</sup> *Ibid.*

<sup>891</sup> Nhenga (2008: 145). It is crucial to note that when parents migrate, particularly single parent households, children are compelled to either find shelter with the extended family members or be alone taking care of the home and siblings. As a result, this movement often negatively affects children in both scenarios of migration.

<sup>892</sup> Save the Children 'Migration' Available at: <https://www.savethechildren.org.za/what-we-do/our-work/child-protection/migration> (Accessed 11 February 2019).

<sup>893</sup> Consortium for refugees and migrants in South Africa (CoRMSA) report (2008). Available at: <http://www.migration.org.za/wp-content/uploads/2017/08/Protecting-Refugees-Asylum-Seekers-and-Immigrants-in-South-Africa.pdf> (Accessed 10 February 2019).

<sup>894</sup> *Ibid.* According to the report, this includes children who have lost their either or both parents, trafficked, seeking asylum, seeking economic emancipation and those who are not in schools.

<sup>895</sup> *Ibid.* See also PAN: Children Article on unaccompanied foreign migrant children in South Africa, the authors argues that many children migrate not only in search of better living conditions but also because of the lack of educational opportunities, poverty, hunger, political turmoil and death of parents or caregivers to state but a few.

<sup>896</sup> *Ibid.* This is said to be the highest proportion in the world.

<sup>897</sup> *Ibid.* This accounts for children from other countries, South Africa's neighboring countries. This includes children from Lesotho, Mozambique, and Zimbabwe etc.

<sup>898</sup> Pan: Children 'Unaccompanied foreign migrant children in South Africa' Available at: <https://children.pan.org.za/sites/default/files/publicationdocuments/Unaccompanied%20Foreign%20Migrant%20Children%20-Topical%20Guide.pdf> (Accessed 10 February 2019). See also Ann Whitehead & Irma M.Hashim (2007) 'Child migration, child agency and intergenerational relations in Africa and Asia1' Working paper 24. The authors "refer to these children as

and lack of family support, many find themselves exposed to dangerous and hazardous working conditions that violate their human rights.<sup>899</sup> This includes working in various sectors such in farming and providing domestic services for long hours with inadequate remuneration asserts Lubaale.<sup>900</sup> Many child migrants in SA are from Lesotho, Zimbabwe, Malawi and Mozambique. These children often engage in domestic work, herding of livestock, working in farms and working as street vendors in the different provinces of the country.<sup>901</sup> In the case where parents migrated with children, these children are often used by their parents (abled and disabled) to beg for money and gain sympathy by traffics lights and road intersections thus putting at risk the lives of the young ones.<sup>902</sup> Majority of these children are as little as 4 years old or younger.<sup>903</sup> For children left back home, those children have an obligation to help with family chores, this includes caring for siblings and engaging in domestic chores. It is evident that migration contributes significantly to the high prevalence of child labour in South Africa and the entire African continent.<sup>904</sup>

The illegal status of many foreign immigrants including children exposes them to exploitation and oppression contends Lubaale.<sup>905</sup> Furthermore, while they may not have the privilege of enjoying basic services like South African citizens and legal migrants, majority of illegal immigrants would rather settle for exploitation as opposed to deportation.<sup>906</sup> Therefore, employers take advantage of these circumstances; employing illegal migrants (parents and children alike) in exploitative and abusive working environments.<sup>907</sup> Children are forced to work under unfavourable conditions, for prolonged hours, without legal assistance or demand

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‘independent child migrants’. We recognise that the decision to move may or may not be an autonomous one, the children may or may not make their journeys in the company of known adults or other children, and at their destinations they may or may not be living with other family members or kin. Most often, they remain in contact with their families and family ties have not been broken, unless by conflict, but they do include runaways and also orphan children.”

<sup>899</sup> Palmary, I. Forced migration study programme (UNICEF) ‘For better implementation of migrant children’s in South Africa’. Available at: [https://www.unicef.org/southafrica/SAF\\_resources\\_migrantchildrens.pdf](https://www.unicef.org/southafrica/SAF_resources_migrantchildrens.pdf) (10 February 2019). This includes the right to education and access to basic health to state the least.

<sup>900</sup> Lubaale (2011: 24). See also the Consortium for refugees and migrants in South Africa (CoRMSA) report.

<sup>901</sup> *Ibid.* Lubaale argues that that within the South African Commercial farms, approximately 70 to 85 percent of Zimbabweans work on these farms, children constituting the biggest number of labourers. Most children are found in Free State, Limpopo, Kwa-Zulu Natal and Gauteng (north of Soutpansberg) provinces.

<sup>902</sup> Sandton Chronicle (2016) ‘Using children as begging pawns’ Available at: <https://sandtonchronicle.co.za/163245/using-children-as-begging-pawns/> (Accessed 8 February 2019).

<sup>903</sup> Sandton Chronicle (2016) ‘Using children as begging pawns’ Available at: <https://sandtonchronicle.co.za/163245/using-children-as-begging-pawns/> (Accessed 8 February 2019).

<sup>904</sup> Van de Glind (2010:1).

<sup>905</sup> Lubaale (2011: 25).

<sup>906</sup> *Ibid.* The basic services include access to education, health care, protection from violation of their rights to state but the least.

<sup>907</sup> *Ibid.*

for protection.<sup>908</sup> Children migrating internally from rural to urban areas also experience similar challenges. They are not excluded from the exploitative and abusive working conditions. Given the grievous conditions under which children engage in, calls for banning of child labour are inevitable. Although a number of South African laws including the Children's Act make a provision on the protection of children, particularly foreign nationals in theory, this is not so in practice especially for undocumented or illegal child immigrants. Banning<sup>909</sup> of child labour may also not be sufficient given the circumstances where these children come from. However, it is crucial to ensure that children are protected from exploitative work through legal and social measures in spite of their nationality in South Africa.<sup>910</sup> The CRC has placed an obligation upon states to ensure protection of all children against dubious and hazardous working environments.<sup>911</sup>

#### 4.2.6 Culture

While incidences of child labour in South Africa cannot be attributed solely to socioeconomic constraints, predominance of orphan hood and high levels of migration, cultural and social norms also contribute greatly to the prevalence of child labour.<sup>912</sup> In fact, it is argued that child labour is 'deeply ingrained' (author's emphasis) in cultural as well as social traditions.<sup>913</sup> Throughout African history, children have performed and continue to perform in one way or another some work for both the family and community.<sup>914</sup> Although work is culturally considered and accepted as a mechanism through which children are integrated into the society, a means of transition from childhood to adulthood and acquisition of knowledge and skills for survival purposes,<sup>915</sup> some work may however be injurious and exploitative.<sup>916</sup> Granted that children ought to or are socialised to work, African culture fails to distinguish

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<sup>908</sup> *Ibid.*

<sup>909</sup> *Ibid.*

<sup>910</sup> South African Law Commission's Issue Paper 13 of project 110 on the review of the Child Care Act (1998) 33.

<sup>911</sup> CRC GC 6 of 2005 on the treatment of unaccompanied and separated children outside their country of origin. See also UN.Doc.CRC/GC/2005/6, para 12.

<sup>912</sup> International Labour Organisation (ILO) "Causes" Available at: [https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS\\_248984/lang--en/index.htm](https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_248984/lang--en/index.htm) (Accessed 10 February 2019). According to the report, not only does culture and social attitudes contribute to child labour. But child labour is embedded in societal cultural practices. This further explained will entail that child labour is a culture, that is part of who children are and cannot be seen as wrong.

<sup>913</sup> *Ibid.*

<sup>914</sup> Lubaale (2011:23). See also Nhenga (2008:13) "African culture thus conceptualises childhood in terms of intergenerational obligations of support and reciprocity, and regards it as a period of rigorously enforced obedience to persons in authority. The intergenerational dependency of African families ensures that the discharge of parental obligations towards children in tender years creates reciprocal obligations for the children to support their parents at all times. In this respect, a child is a resource to be utilised, a view that is fundamentally at odds with international laws on child labour."

<sup>915</sup> Virginia Morrow & Jo Boyden (2010) 'Social values and child labour' University Press Scholarship Online.

<sup>916</sup> Lubaale (2011:23).

between child work and child labour, despite legal definitions and legislation prohibiting child labour asserts Lubaale.<sup>917</sup> This may be a result of failure of many cultures to define a child. While a child may be defined on biological terms or age, Nhenga contends that, in most Southern African cultures, a definition of a child is attached to the child's ability to perform work given, attainment of marital status, puberty, ability to reproduce or circumcision to mention.<sup>918</sup> Therefore, despite one's age, attainment and ability to perform the above, results in a child transitioning into adulthood.<sup>919</sup> In South Africa, a male child particularly within the Xhosa culture is said to be an adult after having gone through circumcision.<sup>920</sup> Through this rite of passage, a male child is considered a man (adult), therefore fully equipped for adulthood responsibilities in spite of age.<sup>921</sup> While the child's development is positively impacted by this growth, this may however negatively affect the health, mental development of the child as well as education.<sup>922</sup> The cultural acceptance of duties and responsibilities placed on children without considering the negative effects of such duties impedes on laws and policies against exploitative work children engage in. That said, the regulation of child labour in Southern African will continue to be problematic if the cultural issues surrounding child work are not resolved. It is therefore argued that, to resolve child labour problems, both children and communities should be afforded opportunities to express their perceptions/ understanding of work pertaining to children.<sup>923</sup> Van Bueren stresses that the only way we can have dialogues on child labour at great length is by understanding their social and cultural values.<sup>924</sup> Van Bueren further contends that culture is not static but evolves, therefore exploitative cultural practices including work done by children should be in harmony with universal standards that prohibit child labour.<sup>925</sup> Although

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<sup>917</sup> *Ibid.*

<sup>918</sup> Nhenga (2008: 175).

<sup>919</sup> *Ibid.* Although some children may not achieve the statuses as stated above and below the legal age of a child. Their ability to perform the task at hand, they have obligation to perform duties and responsibilities as required by both the family and community.

<sup>920</sup> Lubaale (2011:23). It is crucial to state that in the (Nguni tribes) Ndebele culture both males and females alike go through initiation process thus marking passage from childhood to adulthood. It would not be long until the initiates enter into marriage as they are considered adults. This is irrespective of age. Initiates may be between the age of 15 years and 18 years or younger.

<sup>921</sup> *Ibid.* See also KG Bahrens in 'Traditional male circumcision: Balancing cultural rights and the prevention of serious, avoidable harm' (2014), Vol. 104, No. 1. Available at: <http://www.scielo.org.za/pdf/samj/v104n1/10.pdf> (Accessed 11 February).

<sup>922</sup> *Ibid.*

<sup>923</sup> *Ibid.*

<sup>924</sup> Bueren V. G. (1998) 'Children's Rights: Balancing traditional values and cultural plurality' in G Douglas and L Sebba (eds) Children's rights and traditional Values. 17.

<sup>925</sup> *Ibid.*

the Republic of South Africa through legislation and policies prohibit exploitative work and harmful cultural practices,<sup>926</sup> children continue to be victims of such.

### **4.3 Legal framework and policies prohibiting child labour in South Africa**

By means of examining South Africa's legislation, policies and strategies on child labour, this thesis aims to highlight best practices of which not only the Kingdom of Lesotho but the African continent may emulate, but also learn from in order to address child labour challenges. While governments globally in the past gave little attention to issues concerning and affecting children particularly issues on child labour. Veeran.<sup>927</sup> Currently focus issues concerning children's rights particularly in relation to child labour have been apparent.<sup>928</sup> The evident awareness of children's rights through international campaigns and conferences continue to buttress the importance and need for governments to address children's rights including child labour concerns.<sup>929</sup> As a result many African countries including the Republic South Africa have heeded to the call through enactment of pieces of legislation aimed at protecting the rights of children and addressing child labour challenges.<sup>930</sup> Said to be one of the highly progressive Constitutions universally, the Republic of South Africa's Constitution not only makes provision for the protection of children's rights in it but it also prohibits children's involvement in exploitative work.<sup>931</sup>

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

The Constitution of South Africa expressly makes provision for the protection of children against economic exploitation. In accordance with Section 28, protection of children against

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<sup>926</sup> Department of Social Development: Key messages 2016 child protection week.

<sup>927</sup> Veeran, V. (2003). 'Combating child labour – A South African challenge definitions and measurement of child labour.

<sup>928</sup> As outlined in the United Nations Sustainable Development Goal (SDG) Target 8.7 that aim to abolish child labour by 2025.

<sup>929</sup> *Ibid.* See The Oslo Conference on Child Labour (UNICEF)1997, the Global Conference on Child Labour and Forced Labour, Buenos Aires in 2017, Brasilia Global Child Labour Conference in 2013 and The Hague Global Child Labour Conference in 2010 to mention but a few.

<sup>930</sup> Kannapathi (2015:39).

<sup>931</sup> Section 28 of the Constitution of South Africa.

exploitative labour practices is guaranteed.<sup>932</sup> The Constitution prohibits children from performing work that is not age appropriate, placing at risk the wellbeing, education, physical or mental health or spiritual or moral or social development of the child.<sup>933</sup> Pursuant to Section 28 (2), the Constitution emphasises the importance of the ‘best interest of a child’ in all matters pertaining to a child.<sup>934</sup> Therefore conforming also to the international human rights standards as provided under CRC, ILO conventions and ACRWC.

It is therefore crucial to conclude that, provisions under Section 28 of the Constitution not only prohibit but are also against the practise of child labour, stressing thereof an obligation upon the state to ensure that children are protected from work detrimental to their wellbeing. Lubaale contends that protection of children against harmful labour practices should go beyond setting minimum age of employment.<sup>935</sup> The author further argues that the recognition and realisation of fundamental rights pertaining to children, which includes the right to basic health, shelter, nutrition, care and social services, will help protect children from exploitative labour practices.<sup>936</sup> Although the Constitutional provisions on protection of children against exploitative practices are accentuated, many children continue to be victims of child labour. However, more pieces of legislation have been enacted in South Africa as a means of addressing work that is destructive and exploitative. This includes:

#### **4.3.2 Basic Conditions of Employment Act No. 75 of 1997 (BCEA)**

Drawing on the principles of the International Labour Organisation Minimum Age Convention, 1973 (ILO Convention 138),<sup>937</sup> the Republic of South Africa enacted the Basic Conditions of Employment Act of 1997 (BCEA) as a legal instrument directed at addressing

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<sup>932</sup> Section 28 of the Constitution of South Africa. The Constitution acknowledges and recognises that children need special protection as one of the most vulnerable groups within our societies. The rights of children are therefore prioritised and matter of concern in the country where many children continue to be victims of abuse and exploitation. Under section 28, the state is given a clear mandate, that is setting out clear interpretation, limitations, abilities, purposes and application of the act with regards to addressing children’s rights, rightly asserts Kannapathi.

<sup>933</sup> Section 28 (e) and (f) (i) (ii).

<sup>934</sup> Section 28 (2). While there is no standard definition of ‘best interest’ of a child, it is at the court’s discretion to determine services and actions that best suit caring for a child. A number of factors may be considered including safety and wellbeing of a child, which remain paramount. Therefore, this includes, health, education, social, moral and physical development, safety to mention but a few. See article ‘determining the best interest of the child’ available at: [https://www.childwelfare.gov/pubPDFs/best\\_interest.pdf](https://www.childwelfare.gov/pubPDFs/best_interest.pdf) (Accessed 16 February 2019).

<sup>935</sup> Lubaale (2011:26).

<sup>936</sup> Lubaale (2011:26).

<sup>937</sup> The Republic of South Africa ratified the International Labour Organisation Minimum Age Convention, 1973 (ILO Convention 138) on the 30<sup>th</sup> March 2000.

child labour issues, amidst the regulation of work in formal employment.<sup>938</sup> The Convention obligates state parties to undertake to adopt national policies aimed at effectively eradicating child labour and therefore setting a minimum age of employment consistent with a child's physical and mental development.<sup>939</sup>

Not only does the Basic Conditions of Employment Act <sup>940</sup>regulate the employment of children in SA, the Act further prohibits the employment of children less than 15 years of age.<sup>941</sup> Furthermore, the Act provides that children below the minimum school leaving age may not be employed.<sup>942</sup> The Act further prohibits the employment or engagement of children in work that is age inappropriate thus exposing them to risk and harm.<sup>943</sup> Employment of children without consideration of the provisions under section 43 (1) and (2) contravenes the Act thus constituting an offense.<sup>944</sup>

While the majority of child labour practices take place in informal sectors and within the confines of the family, it is important to note that provisions of the Act do not take into consideration children employed within the informal sector. Nhenga contends therefore that the BCEA fails to comply with Minimum Age Convention, the Convention on the Worst Forms of Child Labour, the CRC or the ACRWC aimed at eradicating child labour in all economic spheres.<sup>945</sup> Furthermore, Lubaale rightly contends that, the Act does not respond to conditions that breed and proliferate child labour.<sup>946</sup> This includes HIV, unemployment, undesirable socio economic conditions, cultural perceptions, poverty and child headed households.<sup>947</sup> While SA grapples with enforcement of the Act,<sup>948</sup> it is however considered to have made progress in addressing child labour as opposed to other African states including Lesotho.

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<sup>938</sup> Section 2 of the Basic Conditions of Employment Act of 1997. "The purpose of this Act is to advance economic development and social justice by fulfilling the primary objects of this Act which are— (a) to give effect to and regulate the right to fair ~about practices conferred b] section 23( 1 ) of the Constitution— (i) by establishing and enforcing basic conditions of employment; and (ii ) by regulating the variation of basic conditions of employment; (b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation."

<sup>939</sup> Article 1 of the Minimum Age Convention, 1973 (Convention concerning Minimum Age for Admission to Employment).

<sup>940</sup> Sections 43-48 of the Basic Conditions of Employment Act of 1997.

<sup>941</sup> Section 43 (1) (a) of the Basic Conditions of Employment Act of 1997.

<sup>942</sup> Section 43 (1) (b) of the Basic Conditions of Employment Act of 1997.

<sup>943</sup> Section 43 (2) (a) & (b) in this case placing children's wellbeing, education, physical or mental health, or spiritual, moral or social development as risk. See also Section 28 (1) (f) (i) & (ii) of the Constitution of South Africa.

<sup>944</sup> Section 43 (3) of the Basic Conditions of Employment Act of 1997

<sup>945</sup> Nhenga (2008:101).

<sup>946</sup> Lubaale (2011: 27).

<sup>947</sup> *Ibid.*

<sup>948</sup> Nhenga (2008:101). See also Lubaale (2011: 27).

### 4.3.3 The Children's Act 38 of 2005 (as amended by the Children's Amendment Act 41 of 2007).

The Child Care Act of 1983 enacted under apartheid government failed to conform to the Bill of Rights as well as the country's obligations to the international treaties including the CRC and ACRWA thus undermining the fundamental rights of children.<sup>949</sup> This therefore called for revision and the enactment of new laws that recognised children's rights as constitutional rights. Furthermore, with the great magnitude of social issues facing many children and families in SA, a new approach had to be adopted as a means of addressing the problems.<sup>950</sup> These issues which include high levels unemployment, poverty, and the HIV epidemic have not only affected children socially but have placed them in a state of vulnerability.<sup>951</sup>

The enactment of the Children's Act No. 38 of 2005 presented a new legal framework aimed at protecting and caring for children as well as promoting children's rights. The Children's Act prohibits child labour and the exploitation of children.<sup>952</sup> Under the Act, child slavery, servitude, forced labour, use of children for commercial sex, employment of children in trafficking and child labour (that is work detrimental to the wellbeing of a child) amongst others were recognised as constituting elements exploitation, therefore prohibited.<sup>953</sup> The amendment to the Children's Act, by Act 41 of 2007 resonates with the SA Bill of Rights, recognising thereof the vulnerability of children and the need to protect them. Pursuant to Section 7 (I) (i), the Act makes provision for the best interest of a child, stating that a child must be protected from any physical or psychological harm resulting from child maltreatment, abuse, neglect, exploitation or exposing a child to violence or other harmful behaviour.<sup>954</sup> Furthermore, the Act recognises the need for childcare and protection services as well as support for children living in child headed households.<sup>955</sup> In accordance with the Act, abandoned and orphaned children, children living, working and begging in the streets

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<sup>949</sup> Proudlock, P. & Jamieson, L. 'The Children's Act: Providing a strong foundation for caring for vulnerable children' (2010) Available at: [http://www.ci.uct.ac.za/sites/default/files/image\\_tool/images/367/publication/2010/childrens\\_act\\_march\\_april2010.pdf](http://www.ci.uct.ac.za/sites/default/files/image_tool/images/367/publication/2010/childrens_act_march_april2010.pdf) (Accessed 15 February 2019).

<sup>950</sup> *Ibid.*

<sup>951</sup> *Ibid.*

<sup>952</sup> Section 141 of the Children's Act No. 38 of 2005 (as amended by the Children's Amendment Act 41 of 2007).

<sup>953</sup> *Ibid.*

<sup>954</sup> Chapter 2, Section 7(I) (i) of the Children's Act No. 38 of 2005 (as amended by the Children's Amendment Act 41 of 2007). This includes child labour practices which constitute exploitative and abusive activities.

<sup>955</sup> Section 105 & Section 137 of the Children's Act respectively. Pursuant to Sec 137 (9), "A child-headed household may not be excluded from any grant, subsidy, aid, relief or other assistance or programmes provided by an organ of state in the national, provincial or local sphere of government solely by reason of the fact that the household is headed by a child"



need to be cared for and protected.<sup>956</sup> The Act further provides that, protection should be extended to victims of child labour, neglected children and those who have been exploited or exposed to exploitative conditions and circumstances deemed detrimental to the child's physical, mental and social wellbeing amongst others.<sup>957</sup> The Act not only places an obligation to protect upon the state, but also emphasises the responsibility to ensure children are taken care of and are protected by designated social workers<sup>958</sup>. It is evident therefore, that the Act is in conformity with both international instruments on the rights of children and the Constitutional obligations.<sup>959</sup> Therefore, presenting solutions to child labour problems and measures aimed at eradicating child labour.

However, it is argued that, while the provisions of the amended Act truly seek to address children's issues, promoting and protecting children's rights through various interventions, it does not sufficiently respond to the circumstances under which children engage in exploitative labour.<sup>960</sup> For instance, some interventions fall short of the needs of both families and children due to the everyday increase in demand as social problems continue to be persistent. The battle of raising funds and grants for children within child headed households continue unabated.<sup>961</sup> Furthermore, the Act fails to recognise the need for protection of child migrant labourers. While not all children may benefit and enjoy the rights as provided in the Act, it is important therefore, that children, families, communities and policy makers are well trained and informed about the application of this legislation for effective implementation, contends Lubaale.<sup>962</sup>

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<sup>956</sup> Section of 150 of the Children's Act

<sup>957</sup> *Ibid.*

<sup>958</sup> Section 150 (2) (a) of the Children's Act No. 38 of 2005.

<sup>959</sup> The Act under Section 6(2) of the Children's Act provides that all proceedings, actions or decisions in matters concerning a child must respect, protect, promote and fulfil the child's rights as set out in the Bill of Rights. The Act not only conforms to the bill of rights but also to the UNHR, CRC, ACRWC principles on the protection and promotion of the rights of children universally.

<sup>960</sup> Lubaale (2011: 28).

<sup>961</sup> Proudlock, P & Jamieson, L. (2008) 'Guide to the Children's Act no 38 of 2005 (as amended by the Children's Amendment Act no 41 of 2007)' Children Institute, University of CapeTown. Available at: <http://www.ngopulse.org/press-release/guide-childrens-act-no-38-2005> (Accessed 15 February 2019). See also Lubaale (2011).

<sup>962</sup> Lubaale (2011: 28).

#### 4.3.4 The School's Act No. 84 of 1996

The link between education and child labour cannot be denied. According to the ILO report, education is one of the principal elements in the prevention of child labour.<sup>963</sup> The report states that as long as child labour prevails, education for all cannot be achieved.<sup>964</sup> Sending children to school therefore reduces their likelihood to engage in child labour practices. Madziwa rightly contends that free and compulsory basic education will help control and ultimately eliminate child labour within the Southern Africa region.<sup>965</sup> According to Article 2 (3) of the Minimum Age Convention, 'the minimum age for employment should not be less than the age of completion of compulsory schooling and in any case, not less than fifteen years.'<sup>966</sup> Both Section 43 of BCEA and Chapter 2 of the School's Act comply with the Convention. The School's Act makes provision for compulsory attendance and places an obligation upon the state to ensure that children are in school until the age of 15.<sup>967</sup> However, it is worth noting that because of many children often combine school and work the enforcement of Act remains problematic. Although the Act indirectly addresses how to respond to child labour, it fails to sufficiently respond to conditions that breed and force children into child labour; this includes poverty, HIV and unemployment to state the least. With that said, compulsory attendance or education does not entirely address factors proliferating child labour and its effects. Some children may go to school and work thereafter, particularly children in domestic work or working in family businesses.

#### 4.3.5 The Sexual Offences Act No. 32 of 2007

Many children involved in child labour are often subjected to forms of abuse including sexual exploitation at the hands of employers.<sup>968</sup> The exploitation of children sexually not only constitutes worst forms child labour but also a criminal offence punishable by law asserts

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<sup>963</sup> International Labour Organisation 'Child labour and education for all' Available at: <https://www.ilo.org/ipec/Action/Education/ChildlabourandEducationforAll/lang--en/index.htm> (Accessed 15 February 2019).

<sup>964</sup> *Ibid.*

<sup>965</sup> Madziwa (2014:56). He argues that if free and compulsory basic education is made available to all in accordance to Article 7(2) of the Worst Forms of Child Labour, states will be conforming to the international treaties that advocate for education for all.

<sup>966</sup> Article 2 (3) of the Minimum Age Convention.

<sup>967</sup> Chapter 2, Article 3 (1) of the South African School Act No. 84 of 1996.

<sup>968</sup> Ecap: The landscape of sexual exploitation of children in South Africa (2019) available at: <https://www.ecpat.org/wp-content/uploads/2019/10/Landscape-of-Sexual-Exploitation-of-Children-in-South-Africa-ECPAT-research-October-2019.pdf> (accessed 25 November 2020) 14.

Cullen.<sup>969</sup> Given the vulnerability of women and children, the Sexual Offences Act of 2007 recognises the likelihood of them being victims of sexual offenses, including sexual exploitation.<sup>970</sup> While the Act does not directly address child labour, it however prohibits sexual exploitation of a child.<sup>971</sup> Pursuant to Section 20, the Act provides that anyone who compels a child to engage in commercial sex work shall be found guilty.<sup>972</sup> However, the Act fails to address socioeconomic challenges amongst others that promote exploitative child labour practices, such as commercial sex where sexual exploitation is evident.<sup>973</sup> Lubaale further contends that the Act is silent on other rights fundamental to children, particularly those involved in sexually exploiting labour practices.<sup>974</sup> Therefore the effective protection of such children requires a realisation of children’s rights holistically as provided in different human rights instruments.<sup>975</sup>

#### **4.3.6 The South Africa’s Social Assistance Act No.13 of 2004 (SAA)**

Under the South African Assistance Act, social security for children is provided through social grants. The legislation undertakes to provide social grants to children in need of support, those in need of foster care and the disabled to mention but a few.<sup>976</sup> This includes Child Support Grant (CSG), Care Dependency Grant (CDG) and Foster Child Grant (FCG). Administered monthly by the South Africa Social Security Agency (SASSA), Child Support Grant (GSG) provided in accordance to Section 6 of the SAA, is often given to the primary care givers<sup>977</sup> of children in need. The grant is aimed at assisting children in lower income families and those living in poverty.<sup>978</sup> Kannapathi asserts that not only does the CSG relieve families of economic pressures but have also created means for survival<sup>979</sup>hence improving

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<sup>969</sup> Cullen (2007:43) Chapter 3. Child Labour and The Sexual and Criminal Exploitation of Children in The Role of International Law in the Elimination of Child Labour.

<sup>970</sup> The Sexual Offences Act of 2007 Preamble.

<sup>971</sup> Section 17 Of The Sexual Offences Act of 2007.

<sup>972</sup> Section 20 The Sexual Offences Act of 2007

<sup>973</sup> These socio economic challenges include poverty, unemployment, HIV and HIV related illness and so on.

<sup>974</sup> Lubaale (2011:29).

<sup>975</sup> *Ibid.* See also the Films and Publications Amendment Act no. 11 of 2019, Section 3 (d) “criminalise the possession, production and distribution of child pornography” and (e) “create offences for non-compliance with this Act”.

<sup>976</sup> Chapter 2 Section 4 of The South Africa’s Social Assistance Act No.13 of 2004.

<sup>977</sup> Primary caregivers include parent, grandparent or a child over 16 heading a family.

<sup>978</sup> Gabrielle Kelly (2017) ‘Everything you need to know about social grants’ Available at: [https://www.groundup.org.za/article/everything-you-need-know-about-social-grants\\_820/](https://www.groundup.org.za/article/everything-you-need-know-about-social-grants_820/) (Accessed 16 February 2019).

<sup>979</sup> Kannapathi (2015:45). See also Lubaale (2011:29).

the standard of living of many poor children.<sup>980</sup> The Child Support Grant is said to be a poverty alleviating strategy that has helped in the realisation of other rights fundamental to children for instance, the right to education. With many children in schools, the chances of them engaging in exploitative child labour activities are limited.<sup>981</sup>

It is apparent that the South African social security grants have responded positively to some of the circumstances that breed child labour. Burdens of poverty and unemployment although not entirely, are reduced. One would therefore argue that the Act although indirectly, attempts to address and alleviate the main problems causing child labour practices. However, not all children have access to the grants due to unavailability of the proper documentation required in order to apply for the grant, this includes children particularly from improvised households and rural areas, asserts Kannapathi.<sup>982</sup> Furthermore, the Act is not applicable to non-South African child migrant labourers who are predominantly found in exploitative labour practices within the agricultural sector, selling or begging on the streets.<sup>983</sup>

#### **4.4 National policy framework**

Though it is evident that the national legislative conforms to an extent with the provisions under various international human/ children's rights conventions, in addressing child labour and an attempt to eradicate its prevalence, it is however fundamental to note that the laws prohibit exploitative child labour practices. The legislation however, fails to respond to factors contributing to child labour and its proliferation. The Republic of South have adopted policies that will help achieve the desired goal of abolishing child labour in accordance with international treaties on the rights of children.

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

A Survey of Activities of Young People (SAYP) conducted in 2015 showed that at least 2.4 million of the 11, 2 million of children between the ages of 7 and 17 years were involved in

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<sup>980</sup> *Ibid.*

<sup>981</sup> *Ibid.* See also Lubaale (2011:29).

<sup>982</sup> *Ibid.*

<sup>983</sup> South African Assistance Act 13 of 2004 See Preamble "AND in order to assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent government in respect of social assistance for the Republic as a whole" this clearly stipulates that grants are for South African only.

economic work.<sup>984</sup> It is fundamental to note that there has been a decline in child labour from 79 000 in 2010 to 577 000 in 2015.<sup>985</sup> Children thought it was their duty to work and provide for their families. Consequently, this called for urgent intervention as many children suffered human rights infringements. Through intense consultations and engagements within a number of government departments,<sup>986</sup> between various stakeholders and children engaging in different forms of child labour in 2003, the Republic of South Africa adopted the Child Labour Programme Action (CLPA).<sup>987</sup> The adoption of the CLPA is in accordance with Article 1 of ILO Convention 138 and the Convention on the Worst Forms of Child Labour (WFCL) as well as national legislation.<sup>988</sup> Divided into three phases, the CLPA commenced in 2003, and ended in March 2017.<sup>989</sup> The programme was aimed at preventing, reducing and ultimately eradicating child labour. The CLPA identifies social security, education, engaging civil society as well as adopting poverty alleviation strategies as some of the keys areas to tackle in order to address child labour in South Africa.<sup>990</sup>

It is worth noting that the programme achieved notable results. This includes child labour awareness campaigns, reduction of poverty within poor households through grants, at least 55% of public schools offered free education, making it easy for children to access education and strengthening legislative measures by approving the Children's Act and its amendment in 2007.<sup>991</sup> Furthermore, different sectors or departments also worked together in establishing

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<sup>984</sup> Survey of the Activities of Young People (SAYP) (2015). Many children worked within the informal sector where both boys and girls were equally involved, available <http://www.statssa.gov.za/publications/P0212/P02122015.pdf> (accessed 25 November 2020)

<sup>985</sup> *Ibid.* the Survey provides that "highest proportion of children who were engaged in market production activities were in the Trade industry". Moreover "in 2015, 34,2% of working children were exposed to at least one hazardous working condition. Boys (35,5%) were more likely to be exposed to hazardous conditions compared to girls (32, 9%)."

<sup>986</sup> See also Child Labour Programme of Action: Department of Labour Progress Report. Available at: <https://pmg.org.za/committee-meeting/11783/> (Accessed 17 February 2019). This includes the department of labour, education, justice, Police, social development amongst others as well as both the provincial and local government.

<sup>987</sup> Department of Labour Publication 'The national child labour programme of action for South Africa Phase two: 2008-2012. Available at: <http://www.labour.gov.za/DOL/downloads/documents/annual-reports/child-labour-programme-of-action-for-south-africa/2013/childlabourprog2017.pdf> (Accessed 17 February 2019).

<sup>988</sup> Article 1 of the ILO C 138 - Minimum Age Convention, 1973 and Article 1 and 5 of the ILO C 182 – Worst Forms of Child Labour Convention 182. (CLPA), noting that the programme was accepted by Government in 2003, and was in compliance with the Constitution, as well as the Basic Conditions of Employment Act of 1997(BCEA)

<sup>989</sup> Department of Labour Publication 'The national child labour programme of action for South Africa Phase 3: 2013-2017. Phase 1 commencing from 2003 to 2008, Second phase starts from 2008/9 to 2012 and last phase is from 2012/13 to 2017. Available at : <https://children.pan.org.za/node/9640> ( Accessed 17 February 2019).

<sup>990</sup> The National Child Labour Programme of Action For South Africa: Phase two: 2008- 2012. 50 and introduction.

<sup>991</sup> Parliamentary Monitoring Group (2010). See also Child Labour Programme of Action: Department of Labour Progress Report. Available at: <https://pmg.org.za/committee-meeting/11783/> (Accessed 17 February 2019). See The National Child Labour Programme of Action for South Africa: Phase two: 2008- 2012. "Children's Act as amended in 2007 deals explicitly with child trafficking, children used by adults to commit crime (CUBAC) and the commercial sexual exploitation of children. Thus reinforcing also the provisions on forced labour in the Basic Conditions of Employment Act" Available at:

the implementation and inter-sectoral committees on child labour. These committees emphasised the importance of working with present structures to ensure that CLPA was both effective and efficient.<sup>992</sup> Given the positive outcomes of CLPA, one would state that indeed the Republic of South has made progress in ensuring the protection of children against exploitative child labour practise as provided in international conventions and national legislation. Furthermore, the CLPA sufficiently responds to circumstances that breed child labour such as poverty, unemployment amongst others.<sup>993</sup> Although Lubaale contends that the lack of implementation and accountability have resulted in yielding little in practice<sup>994</sup>, it is however fundamental to note that unlike other African countries, South Africa has made notable progress in reducing child labour through this programme.<sup>995</sup> This calls for other countries including Lesotho to emulate such positive practice in order to tackle the issue of child labour.

#### **4.4.2 The National Programme of Action for Children in South Africa (NPAC)**

Approved in 1996, the National Programme of Action framework consolidated all plans and policies developed by the government and non-governmental organisations to ensure promotion and protection of children's welfare and development, as well as the implementation of rights.<sup>996</sup> These include the right to survival, protection, development and participation.<sup>997</sup> NPAC prohibits the use of children in work detrimental to their wellbeing or education.<sup>998</sup>

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<http://www.labour.gov.za/DOL/downloads/documents/annual-reports/child-labour-programme-of-action-for-south-africa/2012/Child%20Labour%20Programme%20of%20Action.pdf> (Accessed 17 February 2019) Introduction.

<sup>992</sup> *Ibid.*

<sup>993</sup> Parliamentary Monitoring Group (2010). See also Child Labour Programme of Action: Department of Labour Progress Report.

<sup>994</sup> Lubaale (2011:30).

<sup>995</sup> Parliamentary Monitoring Group (2010). See also Child Labour Programme of Action: Department of Labour Progress Report.

<sup>996</sup> The National Programme of Action for Children in South Africa (NPAC). Available at: <https://www.gov.za/documents/national-programme-action-children-framework> (Accessed 17 February 2019). While the government sector responsible for ensuring the implementation of NPA is the Welfare and Population Development sector, the supporting actors include s and Culture, Science and Technology, Education, Health, Justice, Labour, Posts, Telecommunications and Broadcasting, RDP, South African Communication Services, South African Police Services, Sports and Recreation.

<sup>997</sup> Department of women, children and people with disabilities. National Plan of Action for Children: Discussion document for children. Available at: <http://www.childlinesa.org.za/wp-content/uploads/national-plan-of-action-for-children-discussion-document-for-children.pdf> (accessed 17 February 2019). NPA is formed under the principles of the Bill of Rights as provided in the Constitution and in accordance to the CRC, and ACRWC.

<sup>998</sup> The National Programme of Action for Children in South Africa (NPA).

Furthermore, the NPAC provides that children should be protected from exploitative labour practices.<sup>999</sup> According to the NPAC report, many of the desired goals were still not achieved due to a lack of cooperation and teamwork between departments responsible for ensuring the effective implementation of the NPAC.<sup>1000</sup> It has been moreover been argued that, failure to monitor and evaluate progress of the NPAC resulted in a lack of response to factors contributing to child labour and its dire consequences affecting children.<sup>1001</sup> Lubaale further contends that, the NPAC has no system for checks and balances in order to monitor compliance and progress.<sup>1002</sup> It is however important to note that, children's rights remain the central concern for the NPAC.

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

While it is evident that children involved in child labour are exposed to all sorts of abuse and exploitation, the Republic of South Africa under the Department of Social Development, convoked an inter-sectoral body, the National Committee on Child Abuse and Neglect (NCCAN) in 1996 as a part of the NPAC.<sup>1003</sup> Recognising the existence of unclear strategies with regards to child abuse and neglect, lack of resources to aim the protection of children particularly in rural areas and inadequate child protection systems amongst others,<sup>1004</sup> NSCAN recognises child labour as form of abuse and exploitation, thus denying children rights to education, rest and leisure.<sup>1005</sup> Commercial sex work is said to be the most injurious form of child labour.<sup>1006</sup> Under the strategy, children living on the street, children without caregivers, poverty-stricken children, displaced or refugee children and those affected by HIV/AIDS need special protection.<sup>1007</sup> It is worth noting that these children are often found engaging in child labour for survival, therefore prone to abuse. However, due to the lack of

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<sup>999</sup> *Ibid.*

<sup>1000</sup> *Ibid.* for instance, children living the streets are prone to engage in exploitative labour activities thus placing their lives in danger. Work these children usually engages in is detrimental to their wellbeing, exposing them to substance abuse, prostitution and other illicit activities. The department responsible has failed in reaching out to children in the streets and has failed to reduce their number, argues one member of the panel during the briefing meeting on National Plan of Action for Children 2012-2017; Report of National Women's Conference, August 2011: DWCPD briefing.

<sup>1001</sup> *Ibid.*

<sup>1002</sup> Lubaale (2011: 30).

<sup>1003</sup> Chapter 10: Child protection. Available at: [http://www.ci.uct.ac.za/sites/default/files/image\\_tool/images/367/childrens\\_act/salrc/12-dp103-ch10.pdf](http://www.ci.uct.ac.za/sites/default/files/image_tool/images/367/childrens_act/salrc/12-dp103-ch10.pdf) (Accessed 19 February 2019).354.

<sup>1004</sup> *Ibid.* while in time past the" NSCAN remained uncertain for the next few years, but it is now under consideration by state departments with core child protection responsibilities, under the leadership of the Department of Social Development"

<sup>1005</sup> *Ibid.*

<sup>1006</sup> *Ibid.*

<sup>1007</sup> *Ibid.*

proper implementation policies, lack of resources and poor service delivery, many children continue to endure abuse and exploitation.<sup>1008</sup> It is however important to note that in recent years South Africa made progress in addressing issues concerning sexual exploitation, abuse and maltreatment of children.<sup>1009</sup> It is argued that the progress in protecting children against sexual exploitation can be attributed to strong legal measures.<sup>1010</sup>

#### 4.4.4 Organisations and Non-Governmental Organisations in South Africa

With the help of a number of organisations including non-governmental organisations (NGO) and non-profit groups promoting and advocating for the rights of children, the Republic of South Africa witnessed commendable progress in addressing child labour issues. These organisations include Children's Rights groups, South African Congress of Trade Unions (COSATU), which called for the end of child labour and protection of children against exploitative labour practices as well as human rights lawyers groups, which promote human rights through legal assistance in labour rights related issues, refugee rights among others.<sup>1011</sup> Furthermore, founded on the principles of United Nations Conventions on the Rights of Child, Children First is one of the visible NGOs operating in South Africa through sound policies, advocacy and research on children's rights and protection.<sup>1012</sup> Also represented in more than 120 countries including Lesotho, Save the Children has also done a commendable work in South Africa by promoting and protecting children's rights.<sup>1013</sup> According to the organisation's Sustainable Development Goals (SDGs), by the year 2030 extreme poverty should be eradicated in South Africa and quality health care and education achieved.<sup>1014</sup> It is evident therefore that the organisation does not only seek to protect the rights of children but

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<sup>1008</sup> Rose L. September 'The progress of child protection in South Africa' (2006) 15 *International Journal of Social Welfare* 67.

<sup>1009</sup> Briefing Paper: Sexual exploitation in South Africa available at: <https://www.ecpat.org/wp-content/uploads/2019/10/South-Africa-Briefing-Paper-Sexual-Exploitation-of-Children-October-2019.pdf> (accessed 25 November 2020). See also Safer Spaces report: child maltreatment in South Africa available at: <https://www.saferspaces.org.za/understand/entry/child-maltreatment-in-south-africa> (accessed 25 November 2020).

<sup>1010</sup> *Ibid.*

<sup>1011</sup> Mambi (2016:18). See also Congress of South African Trade Unions (COSATU) 'COSATU demands an end to child labour' Available at: <http://www.cosatu.org.za/show.php?ID=7600> (Accessed 18 February 2019). The human rights lawyer's organisations include the Lawyers for Human Rights and Black Sash contribute to the realisation of human rights and the need to protect them.

<sup>1012</sup> *Ibid.*

<sup>1013</sup> *Ibid.* Save the Children also aims at ensuring that children are protected from violence, ensuring that quality education for all is accessed by all children, ensuring that children receive good nutrition and are healthy. As lack of these contributes to child labour prevalence. See also Save the Children Available at: <https://www.savethechildren.org.za/> (Accessed 17 February 2019).

<sup>1014</sup> Save the Children: Why are the SDGs Important? Available at: <https://www.savethechildren.org.za/what-we-do/whatever-it-takes/sustainable-development-agenda> (Accessed 17 February 2019).



respond also to the conditions that breed and proliferate child labour not only in South Africa but the entire African continent.

Furthermore, in partnership with UNICEF and ILO Red card campaign, Fair Trade in Tourism South Africa (FTTSA)<sup>1015</sup> as well as the National Prosecuting Authority (NPA) programme Tsireledzani, also play a fundamental role focusing on ensuring protection of children against commercial sexual exploitation within the tourism industry and human trafficking respectively.<sup>1016</sup> Children in Distress Network (CINDI) on the other hand has reached at least 46 000 children, this include girls of all age groups, child headed household, high schools amongst others implementing programmes aimed at children affected by HIV/AIDS in KwaZulu- Natal and other South African regions.<sup>1017</sup> It is evident therefore that these organisations that is the NGOs and Non-Profit groups contribute significantly to the protection against hazardous working environments and promotion of children's rights in South Africa by responding to needs of children, where governments have failed to reach.

In conclusion, it is evident therefore that while prevalence of child labour and factors contributing to its proliferation remains the same throughout the African continent, measures taken by South Africa to address the plight and scourge of child labour have proven to be more progressive. The Republic of South through policies, legislative and social means have shown commitment and compliance to several international human rights bodies aimed at promoting children's rights and protecting children from exploitative forms of work. It is however worth noting that, while it is evident that some of the policies and laws were insufficient, failing to address particularly circumstances contributing to child labour such as poverty, unemployment and cultural practices to state but a few; there are however positive practises and lessons that African states, including Lesotho, can emulate and learn from.

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<sup>1015</sup> Unicef South Africa: Fair Trade in Tourism South Africa (FTTSA) Announces the Winners of the Red Card Campaign Contest. Available at: [https://www.unicef.org/southafrica/media\\_6044.html](https://www.unicef.org/southafrica/media_6044.html) (Accessed 19 February 2019) 6. FTTSA Child-Protection Code of Conduct for South Africa, which was recently launched to the South African tourism industry in June 2010.

<sup>1016</sup> Tsireledzani, National Prosecuting Authority (NPA) programme. Available at: <https://www.npa.gov.za/node/56> (Accessed 19 February 2019).

<sup>1017</sup> Charity SA: Children in Distress Network (CINDI) Available at: <http://www.charitysa.co.za/children-in-distress-network-cindi.html> (Accessed 18 February 2019).

## 4.5 Child labour in The Republic of Tanzania: Background

Situated on the East coast of the African continent, the United Republic of Tanzania lies between Kenya and Mozambique,<sup>1018</sup> with the majority of the population residing in the rural areas and about 30 percent of the people in urban areas.<sup>1019</sup> Majority of the population is comprised of young people. Approximately 50.1 percent of the population was below the age of 18 in 2014.<sup>1020</sup> Unlike the 2014 report, 2020 report on the population statistics of Tanzania does not explicitly state number of children below the age 18.<sup>1021</sup> Like many other least developed countries within the Sub-Saharan region, Tanzania is confronted with the high levels of child labour. Although it is not clearly articulated as to how far back the problem of child labour can be dated, it is however stated that the advent of child labour in Tanzania can be traced back to the colonial era.<sup>1022</sup> Though in the late 1940's and early 1950's the use of children in labour was significantly low, this was not so within the agricultural sector asserts James.<sup>1023</sup> The use of children in agriculture came at a cheaper cost hence the high employment of children.<sup>1024</sup> Out of 15 million children between the ages of 5 and 17 years, 4.2 million children in Tanzania are involved in child labour.<sup>1025</sup> Child labour is predominantly rampant within the agriculture and fishing industries, with 9 out of 10 children particularly boys being the majority workers. <sup>1026</sup> At least 88.7 percent of children aged

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<sup>1018</sup> Embassy of the United Republic of Tanzania: Geography. The republic of Tanzania borders the Indian ocean, Uganda and Kenya on the northern side, Rwanda, Congo and Burundi on west and Zambia, Malawi and Mozambique on the south. The United Republic of Tanzania is a product of the unification of Tanganyika (mainland) and Zanzibar Islands in 1964. Both regions were under British colony, Upon their independence from the British colony in 1961 and early 1964, both Tanganyika and Zanzibar respectively united forming one state The United Republic of Tanzania in 1964.

<sup>1019</sup> Jennie Johansson (2009) "Causes of Child Labour- A case study in Babati town, Tanzania" Södertörn University College| School of Life Sciences. Published Bachelor's Thesis. See also NBS & ILO Analytical Report According to the report, Tanzanian population is predominantly rural with 70 per cent of the population, and about 30 per cent living in urban areas.

<sup>1020</sup> Tanzania National Bureau of Statistics (NBS) & International Labour Organization (ILO) Analytical Report (2016): Tanzania National Child Labour Survey 2014.

<sup>1021</sup> See the worldometer: Tanzania population. Available at: <https://www.worldometers.info/world-population/tanzania-population/> (accessed 25 November 2020).

<sup>1022</sup> James, O. G. (2013) "The prohibition of child labour in Tanzania; gaps in law and practice" Published Thesis. 5. See also Shivji, I. G. (1986) *Laws, State & The Working Class in Tanzania* as quoted by Ouma George.

<sup>1023</sup> *Ibid.*

<sup>1024</sup> *Ibid.*

<sup>1025</sup> International Labour Organisation (ILO) Report: Tanzania and ILO launch a national child labour report (2016). Available at: [https://www.ilo.org/addisababa/media-centre/pr/WCMS\\_502717/lang-en/index.htm](https://www.ilo.org/addisababa/media-centre/pr/WCMS_502717/lang-en/index.htm) (Accessed 22 February 2019). See also NBS & ILO Analytical Report on child labour which states that boys constitute a larger proportion (94.3 per cent) than girls (89.6 percent) in agriculture, forestry and fishing sector.

<sup>1026</sup> *Ibid.* Economy of the United Republic of Tanzania, relies largely on the agricultural sector hence it accounts for the largest sector for child labour. This also includes tobacco plantations.

between 5 and 17 years perform agricultural work for their families without any remuneration.<sup>1027</sup>

While majority of boys were found engaging in agriculture and fishing, majority of girls were found working under hazardous circumstances as domestic workers.<sup>1028</sup> Furthermore, with an estimate of about 8.5 % growth,<sup>1029</sup> the Tanzanian mining sector contributes significantly to the high prevalence of child labour, particularly worst forms of child labour asserts James.<sup>1030</sup> A number of scholars and researchers have identified a number of regions in Tanzania as breeding ground for child labour practices in the United Republic of Tanzania. This includes Dar es Salaam, Zanzibar, Unguja, Babati, Dodoma and Tabora among others.<sup>1031</sup>

Child labour is common in Zanzibar particularly in the clove plantations and a number of children are found working in seaweed farms preparing of soil and seeds as well as in the plantation, harvesting and drying processes.<sup>1032</sup> Consequently, children are exposed to the use of pesticides, dangerous tools, exposed to harsh climatic conditions thus working in an environment harmful to their health and wellbeing. Being a tourist attraction, Zanzibar has a number of brothels, hotels, bars, discos and casinos, serving also as entertainment areas. These areas have encouraged the proliferation of child prostitution.<sup>1033</sup> Children particularly girls are used by owners of the hotels and brothels to attract more customers.<sup>1034</sup> Child prostitutes are therefore exposed to exploitation and abuse.

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<sup>1027</sup> Tanzania National Bureau of Statistics (NBS) & International Labour Organization (ILO) Analytical Report (2016): Tanzania National Child Labour Survey 2014.

<sup>1028</sup> The Citizen (2016) 'Child labour rate down 2pc, says statistics body'. Available at: <https://www.thecitizen.co.tz/News/1840340-3304036-k8wth0z/index.html> (Accessed 22 February 2019). According to the newspaper article, although child labour has dropped in Tanzania, at least 84.2% of girls work as domestic workers, exposing them to conditions that leave them vulnerable.

<sup>1029</sup> Tanzania Country Commercial Guide 'Tanzania –Mining overview' (2009). Available at: <https://www.export.gov/article?id=Tanzania-Mining> (Accessed 01 March 2019). According to the article, mining sector is characterised by worst forms of child labour.

<sup>1030</sup> James (2013:21). See also Tanzania National Child Labour Survey 2014, "children also work in underground mines, such as Tanzanite mines, and engage in gemstone brokering. These children are pronounced as "snake boys" given their ability to crawl through narrow tunnels in unregulated gemstone mines to help position mining equipment and explosives. This puts many lives of children in danger.

<sup>1031</sup> James (2013). See also Jennie Johansson (2009).

<sup>1032</sup> James (2013:23). See also the New Humanitarian article. A recent rapid assessment by the International Labour Organisation (ILO). ILO found that child labour is "common" in Zanzibar, with prostitution, fisheries and seaweed farming among the "most hazardous" sectors in which children are involved.

<sup>1033</sup> Khamis, H. A., Juna, M.G. & Gonza, M. J. Investigating the worst forms of child labour No.12 "Tanzania Children in Prostitution: A rapid Assessment" by the International Labour Organization International Programme on the Elimination of Child Labour (IPEC) (2001).

<sup>1034</sup> *Ibid*. See also the Humanitarian report. According to the report, researchers provided that while doing the counting process, it was found that in Stone town about 50 children between the age of 14 and 18 engage in prostitution.

Central of Tanzania, in the region of Dodoma, incidences of child labour are evident. According to James, the region is characterised by a nomadic society with many children tending and caring for livestock.<sup>1035</sup> In search for better pastures, children move from one place to the other and as a result placing them in conditions that not only endanger their lives, but also subjecting them to harsh environmental conditions harmful to their health.<sup>1036</sup>

Dar es Salaam also accounts for significant number of children engaging in child labour. In the early 1990s, children as young as 14 years were engaging in child labour within the informal sector particularly urban agriculture.<sup>1037</sup> Furthermore, according to the Tanzania National Child Labour Survey report, a significant portion of young girls between the ages of 5 and 17 engage in domestic work.<sup>1038</sup> These children often work for prolonged hours using dangerous utensils such as knives and gas stoves; enduring degrading treatment from employers including sexual, physical and verbal abuse.<sup>1039</sup> Domestic work affects negatively the moral, physical and psychological wellbeing and development of child thus infringing on the fundamental rights of children.<sup>1040</sup> These include the right to rest, education, to play to mention but a few. Many children living on the streets of Dar es Salaam also engage in child labour; working and begging on streets thus exposing them to sexual exploitation and substance abuse.<sup>1041</sup> The use of drugs ignites an aggressive behaviour<sup>1042</sup> and affects children psychologically.

It is worth noting that street children are divided into two groups; those working and living in the streets. Johansson asserts that children working in the streets often live with their parents and work during the day and evenings.<sup>1043</sup> Those living and working in the streets include children who left their families to fend for themselves. These children are said to be independent.<sup>1044</sup> This form of child labour is most prevalent in Babati, a small busy town on

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<sup>1035</sup> James (2013:24).

<sup>1036</sup> *Ibid.*

<sup>1037</sup> Mlozi, M. R.S. “Child Labour in Urban Agriculture: The Case of Dar es Salaam, Tanzania”

<sup>1038</sup> Tanzania National Bureau of Statistics (NBS) & International Labour Organization (ILO) Analytical Report (2016): Tanzania National Child Labour Survey 2014. 29. According to the report ‘children in domestic work in the very young age group of 5–11 years-old, representing 23 per cent of all child domestic workers in the country. The upper age category of children 14–17 years-old concentrates 70.5 per cent of all child domestic workers’

<sup>1039</sup> *Ibid.*

<sup>1040</sup> Tanzania National Child Labour Survey 2014 (2016:29). Other rights include, the right to health care, leisure, right to be cared for and have regular contact with their parents.

<sup>1041</sup> Tanzania National Child Labour Survey 2014 (2016:10).

<sup>1042</sup> *Ibid.*

<sup>1043</sup> Johansson (2009:22)

<sup>1044</sup> *Ibid.*

the Great north, south of Arusha and North of Kondo. <sup>1045</sup> According to Johansson, the need for cheap and unskilled labour in the rapidly growing town of Babati offers great job opportunities for children in search of jobs. <sup>1046</sup> However, street children particularly those living on the streets are susceptible to sexual exploitation, violence and substance abuse. <sup>1047</sup>

Another group of children engaging in child labour are child porters. Child porters carry heavy loads of goods over both short and long distance for money. <sup>1048</sup> Consequently, this kind of work not only affects children physically, but poses danger to their health. In most cases children working and living on the streets have dropped out of school. <sup>1049</sup>

The United Republic of Tanzania is among the top countries in tobacco production in Africa. <sup>1050</sup> In Tanzania, tobacco is produced in Tabora region. James contends that production of tobacco requires a large workforce throughout the year. <sup>1051</sup> Due to high levels of poverty in Africa, including Tanzania many children find themselves working in tobacco farms. <sup>1052</sup> Children between the age 5 and 17 years in Tanzania are involved in tobacco plantations. <sup>1053</sup> Children are often used in the preparation of the land, planting process, watering, weeding, application of fertilisers and pesticides, harvesting and ultimately carrying the harvested leaves and the packing of tobacco leaves. <sup>1054</sup> Children work for long hours with little pay. <sup>1055</sup> Preparation or farming process of tobacco takes about five months therefore children working in the farms miss out on school. Since most children do not have any educational qualification, a great number of them cannot be employed within the public sector resulting in a cycle of poverty and scourge of child labour. <sup>1056</sup> James further states that in Tabora tobacco farming has attracted a number of migrant child labourers. <sup>1057</sup> The use of child labour

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<sup>1045</sup> Johansson (2009:20)

<sup>1046</sup> *Ibid.*

<sup>1047</sup> Johansson (2009:22). One could argue that, children working and living in the streets are forced to drop out in order to work and provide for their families.

<sup>1048</sup> *Ibid.*

<sup>1049</sup> Johansson (2009:22)

<sup>1050</sup> Hu, Teh-wei and Lee, A. H. (2015) "Tobacco Control and Tobacco Farming in African Countries" *J Public Health Policy*. 2015 February; 36(1): 41–51.2.

<sup>1051</sup> James (2013:22). Teh-wei Hu and Anita H. Lee (2015: 5).

<sup>1052</sup> Hu and Lee (2015: 5).

<sup>1053</sup> *Ibid.* At least 1500 and 800 children are often found also in farms in Iringa District and in Urambo District respectively.

<sup>1054</sup> *Ibid.*

<sup>1055</sup> *Ibid.* children are paid as little as \$0.25 a day and earn as little as \$80 for an entire season.

<sup>1056</sup> *Ibid.*

<sup>1057</sup> James (2013:22).

in tobacco plantation places children at risk of illness and commercial exploitation contends Hu and Lee.<sup>1058</sup>

It is therefore clear that, many children in Tanzania engage in different economic activities constituting worst forms of child labour. Children are involved in work that leaves them vulnerable and susceptible to exploitation and abuse. It is evident that the working conditions are detrimental to their wellbeing and development and therefore infringes on the fundamental rights of a child. Employment of children constitutes a matter of concern as children are subjected to dangerous conditions. It is crucial to identify forms of child labour and reasons for the prevalence of child labour in Tanzania.

#### **4.6 Forms of child labour and impact of child labour**

The African continent has the largest child work force and highest incidences of child labour.<sup>1059</sup> It is common and acceptable in Africa for children to perform work. However, working out of duty and responsibility may result in work detrimental to the wellbeing of children, particularly those from poverty-stricken families and societies. In Tanzania, child labour is more apparent in the informal sector, including commercial agriculture, children living and working on the streets, mining, prostitution, domestic work and fishing.<sup>1060</sup> Children engage in work that constitutes the worst forms of child labour given hazardous nature of the work. As a result, children are exposed to all forms of exploitation and abuse affecting them physically, mentally, socially, and psychologically.<sup>1061</sup> It is clear that child labour impinges on the fundamental rights of children, including the right to basic education, healthcare, play, leisure, childhood, moral, physical and psychological development to mention a few.

#### **4.7 Causes of child labour in Tanzania**

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<sup>1058</sup> Hu and Lee (2015: 5).

<sup>1059</sup> Kwariko, M.A. (2004) 'The problem of child labour in Tanzania: An exploratory study in relation to the fishing industry and related support activities in Iringa district, with specific reference to Mtera dam' Published Thesis. University of Zimbabwe.11.

<sup>1060</sup> Kwariko (2004:31)

<sup>1061</sup> *Ibid.*

### 4.7.1 Poverty

Incidences of child labour in Tanzania can be attributed to a number of factors. According to James, poverty is the major root cause of child labour among many others.<sup>1062</sup> High levels of poverty are apparent and experienced greatly in the rural areas.<sup>1063</sup> In Tanzania poverty is understood not only as a result of lack of monetary provision but also in terms deprivation of basic needs and services.<sup>1064</sup> It is estimated that 74 percent of children in Tanzania live in multidimensional poverty, deprived of either nutrition, protection education, health, water and housing among others.<sup>1065</sup> Furthermore, at least 29 percent of children live below monetary poverty line.<sup>1066</sup> Although the response to poverty has been slow, it is worth noting to that during the early 2000's the United Republic of Tanzania witnessed not only an increase in economic growth but resilience to external shocks.<sup>1067</sup> Despite the apparent national poverty rate decline from 34.4% in 2007 to 28.2% in 2012 and then to 26.8% in 2016, significant portion of the population including children remain poor.<sup>1068</sup> Consequently, children found in poor families and poverty-stricken societies inevitably join the labour force forfeiting privileges of being in school to try alleviating the undesirable effects of poverty.

### 4.7.2 Inequality

While there is evidence of a decline in poverty, unequal distribution of income in Tanzania is rising.<sup>1069</sup> The increasing gap between the rich and poor signifies partial distribution of wealth.<sup>1070</sup> Furthermore, the high levels of unemployment contribute significantly to high levels of inequalities and household insecurities.<sup>1071</sup> According Matotay there is a correlation

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<sup>1062</sup> James (2013:24).

<sup>1063</sup> Tanzania National Child Labour Survey 2014 (2016:8).

<sup>1064</sup> *Ibid.*

<sup>1065</sup> National Bureau of Statistics and United Nations Children's Fund (Unicef) 'child poverty in Tanzania' 2016. Available at: <https://www.unicef.org/esaro/2016-UNICEF-Tanzania-Child-Poverty.pdf> (Accessed 25 February 2019). According to the report, poverty cannot be defined solely as a result of a single factor but occurs and exist as result of different factors and in several dimensions. In Tanzania, e. nutrition, health, protection, education, information, sanitation, water, and housing are described as dimensions that have resulted in poverty. Therefore, the explanation of poverty or definition of poverty cannot be can be understood as deprivation of either 3 or 4 or all of this dimensions.

<sup>1066</sup> *Ibid.*

<sup>1067</sup> World Bank Group "Tanzania Mainland Poverty Assessment" (2015) Available: <http://www.worldbank.org/content/dam/Worldbank/document/Africa/Tanzania/Report/tanzania-poverty-assessment-05.2015.pdf> (Accessed 27 February 2019).

<sup>1068</sup> The World Bank: Tanzania. Available at: <https://www.worldbank.org/en/country/tanzania/overview> (Accessed 27 2019).

<sup>1069</sup> Matotay, E. (2014) Inequalities and Structural Transformation in Tanzania Development, 57(3-4).

<sup>1070</sup> Matotay (2014: 595).

<sup>1071</sup> *Ibid.*

between income and access to basic services,<sup>1072</sup> for instance, it is opined that people with high levels of education have a higher chance of earning more income and accessing basic services. While it is evident that Tanzania is experiencing economic growth, wider gaps of inequalities have been also created.

Although the United Republic of Tanzania has adopted measures to eliminate poverty and inequalities, many particularly children remain affected. High levels of poverty and inequalities have left children no option but to engage in child labour and provide for their poor and low-income families. These children are deprived of education, health care and nutrition and have their dignity violated.<sup>1073</sup> As a result, children are denied the enjoyment of their fundamental and basic human rights.<sup>1074</sup>

### 4.7.3 HIV/AIDS Pandemic

As in many other African countries, HIV/AIDS pandemic is one of the main causes of child labour in Tanzania.<sup>1075</sup> According to the UNICEF report, Tanzania is among the top 15 countries with a high number of people infected by HIV in the world.<sup>1076</sup> In spite of great progress made in controlling HIV epidemic in the last 10 years through increased access to antiretroviral treatment, about 1.4 million Tanzanians were living with HIV in 2016.<sup>1077</sup> The same year 55 000 people were infected and 33 000 died of AIDS-related diseases.<sup>1078</sup> The high prevalence of HIV/AIDS not only impedes on socioeconomic development but also affects the labour market.<sup>1079</sup> As labour productive adults die, children are forced to join the labour force. Consequently, death of one or both parents to HIV/ AIDS related illnesses have resulted in a change in household structures and increase of children engaging in child labour

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<sup>1072</sup> *Ibid.*

<sup>1073</sup> *Ibid.*

<sup>1074</sup> Unicef Report 'Childhood Poverty in Tanzania: Deprivations and Disparities in Child Well-Being' (2009). Available at: [https://www.unicef.org/socialpolicy/files/Tanzania\\_FinalChildPovertyStudy.pdf](https://www.unicef.org/socialpolicy/files/Tanzania_FinalChildPovertyStudy.pdf) (Accessed 28 February 2019). (Executive summary).

<sup>1075</sup> International Labour International (ILO) Paper No.3. HIV/AIDS and child labour in the United Republic of Tanzania: A rapid assessment. A case study of Dar es Salaam and Arusha. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/publication/wcms\\_119215.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_119215.pdf) (Accessed 01 March 2019).

<sup>1076</sup> Unicef Report 'HIV and AIDS budget brief 2018 Tanzania'. Available at: <https://www.unicef.org/esaro/UNICEF-Tanzania-2018-HIV-and-AIDS-Budget-Brief-Mainland.pdf> (Accessed 01 March 2019).

<sup>1077</sup> Avert 'HIV and AIDS in Tanzania' Available at: <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania> (Accessed 01 March 2019).

<sup>1078</sup> *Ibid.*

<sup>1079</sup> International Labour International (ILO) Paper No.3. HIV/AIDS and child labour in the United Republic of Tanzania: A rapid assessment. A case study of Dar es Salaam and Arusha (2003: 5). It is argued that devastating impacts of HIV/AIDS further weakening and killing adults in the prime of their lives as workers and parents, leaving millions of children as orphans.



as means of survival.<sup>1080</sup> The responsibility to take care of the family is therefore bestowed upon the eldest children.<sup>1081</sup> Resultantly, children are coerced into engaging in paid labour in order to provide for the family. These children often engage in work that is exploitative, hazardous and detrimental to their wellbeing. These include working in clove plantations, seaweed farms or in mines.<sup>1082</sup>

#### 4.7.4 Education Standards

Baregu contends that a number of studies associate child labour with the level of education.<sup>1083</sup> It is argued that children below the ages of 18, found engaging in child labour have lower levels of education, lack quantitative skills and their development of basic literacy is impeded.<sup>1084</sup> While the quality of education and its accessibility thereof has improved, not many children have access to it. In fact, investing in education is thinly spread despite demands for quality and accessible education contends Baregu.<sup>1085</sup> Children without access to school resort to child labour. In the case of poor education system, children often drop out and ultimately engage in child labour practices.<sup>1086</sup> Furthermore, children from low income families are often deprived of education as they cannot afford to pay fees, purchase school books and uniforms to state a few.<sup>1087</sup> As a result, they engage in child labour to help provide for the family and add to the household income.

According to Baregu, another important factor contributing to child labour is the learning environment:<sup>1088</sup> unpleasant physical structure of a school and inadequate number of teachers among others may not only discourage student but also increase levels of drop out. When children are not in schools, chances are that they will engage in commercial work despite the nature of work. In Tanzania many people live in the rural areas dependent on farming, as a result not much of income is earned by the family. Therefore, costs of taking children to

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<sup>1080</sup> James (2013:28).

<sup>1081</sup> *Ibid.*

<sup>1082</sup> James (2013:23).

<sup>1083</sup> Baregu K. M. (2011) 'Situational Analysis on Child Labor in Tanzania Mainland and Zanzibar'. Cornell University ILR School, Federal Publications. 15.

<sup>1084</sup> *Ibid.*

<sup>1085</sup> *Ibid.*

<sup>1086</sup> *Ibid.* See also James (2013:26) majority of parents particularly poor families may be discouraged to send their children to school when they have to pay for all school materials. In Tanzania many people live in the rural areas dependent on farming, as a result not much of income is earned by the family. therefore, costs of taking children to school remain problematic. Children therefore resort to working in farms to assist their families with income.

<sup>1087</sup> Baregu (2011: 15-16).

<sup>1088</sup> *Ibid.*

school remain problematic. Children in essence, resort to working in farms to assist their families with income.<sup>1089</sup>

#### **4.7.5 Culture**

Tanzania is very traditional and guided by cultural ways of living.<sup>1090</sup> Culturally it is a norm for children to work; this in fact is visible in many other African states. The cultural norm of a working child is said to be a necessary aspect of socialisation.<sup>1091</sup> School attendance is not a matter of concern, instead non-school attendance is not regarded as an infringement on the fundamental rights of the rights of the child;<sup>1092</sup> which is the right to education. Bertolotto states that the Masai tribe residing in the northern part of Tanzania and southern part of Kenya view going to school as against their nomadic culture and way of living.<sup>1093</sup> Children's obligations to their families and parental expectations on the basis of culture remain one of the most critical reasons for child labour prevalence not only in Tanzania but Africa as a whole.

#### **4.7.6 Financial Independence**

Baregu asserts that some children engage in child labour in search of better living conditions.<sup>1094</sup> Many children in Tanzania work in mines hoping to be rich in a short space of time. Consequently, children form part of the labour force engaging in worst forms of child labour. The need for financial independence and better living conditions proliferates child labour incidences.

#### **4.7.7 Cheap Labour**

Incidences of child labour are fuelled by the need for cheap labour. Majority of employers in Tanzania, particularly hotels, bars and casinos owners prefer young vulnerable girls to work.<sup>1095</sup> The agricultural sector also prefers young children as it is easy to control them.<sup>1096</sup>

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<sup>1089</sup> James (2013:27).

<sup>1090</sup> Bertolotto, E. (2006). 'The Cultural Context of Research: Child Labor and Daily Life in Tanzania'. *Inquiry Journal*.1.

<sup>1091</sup> Bertolotto, E. (2006:1).

<sup>1092</sup> *Ibid.*

<sup>1093</sup> *Ibid.*

<sup>1094</sup> Baregu (2011: 15-16).

<sup>1095</sup> Khamis, Juna & Gonza (2001).

<sup>1096</sup> Baregu (2011: 15-16).

Children are often exploited and abused physically and sexually. While children are said to be efficient in performing work, employers take advantage of them because of their lack of knowledge about their rights.<sup>1097</sup> Due to high levels of poverty, children are forced to seek and engage in cheap labour.<sup>1098</sup>

It is evident that incidences of child labour in Tanzania can be attributed to a number of factors. Given the devastating socioeconomic circumstances coupled with both community and family's expectation of children to provide, many children have had to engage in child labour practices that have left them vulnerable and susceptible to abuse, sexual and commercial exploitation. Though children have a duty and responsibility to contribute to the family income or fend for themselves in the case of those residing on the streets, many suffer human rights violations at the hands of their employers. Children often work in environments detrimental to their development, physical and mental state, health and wellbeing with little to no protection.

The United Republic of Tanzania has made recognisable effort to address the issue of child labour.<sup>1099</sup> In fact, it has been argued that great progress has been made by the country not only through its conformity to its obligation to the international human rights conventions and bodies aimed at promoting children's rights and protecting children against harmful labour practices but have also adopted and sufficiently implemented policies against worst forms of child labour.<sup>1100</sup>

#### **4.8 Legal framework and policies prohibiting child labour in Tanzania: National Legislation:**

##### **4.8.1 The Constitution of the United Republic of Tanzania of 1977**

Although the United Republic of Tanzania actively participates in the elimination of child labour, conforming therefore to one of the major international and regional agendas,<sup>1101</sup> it is noteworthy to state that the Constitution makes no provision for the prohibition of child

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<sup>1097</sup> *Ibid.*

<sup>1098</sup> *Ibid.*

<sup>1099</sup> The Hague Global Child Labour Conference 2010 – Towards a World without Child Labour, Mapping the Road to 2016 – Conference Report.13.

<sup>1100</sup> *Ibid.*

<sup>1101</sup> Kwariko (2004:11).

labour and protection of children against exploitation.<sup>1102</sup> However, the Constitution recognises the fundamental human rights principles of equality and respect for human dignity. All people under the Constitution possess equal rights therefore entitled to respect.<sup>1103</sup> While it is evident that child labour deprives children of their right to education and Article 11 of the Constitution provides that everyone has the right to education,<sup>1104</sup> thus guaranteeing the right to education and indirectly prohibiting any engagements that hinder children's access to education, including child labour. Though the Constitution does not particularly address the rights of children in isolation of others, Baregu contends that provisions on the principles of non-discrimination, right to live and protection of life, right to education among others could be argued to be in the best interest of child.<sup>1105</sup> The recognition of basic rights and obligation towards ensuring their fulfilment by the constitution of Tanzania conforms to the CRC provisions. The right to life and protection forms the basis of through which legislation on children's rights are formulated.<sup>1106</sup> However, the Constitution fails to address the issues of child labour adequately.

#### **4.8.2 Employment and Labour Relations Act of No. 6 of 2004**

The Employment and Labour Relations Act of 2004 prohibits child labour. Section 5 (1) provides that children below the age of 14 years shall not be employed.<sup>1107</sup> The Act however provides that, children aged 14 may engage in work that is not harmful to their health and development, does not hinder them from accessing education and impede their participation in vocational training programmes.<sup>1108</sup> Pursuant to Section 5 (3), the Act prohibits the employment of children below the age 18 in factories and informal sectors. This includes the agricultural sector.

According to the Act, work within these sectors constitutes and exposes children to hazardous working conditions therefore prohibited.<sup>1109</sup> Furthermore, Section 5 (4) of the Act provides

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<sup>1102</sup> *Ibid.*

<sup>1103</sup> Article 12 (1) & (2) of the Constitution of the United Republic of Tanzania of 1977.

<sup>1104</sup> Article 11 (a) (2) & (3) Of the Constitution of the United Republic of Tanzania. According to the constitution. "(2) Every person has the right to access education, and every citizen shall be free to pursue education in a field or his choice up to pursue education of his choice to his merit and ability, the highest level according to his merits and ability."

"(3) Every person has the right to access of education and every citizen shall be free to pursue education and technique"

<sup>1105</sup> Part III : Basic Rights and Duties of the Constitution of Tanzania.

<sup>1106</sup> Baregu (2011: 20).

<sup>1107</sup> Section 5 (1) of the Employment and Labour Relations Act, 2004.

<sup>1108</sup> Section 5 (2) of the Employment and Labour Relations Act, 2004.

<sup>1109</sup> Section 5 (3) of the Employment and Labour Relations Act, 2004.

that children may not be employed in work that is not appropriate for the age and detrimental to their wellbeing, education and social, physical, moral and mental health development.<sup>1110</sup> Not disregarding the provisions under subsection (3) of the Act, permission is granted to children below the age of 18 to engage in work that forms part of training programmes.<sup>1111</sup> Regulations prohibiting employment of children under the age of 18 and circumstances that compel children to engage in work shall be formulated by the Minister.<sup>1112</sup> Forms of detrimental child work and inappropriate age shall be determined by the Minister, providing to constant review, revision and updating the list of worst forms of work.<sup>1113</sup> Anyone found in contravention of Section 5 of the Act commits an offence.

The Act under Section 6 prohibits incidences of forced labour, stating that anyone found forcing children into work commits an offence. However, it has been evident in Tanzania that, despite the compelling circumstance of poverty and adult unemployment to say the least, some children are coerced into employment by their parents, caregivers and even employers as well. This contravenes the provisions of Section 6 of the Act. While these offences as stated under the Act have been committed, accountability remains insufficient.<sup>1114</sup> As a result, while it is clear that child labour is prohibited, punishing perpetrators remains a challenge. Furthermore, circumstances that contribute to child labour are not addressed by the Act.<sup>1115</sup>

#### **4.8.3 The Children's Act No. 6 of 2011**

According to the Act, children need special protection against any activity harmful to their wellbeing. Section 97 of the Act forbids the employment of children in undertakings constituting danger to the health, education, mental, physical and moral development of a child.<sup>1116</sup> The Act further prohibits the employment of children in work that is not age appropriate, forced labour, hazardous and exploitative.<sup>1117</sup> However, pursuant to Section 93

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<sup>1110</sup> Section 5 (4) (a) & (b) of the Employment and Labour Relations Act, 2004.

<sup>1111</sup> Section 5 (5) of the Employment and Labour Relations Act, 2004.

<sup>1112</sup> Section 7 (a) of the Employment and Labour Relations Act, 2004.

<sup>1113</sup> Section 7 (b) of the Employment and Labour Relations Act, 2004.

<sup>1114</sup> National Action Plan for the elimination of child labour (2009: 7).

<sup>1115</sup> The Act does not address poverty, unemployment or cultural practices that contribute to the prevalence of child labour.

<sup>1116</sup> Section 97 of the Children's Act No. 6 of 2011 (Part IX: Special Protection Measures in Respect of Children).

<sup>1117</sup> Section 99 of the Children's Act, states that age in appropriate work includes works that places children health, social development and mental health among others at risk. The Act further identifies exploitative work as depriving children health and development, exceeding six hours and performed in the early hours of the morning and late in the night. Section 100, provides that hazardous work includes mining, quarrying, carrying of heavy weights, working with machinery and chemicals. Many children in Tanzania are often found partaking in hazardous work. Many work in mines exposed to heavy

(3), the Act provides that children aged 15 may engage in light work, that is; work not harmful to the wellbeing and development.<sup>1118</sup> Furthermore, employed children must be protected against discrimination, which may negatively affect them and ensure that children are remunerated in accordance to the value of work done.<sup>1119</sup> The Act not only prohibits child labour, but makes provision for special protection of the rights of children placing the best interest of the child at the centre. A contravention to the stipulated provisions constitutes an offence. Although it is evident that the Act prohibits child labour, the practice remains rampant questioning therefore the enforcement of the Act.

#### **4.8.4 The Law of the Child Act No. 21 of 2009**

Conforming to the human rights principles as provided under CRC on the protection of children, the Law of the Child Act aims to protect the rights and welfare of a child. Under the Act, duties and responsibilities of a child, measures to protect and care for children as well issues on pertaining to employment of children are provided. Children may engage in light work. It is worth noting that, a child must be aged 14 to engage in light work.<sup>1120</sup> Furthermore, the Act provides that children should be lawfully employed and protected against discrimination.<sup>1121</sup> Like the Children's Act, the Law of the Child Act prohibits exploitation of children.<sup>1122</sup> Furthermore, employment of children in forced labour and night work is forbidden under the Act.<sup>1123</sup>

Pursuant to Section 80 of the Act, "any person who contravenes any of the provision of this section commits an offence and shall, on conviction, be liable to a fine of not less than two hundred thousand shillings or to imprisonment for a term of six months or to both". Both the Law of the Child Act No. 21 of 2009 and the Children's Act No. 6 of 2011 make similar provision on the prohibition of child employment and the protection of children against injurious work, condemning also the hazardous and exploitative practices of child labour as unlawful. The factors that have led to employment of children have not been adequately

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machinery, in agriculture exposed to chemicals (pesticides) and working on the streets as carriers of heavy loads. See also Section 102 that forbids forced labour.

<sup>1118</sup> Section 98 (3) of the Children's Act.

<sup>1119</sup> Section 99 (2) of the Children's Act. See also Section 101 of the Act.

<sup>1120</sup> Section 77 of the Law of the Child Act No. 21 of 2009. This case light work entails work that is not harmful to the child's health and development and does not hinder the child's participation in school.

<sup>1121</sup> Section 5 (1) of the Law of the Child Act No. 21 of 2009.

<sup>1122</sup> Section 78 of the Law of the Child Act.

<sup>1123</sup> Section 79 & 80 of the Law of the Child Act.

despite the Act's prohibition of children in child labour. The enforcement of both Acts are questioned.

#### **4.8.5 The National Education Act No.25 1978 amended in 1995**

One of the detrimental consequences of child labour is the evident deprivation of education. The majority of children in Tanzania involved in child labour are deprived of their rights to access education. In fact, many children from poverty-stricken households are forced to drop out and join the labour force. In other instances, children drop out of school to take care of their sickly parents. However, the United Republic of Tanzania has not only enacted the Education Act, but also have policies (to be discussed later) aimed at ensuring all children have equal access to education.<sup>1124</sup> Article 11 of the Constitution provides that everyone has the right to education.<sup>1125</sup> Compulsory primary education is guaranteed under Article 35 of the National Education Act.<sup>1126</sup> Furthermore, children of not less than five years of age may access education.<sup>1127</sup>

Article 56 (2) further provides that no person will be denied the opportunity to obtain any category, nature or level of national education on the basis of his race, religion or political or ideological beliefs.<sup>1128</sup> While the Act is cognisant that education is a right for all and a possible solution to child labour problems. However, the cultural conceptions of work make it difficult to implement and enforce the Act sufficiently. For instance in Tanzania particularly within the Masai tribes, education is of no significance and against culture. Instead emphasis is put on the need for a child to work.<sup>1129</sup>

#### **4.9 National Policy Framework**

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<sup>1124</sup> National Education Act of 1978 as well as social policies. See National Action Plan For the Elimination of Child Labour available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=94604](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94604) (accessed 20 March 2019).

<sup>1125</sup> Article 11 (a) (2) & (3) Of the Constitution of the United Republic of Tanzania.

<sup>1126</sup> Article 35 of the National Education Act of 1978. The Act further provided that parents have a responsibility to ensure that child regularly attends the school at which he is enrolled until he completes primary education.

<sup>1127</sup> *Ibid.*

<sup>1128</sup> Article 56 (2) of the National Education Act.

<sup>1129</sup> Bertolotto, E. (2006) 1.

Twenty-five years after the adoption and ratification of the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), the ILO Convention No. 182 on the Elimination of the Worst Forms of Child Labour and Convention No. 138 on the Minimum Age for Employment by the United Republic of Tanzania, a significant and remarkable progress in addressing issues concerning children has been evident.<sup>1130</sup> Many countries including Tanzania now regard the rights and welfare of child as important, thus forming part of national developments plans and agendas, taking into consideration also children's needs in the planning and budget of the state.

According to the African Child Policy Forum (ACPF) report, currently a number of development initiatives world-wide are not only concerned with but are centred on children's issues.<sup>1131</sup> Although issues concerning children may be addressed holistically, for the purpose of the study; the thesis will focus on the policies and strategies implemented by the United Republic of Tanzania in ensuring that child labour is eradicated and children involved in child labour are protected. Collaboration as well as engagements in rigorous consultative processes between the government of Tanzania and various stakeholders have prioritised issues concerning child labour.<sup>1132</sup> Resultantly strategies to eliminate child labour were developed; constantly updating the list of forms of work considered hazardous.<sup>1133</sup>

#### **4.9.1 National Action Plan (NAP) for the elimination of child labour**

The persistent incidences of child labour globally have called for consensus between nations to confront and eradicate worst forms of child labour.<sup>1134</sup> The National Action Plan for the elimination of child labour in Tanzania serve as response to the much needed global action plan aimed at eradicating worst forms of child labour.<sup>1135</sup> The NAP constitutes updated and revised existing laws, policies and programme aimed at abolishing child labour in

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<sup>1130</sup> The African Child Policy Forum (ACPF) report (2016) 'Implementing Child Rights in Tanzania: What is working well, what is not?' Available at: <https://www.africanchild.report/images/Implementing-Child-Rights-in-Tanzania-final-13-10-16.pdf> (Accessed 03 March 2019). It is important to note that the ILO Convention No. 182 on the Elimination of the Worst Forms of Child Labour and Convention No. 138 on the Minimum Age for Employment were also ratified by Tanzania as means of addressing child labour issues.

<sup>1131</sup> *Ibid.* As a result, efforts have been fruitful: report shows that fewer incidences of children mortality from preventable diseases has been evident, many more children have access to go to school and healthcare and children increasingly participate in discussions and decisions that affect them.

<sup>1132</sup> Tanzania National Child Labour Survey 2014 (2016:9).

<sup>1133</sup> Tanzania National Child Labour Survey 2014 (2016:9).

<sup>1134</sup> United Republic of Tanzania: Ministry of Labour, Employment and Youth Development: National Action Plan for the elimination of Child labour (2009).

<sup>1135</sup> *Ibid.*



Tanzania.<sup>1136</sup> Furthermore, the NAP's primary objective is to ensure that incidences of worst forms child labour in all economic sectors, at both household and community levels as well as in rural and urban areas are eliminated. The policy advocates for mandatory implementation of long-term economic, social and institutional policies for the elimination of all forms of child labour.<sup>1137</sup>

It is however important to note that, Tanzania's action plan seeks to address the problem by reducing the impact of factors that contribute to child labour and its proliferation. The NAP seeks to reduce poverty, strengthen economic capability of the chronically poor, strengthen protection measures and respond to child abuse, violence and exploitation through legal and policy interventions.<sup>1138</sup> It will moreover, ensure that vulnerable and disadvantaged children receive social insurance or grants, access quality education and alternative education out of school, rehabilitate victims of child labour, create public awareness through campaigns against child labour, monitor and evaluate interventions of programs aimed at eliminating child labour and above all ensuring that all stakeholders are committed to the implementation of the Plan of Action and it be fully resourced.<sup>1139</sup> Given the progress made in the United Republic of Tanzania, it is suggested that the objectives of the NAP have been sufficiently implemented. However, the enforceability problem as is in the case of Lesotho has been evident. It is argued that due to inadequate resources, awareness on legislation pertaining to child labour and insufficient capacity investigate case of child labour, the enforceability of the NAP has been inadequate.<sup>1140</sup>

#### 4.9.2 Child Development Policy of 2008

According to the the NPA, Child Development Policy of 2008 is amongst many intervention policies designed to tackle the worst forms of child labour in Tanzania.<sup>1141</sup> The policy recognises the need to protect children living in devastating circumstances. These include

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<sup>1136</sup> Tanzania National Child Labour Survey 2014 (2016:9).

<sup>1137</sup> National Action Plan for the elimination of Child labour (2009:16). See also [http://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Tanzania\\_THE\\_NATIONAL\\_ACTION\\_PLAN\\_20182021.pdf](http://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Tanzania_THE_NATIONAL_ACTION_PLAN_20182021.pdf) on the newly adopted Anti – trafficking plan by the Republic of Tanzania aimed at combating trafficking of persons particularly women and children. This is significant as plan address one of the worst forms of child labour.

<sup>1138</sup> National Action Plan for the elimination of Child labour (2009:17).

<sup>1139</sup> *Ibid* Although the not explicitly state its mandate in sections or articles, the NAP is in line with Article 35 of the National Education Act of 1978 and Section 78 of the Law of the Child Act among others.

<sup>1140</sup> National Action Plan for the elimination of Child labour (2009:7).

<sup>1141</sup> National Action Plan for the elimination of Child labour (Background).

children living with disabilities, living on the streets, orphans and those affected by natural disasters.<sup>1142</sup> According to the policy, it is fundamental to distinguish between children residing in rural and urban areas, stating that the different categories require different means of intervention.<sup>1143</sup>

Child labour is prohibited under the policy. Cognisant of child labour incidences in Tanzania, the policy prohibits the engagement of children particularly in domestic work, mining, plantations, prostitution, fishery and those in bars and as street vendors.<sup>1144</sup> The policy recognises the dangerous nature of child labour, stating that it is not only detrimental to children's development and wellbeing, but also denies children access to education.<sup>1145</sup> Consequently, the Development Policy advocates for the protection against child labour and promotion of children's rights. Although the policy recognises the need for survival and to develop, the policy places an obligation upon parents, guardian, institutions and government ministries to safeguard the rights of children through adequate legislative and social measures.<sup>1146</sup>

#### **4.9.3 National Campaign against child labour of 2008**

Realising the prohibition of employment of children by the Employment Act, the government of Tanzania through partnership with the then Ministry of Labour, Employment and Youth Development and the International Labour Organization (ILO), through the IPEC Country Programme took to lodge Campaign against child labour.<sup>1147</sup> The Campaign against child labour entails the establishment and coordination of structures and mechanisms respectively that ensure effective interventions against child labour.<sup>1148</sup> Building also the stakeholders and partners social capacities to create awareness and sensationalising campaigns against child labour.<sup>1149</sup>

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<sup>1142</sup> Child labour and the youth decent work deficit in Tanzania / International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) - Geneva: ILO, 2018.16.

<sup>1143</sup> *Ibid.*

<sup>1144</sup> *Ibid.*

<sup>1145</sup> *Ibid.*

<sup>1146</sup> Child Development Policy of 2008 (13 -26).

<sup>1147</sup> Tanzania National Child Labour Survey 2014 (2016:9). See also Country Report 2000/2001 Integrated labour force and Child labour Survey in Tanzania.79.

<sup>1148</sup> *Ibid.*

<sup>1149</sup> *Ibid.*

#### 4.9.4 National Time-Bound Programme (TBP)

In 2001, the Republic of Tanzania was the first country to launch and implement the national Time Bound Programme (TBP) to eliminate the Worst Forms of Child Labour thus giving effect to Article 7 ILO Convention No. 182.<sup>1150</sup> This is a comprehensive framework embracing a number of policies used by governments to map out course of action given the defined targets and time and contributing to the elimination of child labour and worst forms of child labour in this case.<sup>1151</sup> TBP in Tanzania does not only seek to eliminate the worst forms of child labour, but also target mining, commercial agriculture and prostitutions sectors which contribute to the furtherance of child labour.<sup>1152</sup>

Education policies such as the National Poverty Monitoring Systems and Social Welfare Systems are amongst policies embraced by the TBP as strategies to eradicate child labour.<sup>1153</sup> The educational policies encourage and promote access to basic education thus culminating incidences of child labour.<sup>1154</sup> National Poverty Monitoring Systems aims to reduce poverty, which contributes significantly to child labour. In addition, Tanzania's National Strategy for Growth and Reduction of Poverty (MKUKUTA) is one of the important measures to tackle poverty. Lastly, the Social Welfare Systems aims to improve the health and wellbeing of those affected by HIV and the vulnerable.<sup>1155</sup> It is evident therefore that all policies seek to address the root causes of child labour in order to tackle child labour issues.

#### 4.9.5 National Strategy on Elimination of Child labour (2018-2022)

The National Strategy on Elimination of Child labour (2018-2022), is a new strategy launched as effort to fight against child labour over a period of four years.<sup>1156</sup> The strategy's vision is to have a Tanzania free of child labour, where children shall enjoy their fundamental rights in a safe environment.<sup>1157</sup> The National Strategy on Elimination of Child identifies

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<sup>1150</sup> National Action Plan for the elimination of Child labour (2009:14). See also Article 7 of the Convention concerning the prohibition and immediate action for the elimination of the Worst Forms of Child Labour.

<sup>1151</sup> Tanzania National Child Labour Survey 2014 (2016:21).

<sup>1152</sup> Country Report 2000/2001 Integrated labour force and Child labour Survey in Tanzania.81.

<sup>1153</sup> Tanzania National Child Labour Survey 2014 (2016:21).

<sup>1154</sup> *Ibid.*

<sup>1155</sup> Community Health and Social Welfare Systems Strengthening Program. Available at: [https://www.jsi.com/JSIInternet/Inc/Common/download\\_pub.cfm?id=21661&lid=3](https://www.jsi.com/JSIInternet/Inc/Common/download_pub.cfm?id=21661&lid=3) (Accessed 16 March 2019).

<sup>1156</sup> Child labour and the youth decent work deficit in Tanzania / International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS).

<sup>1157</sup> *Ibid.*

seven approaches in order to eliminate child labour. This includes ensuring that level of compliance to labour standards is enhanced, multi-sectoral partnerships and coordination are strengthened and household income is strengthened through the empowerment of men, women and children alike.<sup>1158</sup> Furthermore, in ensuring the integration of comprehensive social protection system, access to alternative forms of education is enhanced to include vulnerable children, rehabilitating and integrating child labour and worst forms of child labour victims and finally creating public awareness concerning the impacts of child labour and worst forms of child labour.<sup>1159</sup>

#### **4.10 Non-governmental organisation, Private sectors and Trade Unions**

Problems of child labour in Tanzania was not only dealt with by government institutions namely, Ministries of Labour and Youth Development, Education and Culture, the Prime Minister's Office, but also through the government's partnership with a number of NGOs, the private sector as well as trade unions and employers associations.<sup>1160</sup> Some of the policies have been supported by the UN agencies, such as UNICEF.<sup>1161</sup>

While some NGOs were supported by International Programme on the Elimination of Child Labour (IPEC), some were not. However, the work done by all NGOs contributed remarkably to the elimination of child labour in Tanzania. For instance, the Tanzania Council for Social Development (TACOSODE) focuses on addressing HIV pandemic across Tanzania and helping children to access health care.<sup>1162</sup> Kiota Women's Health and Development (KIWOHEDE) advocates for children's rights and their protection thereof.<sup>1163</sup> The Dogodogo Centre aims at empowering children to enjoy their basic rights.<sup>1164</sup> The NGOs focus also on

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<sup>1158</sup> *Ibid.* children in this case refer also to children who have taken the role of parenthood.

<sup>1159</sup> *Ibid.*

<sup>1160</sup> Country Report 2000/2001 Integrated labour force and Child labour Survey in Tanzania.81.

<sup>1161</sup> Kadonya, C. Madihi, M and Matwana, S. (2002) "investigation the worst forms of child labour No. 14 Tanzania. Child labour in the informal sector: A rapid assessment" International Labour Organisation, International Programme on the Elimination of Child Labour (IPEC) available at:

<http://www.ilo.org.ipeinfo/product/download.do?type=document&id=1308> (accessed 20 March 2017) executive summary.

<sup>1162</sup> Country Report 2000/2001 Integrated labour force and Child labour Survey in Tanzania.81.

<sup>1163</sup> Baregu, M. K. (2011) "Situational analysis on Tanzania Mainland and Zanzibar" Available at:

[dol.gov/sites/dolgov/files/ILAB/research\\_file\\_attachment/Tanzania/SA2011.pdf](http://dol.gov/sites/dolgov/files/ILAB/research_file_attachment/Tanzania/SA2011.pdf). (accessed 20 November 2020). See also Kiota Women's and Health Development Organisation available at: <https://www.kiwohede.org/> (accessed 27 July March 2018)

<sup>1164</sup> Dogodogo Centre. Available: <http://www.dogodogocentre.com/en/> (accessed 16 March 2016).

supporting vulnerable children particularly those living in the streets.<sup>1165</sup> These are among many other NGOs in Tanzania that have helped in the elimination of child labour processes.

The Employers' Associations and Trade Unions namely the (Tanzania Federation of Trade Unions) (TFTU) and Organization of Tanzania Trade Unions (OTTU) have played an important role in campaigns against child labour. Association of Tanzania Employers (ATE) is said to have been on the forefront spearheading campaign against child labour.<sup>1166</sup>

According to Tanzania's Country Report, a number of private sector agents including Independent Television (ITV), sisal, tea, tobacco and coffee plantation associations have also taken part in campaigning against child labour.<sup>1167</sup>

In conclusion, while it is evident that Tanzania like many other countries grapple with poor socioeconomic conditions, given the high levels of poverty, HIV and AIDS and cultural practices that have coerced many children into child labour, engaging particularly in the worst forms of child labour. Protecting and promotion of children remains a concern. Both legislation and national policies in Tanzania clearly prohibits child labour, advocating for its elimination.

The compliance with international and regional human rights conventions and bodies through implementation of TBP remains remarkable and notable. It is evident from the study also that the United Republic of Tanzania shall not rest until child labour is completely abolished. In fact, the countries have already planned ahead implementing strategies that go beyond the year 2020. Policies adopted by Tanzania not only address child labour, but the root causes of scourge this injurious and hazardous form of work. The tripartite partners who remain the backbone for a concerted effort on national level advocacy and awareness raising is worth noting. In deed the positive practices from the Tanzania must be emulated by the Kingdom of Lesotho in order to tackle the plight of child labour incidences.

#### **4.11 Child labour in Morocco: Background**

Because of its geographical position, Morocco also referred to as the Kingdom of Morocco is commonly mistaken for a Middle East state. Although the country is predominantly Arabic,

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<sup>1165</sup> *Ibid*

<sup>1166</sup> Baregu, M. K. (2011) "Situational analysis on Tanzania Mainland and Zanzibar"36.

<sup>1167</sup> Country Report 2000/2001 Integrated labour force and Child labour Survey in Tanzania.81.

Morocco is in fact located in North Africa with an estimated population of about 36.64 million people.<sup>1168</sup> Morocco is bordered by Algeria and Western Sahara, as well as the Mediterranean Sea, Atlantic Ocean, and Strait of Gibraltar.<sup>1169</sup> Morocco is a constitutional monarchy divided into three regions; the coastal lowlands, mountainous highlands and high Atlas Mountains.<sup>1170</sup> Akina asserts that the agricultural activities are dominant in the coastal region given the fertile land.<sup>1171</sup> As in many African states, the Kingdom of Morocco is also affected by the incidences of child labour. Schomp asserts that child labour is a common occurrence in Morocco.<sup>1172</sup> The 2017 annual labour survey by Morocco's high Commission for Planning revealed that at least 247 000 children in Morocco between the ages of 7 and 17 are employed.<sup>1173</sup> Children engage in work that is hazardous and 'considered dangerous for their age'.<sup>1174</sup> Of the 247 000, approximately 162 000 children are engaged in work deemed destructive to life in construction, mining, agriculture, handicrafts and fishing sectors in Morocco.<sup>1175</sup>

Furthermore, a great majority of girls are found in domestic work services as maids and boys in car repairs in urban areas.<sup>1176</sup> These children are not only subjected to abuse and exploitation but are also exposed to harsh and life-threatening working conditions. This includes being exposed to chemicals and working for prolonged hours without rest and little pay.<sup>1177</sup> In addition, while some children may work and study at the same time, about 14 per cent of children are robbed of the privilege to access education due to long hours of work.<sup>1178</sup> It is therefore clear that child labour is not only detrimental but violates children's rights. It is contended that although a number of factors have contributed to the prevalence of child labour in Morocco, social, financial and economic factors remain the main contributors.

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<sup>1168</sup> World population Review: Morocco Population. Available at: <http://worldpopulationreview.com/countries/morocco-population/>. (Accessed 20 March 2019).

<sup>1169</sup> Morocco. Available at: <https://www.worldatlas.com/webimage/countrys/africa/ma.htm> (Accessed 20 March 2019). See also John Akina: 'A Brief History of the Kingdom of Morocco' (2019).

<sup>1170</sup> Akina, J (2019) 'A Brief History of the Kingdom of Morocco' Available at: <http://www.globalblackhistory.com/2019/02/a-brief-history-of-the-kingdom-of-morocco.html> (Accessed 20 March 2019).

<sup>1171</sup> *Ibid.*

<sup>1172</sup> Schomp, K. (2007). 'Child labour and Microfinance in Morocco: using micro finance to reduce child labour and the case of the Al Amana Microfinance Institution'.

<sup>1173</sup> Saga, A. B. (2018) 'World Day Against Child Labour: 247,000 Children Work in Morocco'. Available at: <https://www.morocoworldnews.com/2018/06/248793/247000-children-work-morocco/> (Accessed 20 March 2019).

<sup>1174</sup> *Ibid.*

<sup>1175</sup> *Ibid.*

<sup>1176</sup> ILO, UNICEF and World Bank Group: Country Report (2004) 'Understanding Children's Work in Morocco. An inter-Agency Research Cooperation Project. Available at: [www.ucw-project.org/attachment/child\\_labour\\_Morocco20110628\\_112055.pdf](http://www.ucw-project.org/attachment/child_labour_Morocco20110628_112055.pdf) (Accessed 21 March 2019)27.

<sup>1177</sup> Schomp (2017: 12). See also ILO report: Country Report (2004) 'Understanding Children's Work in Morocco.

<sup>1178</sup> *Ibid.*

## 4.12 Factors contributing to child labour in Morocco

### 4.12.1 Social factors

Child labour in Morocco can be attributed to the lack of social capital and disregard of the importance of education asserts Schomp.<sup>1179</sup> While there is no single definition of social capital, for the purpose of this study, social capital entails relationships and communication within society or community that help each other to realise resources and how they can best help others in need and better the circumstance of the community or families said to be poor.<sup>1180</sup> Schomp states that poor families lack “status to borrow in times of difficulty” and this is attributed to a deficiency in community relationships.<sup>1181</sup> In this case, one would argue that the lack of solid relationships may result in child labour. In cases where societies cannot help each other, but do things in isolation, families, particularly poor families may lack information of work that adults can engage in, in order to contribute to the family. As a result, lack of information and knowledge amongst the elderly may force children into engaging in work detrimental to their wellbeing.

While education is not considered valuable a tool that will be useful in future for children to attain better jobs and gain substantial income as well as experience in workforce, children are rather forced into work as means of socialisation.<sup>1182</sup> It is socially acceptable for children to engage in child labour.<sup>1183</sup> In fact, Schomp asserts that child labour is mostly promoted among girls in Morocco.<sup>1184</sup> Young girls in rural areas are often forced to financially provide for their families therefore recruited in domestic work.<sup>1185</sup> As a result, children are deprived of education and subjected to exploitative working conditions as well as violation of human

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<sup>1179</sup> Schomp (2017: 13).

<sup>1180</sup> Alex Lyon argues that given the different definitions of social capital, it is understood to include relationships that help solve any problem that may be facing someone by offering solution through different interaction with different people within the society or communities. The nature of relationship is therefore crucial in order for society to grow.

<sup>1181</sup> Schomp (2017: 13).

<sup>1182</sup> *Ibid*

<sup>1183</sup> *Ibid*.

<sup>1184</sup> *Ibid*.

<sup>1185</sup> Olivier (2017) “Morocco: children deprived of an education” Available at: <https://www.humanium.org/en/morocco-children-deprived-education/> (Accessed 15 March 2019).

rights. In other instances, the poor quality of education and inability to access education due to the lack money have contributed to increased levels of child labour.<sup>1186</sup>

#### 4.12.2 Poverty

Approximately 4 million people in Morocco live below the poverty line.<sup>1187</sup> Although there has been an evident decline in poverty in Morocco, many particularly, those in rural areas continue to live in subjective poverty.<sup>1188</sup> According to the 2017 UNICEF report, approximately 4 out of 10 children live in multidimensional poverty; with 3 of them living in the rural areas.<sup>1189</sup> Poverty is therefore considered a rural phenomenon.<sup>1190</sup> Given the high rates of poverty in rural areas, many families are confronted with a dilemma of taking children to school. Majority of families lack the resources to cover school fee costs and other materials. As a result, children are taken out of school and compelled to work in order to help the family financially.<sup>1191</sup> Furthermore, the high levels of poverty in the rural areas may also be attributed to low levels of education among heads of households in Morocco.<sup>1192</sup> As poverty persists more children continue to follow the vicious cycle of child labour.

#### 4.12.3 Economic factors

According to Schomp, unexpected economic difficulties in Morocco may result in the prevalence of child labour.<sup>1193</sup> This includes the loss of parent, natural disasters just to mention but a few. In poor families, death of the breadwinner, particularly an economically active parent, may compel children to engage in child labour given the financial strain that comes with the absence of that provider.<sup>1194</sup> Death leaves children vulnerable and susceptible

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<sup>1186</sup> *Ibid.*

<sup>1187</sup> Noury, A. I. (2017). 'Lifting Moroccans out of Poverty. Available at: <https://www.faiobserver.com/world-news/poverty-morocco-world-news-sustainable-development-34540/> (Accessed 21 March 2019).

<sup>1188</sup> World Bank Report (2018) 'Poverty in Morocco: Challenges and Opportunities'. Available at: <https://www.worldbank.org/en/country/morocco/publication/poverty-in-morocco-challenges-and-opportunities> (Accessed 23 March 2019).

<sup>1189</sup> UNICEF Annual Report of 2017: Morocco. Available at: [https://www.unicef.org/about/annualreport/files/Morocco\\_2017\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Morocco_2017_COAR.pdf) (Accessed 21 March 2019).

<sup>1190</sup> ILO, UNICEF and World Bank Group: Country Report (2004) 'Understanding Children's Work in Morocco

<sup>1191</sup> Schomp (2017: 13).

<sup>1192</sup> Masaiti El A. (2017) 'Child Poverty Rate Decreases in Morocco: HCP' Available at: <https://www.morocoworldnews.com/2017/05/217818/child-poverty-rate-decreases-morocco-hcp/> (Accessed 21 March 2019).

<sup>1193</sup> Schomp (2017: 14).

<sup>1194</sup> *Ibid.*



to child labour. In most cases children drop out of school to engage in economic activities in order to provide for the family.

Natural disasters may also have a negative impact on the agricultural sectors and those working in farms.<sup>1195</sup> For instance in drought seasons, the majority of workers find themselves swimming in a pool of unemployment.<sup>1196</sup> With no income, children are forced to work so as to supplement the household income. Girls are therefore sent to work as domestic workers in urban areas where they suffer exploitation, verbal and physical abuse.<sup>1197</sup> Consequently children's rights continue to be violated. Although child labour is still dominant, it is however worth noting that, employment among the youth in rural Morocco has increased significantly.<sup>1198</sup> While there maybe a number of factors contributing to child labour, a number of scholarly articles on child labour in Morocco singled the above factors as the primary contributors.

#### **4.13 Forms and Consequences of child labour in Morocco**

Children in Morocco are commonly found working in agriculture, automobile repairs, handicrafts, domestic work services and prostitution.<sup>1199</sup> According to the Country Report, majority of boys are found working as interns or trainees in car repair garages. It is required of them to wash, repair, mount cars and change tyres among others.<sup>1200</sup> Work done by children is often not age appropriate, exposing them to dangerous machinery and chemicals such as acid as well as combustible substances.<sup>1201</sup> Children working in garages are often subjected to verbal abuse and physical and psychological violence.<sup>1202</sup>

Child labour is also prevalent in the handicraft sector. Contributing to 10 per cent of the Growth Domestic Product (GDP) in Morocco, many children of both genders are found

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<sup>1195</sup> *Ibid.* See also Noury (2017). The author states that the agriculture sector contributes which accounts for 19% of gross domestic product (GDP) and nearly 40% of jobs

<sup>1196</sup> Schomp (2017: 14).

<sup>1197</sup> Sommerfelt, T. (ed.) (2001). 'Domestic Child Labour in Morocco: An analysis of the parties involved in relationships to "Petites Bonnes"'. 13.

<sup>1198</sup> ILO Country Brief. Morocco: Young women's employment and empowerment in the rural economy. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_622767.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_622767.pdf) (Accessed 24 March 2019).

<sup>1199</sup> Schomp (2017: Abstract).

<sup>1200</sup> ILO, UNICEF and World Bank Group: Country Report (2004:27).

<sup>1201</sup> *Ibid.*

<sup>1202</sup> *Ibid.*

working in this sector.<sup>1203</sup> While boys engage in pottery, producing of tiles, shoes and leather goods, girls are often involved in weaving rugs.<sup>1204</sup> This kind of work is often time consuming. Children work for long hours without rest and are exposed to health hazards given chemicals they inhale.<sup>1205</sup>

Although the most vulnerable group within the community, girls from rural areas are often recruited to work in urban areas as domestic workers or servants.<sup>1206</sup> Commonly referred to as “petite bonnes” perhaps formally or informally recruited.<sup>1207</sup> The girls are often forced by poor parents or recruited by agents to work to supplement and help their poor families financially.<sup>1208</sup> These children are deprived of education and exposed to detrimental working conditions. In reality, they suffer sexual exploitation and verbal, physical and psychological abuse at the hands of their masters.<sup>1209</sup> It is viewed that this form of work constitutes slavery. With an attempt to escape abuse from the so-called master, the young girls often run away and reside in the streets where they engage in another form of child labour; they engage in prostitution.<sup>1210</sup> Consequently, majority of children are sexually exploited and exposed to substance abuse.<sup>1211</sup> Kaidi asserts that more and more cities in Morocco have become a hub for sex tourism<sup>1212</sup> as a result, proliferating prostitution.

Being one of the main contributors to the economy, the agricultural sector has attracted quite a number of child labourers. This is because of cheap labour as some scholars have contended.<sup>1213</sup> Children in Morocco involved in the agricultural sector help in preparation of fields, plantation process, tending and harvesting of crops as well as tending of livestock.<sup>1214</sup> Exposed to pesticides and other agricultural chemicals, children could potentially experience

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<sup>1203</sup> ILO, UNICEF and World Bank Group: Country Report (2004:26).

<sup>1204</sup> *Ibid.*

<sup>1205</sup> *Ibid.* children they inhale toxic fumes, glue and acid in the production of pottery, shoes and metal work. Wool particles for weaving of rugs and carpets also pose a health hazard.

<sup>1206</sup> ILO, UNICEF and World Bank Group: Country Report (2004:25).

<sup>1207</sup> *Ibid.*

<sup>1208</sup> *Ibid.*

<sup>1209</sup> *Ibid.*

<sup>1210</sup> *Ibid.*

<sup>1211</sup> *Ibid.*

<sup>1212</sup> Kaidi Youssef El (2013) ‘Sexual Tourism in Morocco’ Available at: [https://www.google.co.za/search?q=morocco+tourist+destination+and+prostitution&rlz=1C1GCEA\\_enZA846&oq=morocco+tourist+destination+and+prostitution&aqs=chrome..69i57j12870j0j8&sourceid=chrome&ie=UTF-8](https://www.google.co.za/search?q=morocco+tourist+destination+and+prostitution&rlz=1C1GCEA_enZA846&oq=morocco+tourist+destination+and+prostitution&aqs=chrome..69i57j12870j0j8&sourceid=chrome&ie=UTF-8) (Accessed 25 March 2019).

<sup>1213</sup> Baregu (2011: 15-16).

<sup>1214</sup> ILO, UNICEF and World Bank Group: Country Report (2004:25).

life threatening illnesses such as cancer and immune system anomalies to state the least.<sup>1215</sup> Harsh environmental and climatic conditions may also have negative impacts on children. Furthermore, use of machinery and carrying of heavy loads may be injurious affecting the physical development of a child.<sup>1216</sup>

It is evident that all forms of child labour in Morocco are hazardous thus placing a lot of children's lives in danger. Children are denied the right to education, childhood, rest and development in its entirety, therefore resulting in the violation of the fundamental human rights as provided in the United Nations (UN) Bill of Rights. According to The Hague report on child labour, the Kingdom of Morocco has made a significant progress not only in addressing child labour issues but the protection and promotion of children's rights through adoption, compliance and implementation of international human rights laws but also through the revision and reformation of national laws as well as adoption of policies to respond to the plight of child labour.<sup>1217</sup>

#### **4.14 Morocco's Response to child labour: National Legislative framework**

##### **4.14.1 Constitution of the Kingdom of Morocco**

Adopted first in 1962, six years after the country's independence, the constitution of the Kingdom of Morocco has been reformed at least six times.<sup>1218</sup> In 2011, the new constitution was promulgated.<sup>1219</sup> The new constitution embraces a number of fundamental human rights that were not recognised previously.<sup>1220</sup> While there are no provisions on the employment of children and prohibition of child labour in the Constitution of Morocco, Article 32 recognises the need for children to be protected.<sup>1221</sup> The Constitution however provides that the right to

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<sup>1215</sup> *Ibid.*

<sup>1216</sup> *Ibid.*

<sup>1217</sup> The Hague Global Child Labour Conference 2010 – Towards a World without Child Labour, Mapping the Road to 2016 – Conference Report. 13.

<sup>1218</sup> Ministry of Culture and Communications, Department of Communications: Kingdom of Morocco. Available at: <http://www.maroc.ma/en/content/constitution> (Accessed 25 March 2019).

<sup>1219</sup> *Ibid.*

<sup>1220</sup> Madani, M. Maghraoui, D. & Zerhouni, S. "The 2011 Moroccan Constitution: A Critical Analysis". Available at: [http://www.dustour.org/images/morocco/The\\_2011\\_moroccan\\_constitution\\_english-1.pdf](http://www.dustour.org/images/morocco/The_2011_moroccan_constitution_english-1.pdf) (Accessed 25 March 2019). International Institute for Democracy and Electoral Assistance 2012.

<sup>1221</sup> Article 32 of The Constitution of Morocco of 2011. "It assures one equal juridical protection and one equal social and moral consideration to all children, [being the] abstraction made from their familial situation." "Rights of children Fundamental instruction [enseignement] is a right of the child and an obligation of the family and of the State."

equal access to employment by Moroccan citizens and the provision should be implemented through either state or public establishments.<sup>1222</sup>

Furthermore, Article 31 of the Constitution provides that state or public establishments should ensure equal access to modern and quality education.<sup>1223</sup> While child labour denies the child the right to education, the right to education is guaranteed under the constitution. The constitution ensures protection of children against child labour practices by placing an obligation upon the state and public establishments to ensure that children are protected and engaged to exercise their right to education.

#### **4.14.2 The Labor Code of 2003**

Inspired by the International Labour Organisation (ILO) and an eagerness to bring about solutions to the issue of child labour in Morocco, the Labour Code was adopted. The Labour Code of Morocco regulates specific labour and employment issues, which include conditions of employment and work, contracts of employment, prohibition of forced labour, settlement of labour disputes, conciliation and arbitration, trade union affairs and the election and functions of labour representatives as well labour inspections including the roles and responsibilities of labour inspectors to mention but a few.<sup>1224</sup>

However, the Labour Code was revised in 2003.<sup>1225</sup> The reformation of the Kingdom of Morocco's Labour Code was a result of the need to include provisions that address child labour in accordance with the ILO standards.<sup>1226</sup> While the minimum age of employment was set at 12 years,<sup>1227</sup> the new and revised Code changed the age from 12 years to 15 years old. These amendments to minimum age of employment legislation conform to the ILO Convention No. 138 standards, which provide that admission to employment should not be

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<sup>1222</sup> Article 31 of the Constitution of Morocco. It is important to note that the article does not clearly state the age of employment but generally provides that all citizen feminine and masculine have a right to employment. Furthermore, there is no description of the kind of work one may engage in. the right to self-employment is also guaranteed under the constitution.

<sup>1223</sup> Article 31 of the Constitution of Morocco. While child labour ne

<sup>1224</sup> US Department of Labour Bureau of international labour affairs (2004) 'Labour Rights Report: Morocco' 17.

<sup>1225</sup> US Department of Labour Bureau of international labour affairs (2004) 'Labour Rights Report: Morocco' 17.

<sup>1226</sup> International Labour Office (2008) 'Combating child labour in Morocco by creating an enabling national environment and developing direct action against the worst forms of child labour in rural areas' Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_mas/---eval/documents/publication/wcms\\_126889.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_mas/---eval/documents/publication/wcms_126889.pdf) (Accessed 25 March 2019).

<sup>1227</sup> *Ibid*

less than 15 years.<sup>1228</sup> This age is applicable and restricted to industrial, agricultural sectors, internships and employment in family businesses.<sup>1229</sup> The Code sanctions employment of children below the age of 15 years.<sup>1230</sup> Furthermore, work exposing children to prolonged hours; that is working for more than 10 hours per day, with only an hour's break is prohibited.<sup>1231</sup> Engagement of children below the age of 18 in work that is considered injurious, which involves operating of heavy machinery and exposing children to toxic substance is prohibited.<sup>1232</sup>

Pursuant to Article 172 of the Labour Code further prohibits the involvement of children in night work.<sup>1233</sup> In addition, children under 18 may not engage in mining or quarrying.<sup>1234</sup> The Code recognises that all forms of work prohibited by the Code are not only dangerous but infringes on the wellbeing of a child and constitutes the worst forms of child labour.<sup>1235</sup> According to the Code, anyone found in contravention of these provisions commits a criminal offence therefore liable for a fine; may face suspension or removal of one or more of his or her national, civil or family rights including denial of residency for period of five to ten years.<sup>1236</sup>

Forced or compulsory labour is also prohibited under the Labour Code therefore banned by the law. The law prohibits the employment of children using coercive and forceful means.<sup>1237</sup> Involuntary labour is equated to slavery or bondage therefore constituting the worst forms of child labour.<sup>1238</sup> Having ratified the ILO Convention No. 29 on Forced labour and Convention No. 105 on the Abolition of Forced Labour in 1957 and 1966 respectively, it is evident that the law is in compliance with both conventions.<sup>1239</sup> However it is argued that Morocco's national legislation fails comply with provisions of the ILO convention on forced labour.<sup>1240</sup>

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<sup>1228</sup> Article 2 (3) of the ILO Convention No. 138.

<sup>1229</sup><sup>1229</sup> ILO, UNICEF and World Bank Group: Country Report (2004) 'Understanding Children's Work in Morocco'

<sup>1230</sup> *Ibid.*

<sup>1231</sup> Articles 184 and 191 of the Labor Code.

<sup>1232</sup> Article 147 of the Labour Code.

<sup>1233</sup> Article 172 of the Labour Code.

<sup>1234</sup> Article 179 of the Labour Code.

<sup>1235</sup> ILO, UNICEF and World Bank Group: Country Report (2004) 'Understanding Children's Work in Morocco' 17.

<sup>1236</sup> US Department of Labour Bureau of international labour affairs (2004) 'Labour Rights Report: Morocco' 17. See also United Nations Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties: Morocco, Second periodic reports of States parties due in 2000, para. 647 as quoted by the US Department of Labour.

<sup>1237</sup> US Department of Labour Bureau of international labour affairs (2004:15).

<sup>1238</sup> *Ibid.*

<sup>1239</sup> *Ibid.*

<sup>1240</sup> International Trade Union Confederation (ITUC) (2009) "Internationally recognised core labour standards in Morocco: Report for the WTO general council review of the trade policies in Morocco". Executive summary Geneva. 1.

It stated that sanctions against anyone coercing or forcing a child into labour are discouraging thus insufficient to respond to the issue of forced labour.<sup>1241</sup> Given the lack of labour inspectors in informal sectors where child labour or forced labour is extensive, the Labour Code is rendered insufficient and inadequate in protecting children against harmful child labour practices within this sector.

#### **4.14.3 Penal Code of 1962**

The Kingdom of Morocco has become a hub of prostitution given the booming of sex tourism. At least five cities in Morocco have been identified as prostitution centres, namely Casablanca, Meknès, Tangier, Marrakech and Rabat.<sup>1242</sup> As a result thousands of children are sexually exploited.<sup>1243</sup> Cognisant of this, the Penal Code provides that involving children in pornography, illicit activities and prostitution should be prohibited.<sup>1244</sup> In addition, parliament changed the Code to criminalise child sexual abuse, increasing therefore penalties against employers of children under age 18 for purposes of sexual exploitation.<sup>1245</sup> A number of children found engaging in prostitution are at a risk of being trafficked.<sup>1246</sup> Reformation of the Penal Code not only safeguards the rights of children and protection thereof, it is conforming therefore to the human right bodies aimed at eliminating worst forms of child labour.

#### **4.14.4 Domestic Worker's Law**

It is evident that, the revised Labour Code of Morocco protects children below the age of 15 involved in child labour,<sup>1247</sup> particularly those involved worst forms of child labour including prostitution.<sup>1248</sup> However, the code exclude children working as domestic workers. These children often work for long hours with no legal protection against low wages.<sup>1249</sup> This group of workers often work in abusive and exploitative conditions therefore in need of protection.

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<sup>1241</sup> *Ibid.*

<sup>1242</sup> ILO, UNICEF and World Bank Group: Country Report (2004) 'Understanding Children's Work in Morocco' 17.

<sup>1243</sup> *Ibid.*

<sup>1244</sup> US Department of Labour Bureau of international labour affairs (2004:17). See also Article 497 – 504 stating that “prostitution of children, corruption of minors, and involvement of children in pornography are prohibited under the Penal Code” furthermore the Penal Code “e prohibits soliciting for the purposes of prostitution, 18 as well as aiding, protecting, or profiting from the prostitution of others”

<sup>1245</sup> US Department of Labour Bureau of international labour affairs (2004:17).

<sup>1246</sup> See also the Immigration and Emigration Act of Morocco. The Act prohibits trafficking of children particularly those kidnapped and coerced into prostitution. Traffickers may be investigated, persecuted and convicted.

<sup>1247</sup> Article 143 of the Labour Code.

<sup>1248</sup> See also Article 503 of the Penal Code.

<sup>1249</sup> Human Rights Watch (2005) 'Inside the Home, Outside the Law Abuse of Child Domestic Workers in Morocco' Vol 17 No. 12.

It is worth noting however that, after voting for the adoption of the ILO Domestic Workers Convention No. 189 of 2011, although not ratified, the Kingdom of Morocco approved and adopted new laws regulating employment of domestic workers. The new law sets the age of admission to employment at 18, with a contract stipulating terms of employment.<sup>1250</sup> Furthermore, under the new law, working hours is limited to 40 hours a week for children between the ages of 16 and 17 years.<sup>1251</sup> Employers in violation of the law shall face financial penalties. It is argued that having adopted legislation aimed at protecting child and adult domestic workers, the Kingdom of Morocco should ratify the ILO Domestic Convention to show conformity and influence other countries to realise the need to protect the rights of domestic workers, particularly child domestic workers' rights.<sup>1252</sup>

Ratification of ILO and UN conventions have not only contributed to the reformation of the Constitution but also to the Labour Code of Morocco. As a result, this has also contributed significantly in informing national and social policies aimed at eliminating child labour in the Kingdom of Morocco through a number of governmental departments, law enforcement agencies, ILO and UN bodies and programs.<sup>1253</sup> Various mechanisms have been instituted as means of ensuring regulation of child labour and its ultimate abolishment.<sup>1254</sup>

## 4.15 National Policy Framework

### 4.15.1 National and Sectoral Action Plan Against Child Labour of 1999

The prevalence of child labour in Morocco did not only awaken the need to protect children against environments detrimental to their wellbeing but also the need to recognise the

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<sup>1250</sup> Human Rights Watch (2016) "Morocco: New law advances domestic worker's rights". Available at: <https://www.hrw.org/news/2016/08/01/morocco-new-law-advances-domestic-workers-rights> (Accessed 27 March 2019). National policies and Social policies draft bill on domestic service requires written contracts and sets 18 as the minimum age for domestic workers. The new law requires written contracts and sets 18 as the minimum age for domestic workers, with a phase-in period of five years during which girls between 16 and 18 are allowed to work, with phase-in period of five years during which girls between 16 and 18 are allowed to work."

<sup>1251</sup> *Ibid.*

<sup>1252</sup> *Ibid.*

<sup>1253</sup> 2017 Findings on the Worst Forms of Child Labor: Morocco available at: <https://www.refworld.org/pdfid/5bd05ade0.pdf> (accessed 24 November 2020). The programs undertaken by the Kingdom of Morocco include, Tyssir Condition Cash transfer program Entraide Nationale, Government- Funded Shelters, After school Program for second chance and USAID – Funded projects to address child labour. The program aim to reduce child labour through the increase to access to education, provide cash transfers to help increase school enrolment, prevent child labour by ensuring that girls in rural areas are retained in schools, In addition, shelters and Child Protection Units were established to provide social and educational services to victims of abuse and street children amongst others and finally increase opportunities that will enable youth to advance themselves respectively.

<sup>1254</sup> Bureau of International Labour Affairs. Moderate Advancements: Morocco.

children's rights. The reformation of Morocco's constitution to include children's rights marked a milestone for children. To ensure that children's rights are protected and promoted, particularly of those involved in child labour, the Kingdom of Morocco adopted National and Sectoral Plan of Action Against Child Labour in 1999, addressing child labour.<sup>1255</sup>

The Ministry of Social Development, Solidarity and Labour with technical assistance from the ILO/IPEC attempts to tackle child labour at a number of levels. The Plan aims at ensuring compliance and conformity of national child labour laws with international conventions; that child labour laws are visible and effectively promoted, also strengthening enforcement mechanisms.<sup>1256</sup> The Plan provides that social protection systems should be strengthened, an expansion in vocational training and the educational system strengthened. The plan further provides that there is need for short-term and long-term mechanisms focusing on changes in sectors dominated by child labour in order to eliminate child labour.<sup>1257</sup> Based on the objectives of the National and Sectoral Plan of Action Against Child Labour, the Kingdom of Morocco adopted policies aimed at addressing child labour. It is noticeable that majority of the policies implemented in Morocco were greatly influenced by ILO/IPEC and UNICEF.

#### **4.16 ILO/IPEC Policies relating to the elimination of child labour in Morocco**

##### **4.16.1 Integrated Public Policy on the Protection of Children in Morocco (PPIPEM)**

Integrated Public Policy on the Protection of Children in Morocco (PPIPEM) was launched by the Ministry of Solidarity, Women, Family and Social development with the support of UNICEF and various stakeholders 2013.<sup>1258</sup> Responding to the recommendations made of the National Plan of Action for children 2006-2015,<sup>1259</sup> the PPIPEM takes an interdisciplinary approach as means of responding to the exploitation of children and other issues affecting

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<sup>1255</sup> ILO, UNICEF and World Bank Group: Country Report (2004) 'Understanding Children's Work in Morocco'. 36. It is important to note the sufficient information on National and Sectoral Plan of Action Against Child Labour adopted by the Kingdom of Morocco could not be found online. The Plan itself could not be found except where elaborated in other sources of information. See also the 2013 findings on the Worst forms of child labour: Morocco available at : <https://www.refworld.org/pdfid/5448a6430.pdf> (accessed 24 November 2020).

<sup>1256</sup> *Ibid.*

<sup>1257</sup> *Ibid.*

<sup>1258</sup> Ministry of solidarity, women, family and social development: Integrated Public Policy on the Protection of Children in Morocco. Available at: <http://www.social.gov.ma/en/content/integrated-public-policy-child-protection-morocco> (accessed 29 March 2019).

<sup>1259</sup> *Ibid.*



children.<sup>1260</sup> Primarily, the policy is aimed at building protective and sustainable circumstances against all forms of abuse, violence, exploitation and neglect.<sup>1261</sup> Furthermore, the policy framework aims at adopting and implementing measures prohibiting and preventing all forms of children's rights violation.

The rights of children below the age of 18 suffering inhumane treatment such as exploitation and abuse whom therefore are in need of protection are covered under the policy.<sup>1262</sup> This includes, orphans, children involved in child labour, children with disabilities, children from poverty-stricken families and regions as well as street children to state but a few.<sup>1263</sup> It is argued that, for PPIPEM to be effective child protection legislative measures have to be strengthened, promote social protection standards and effective monitoring and evaluation process should be put in place. About 450 professionals were trained on relevant legislation and human rights, ensuring that children have access to justice as provided under international standards.<sup>1264</sup> Child protection units were also established in order provide safety for children and rehabilitation. Protection of children against hazardous labour practices is guaranteed by the Protection Policy.

#### **4.17 UNICEF Supported Programme**

##### **4.17.1 Out-of-school Initiative**

While child labour continues to hinder access to education which is one of the fundamental rights of children; the Kingdom of Morocco with the help of UNICEF has been able to reduce a number of children dropping out of school through the Out-of-School Initiative.<sup>1265</sup> Morocco has witnessed a great drop, from 3.2 per cent to 1.9 percent.<sup>1266</sup> In 2015, a new

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<sup>1260</sup> Bureau of International Labour Affairs. Moderate Advancements: Morocco.

<sup>1261</sup> Ministry of solidarity, women, family and social development: Integrated Public Policy on the Protection of Children in Morocco.

<sup>1262</sup> 2018 Findings on the worst forms of child labour: Morocco Available at: [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2018/Morocco.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/Morocco.pdf) (accessed 24 November 2020). According to the report, sec 3-5, 52 and 53 of the Integrated Public Policy on the Protection of Children in Morocco (PPIPEM) aims to protect children against exploitation of children.

<sup>1263</sup> *Ibid.*

<sup>1264</sup> UNICEF Annual Report: Morocco (2017). Available at: [https://www.unicef.org/about/annualreport/files/Morocco\\_2017\\_COAR.pdf](https://www.unicef.org/about/annualreport/files/Morocco_2017_COAR.pdf). (Accessed 25 March 2019).

<sup>1265</sup> UNICEF Annual Report: Morocco (2016). Available at: [https://www.unicef.org/about/annualreport\\_/files/Morocco\\_2016\\_COAR.pdf](https://www.unicef.org/about/annualreport_/files/Morocco_2016_COAR.pdf) (Accessed 25 March 2019)

<sup>1266</sup> *Ibid.*

education strategy was launched. The education strategy makes one year of pre- primary obligatory. As a result, approximately 588 000 children have benefited.<sup>1267</sup>

Furthermore according to the UNICEF annual report of 2017, national framework and tools on education were finalised in three areas, namely preschool, inclusive education and life skills education.<sup>1268</sup> Ministry of Education (MoE) provided technical support, where more than 220 preschool teachers and 2200 preschool children were reached.<sup>1269</sup> In 2017 through capacity development, inclusive education was adopted by the MoE and supported by the UNICEF, and was implemented in 60 schools with about 19 000 children as beneficiaries.<sup>1270</sup> Beneficial to the young and youth, was the life skills and citizenship education.<sup>1271</sup> Consequently one would argue that the initiative has had a positive impact on the lives of many children particularly those poor and in rural areas who could afford the costs of education. The inclusive education strategy has opened doors for them to learn and life skills education has brought about knowledge and information. This for instance, has seen many children become informed and trained in entrepreneurship,<sup>1272</sup> therefore resulting in the reduction of engaging in child labour. The children rely on their entrepreneurial skills to generate income for themselves without engaging in injurious conditions.

#### **4.17.2 The National Council for Human Rights (CNDH)**

The National Council for Human Rights (CNDH) was supported by UNICEF Morocco, for developing and advocating an establishment of an independent mechanism on reporting violation of human rights and addressing the concerns thereof.<sup>1273</sup> Furthermore, both UNICEF and the CNDH encourage participation and input of children in monitoring and reporting mechanisms on the rights of the child.<sup>1274</sup> The report states that, more than 500 children participated in consultative process, including children with disabilities and children on the move (migrants) in order to establish children's views on the complaints systems, their views

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<sup>1267</sup> *Ibid.*

<sup>1268</sup> UNICEF Annual Report: Morocco (2017).

<sup>1269</sup> *Ibid.*

<sup>1270</sup> *Ibid.*

<sup>1271</sup> *Ibid.* At least 3,593 adolescents and youth, benefited from the life skills and citizenship education were mainstreamed through development and piloting of a life skills-based counselling program, including entrepreneurship. As a result, many of these children because of the lessons given by the education, child labour would be easily overcome as they would have means of generating income without engaging in hazardous labour practices.

<sup>1272</sup> *Ibid.*

<sup>1273</sup> UNICEF Annual Report: Morocco (2017).

<sup>1274</sup> *Ibid.*

of national policies on children's rights and contribution as duty bearers.<sup>1275</sup> As a result, implementing of such mechanisms contribute to the elimination of child labour as children remain the drivers and voice behind the protection of children against work detrimental to their wellbeing.

#### **4.18 Social Programs aimed at addressing child labour in Morocco**

While there maybe a number of social policies adopted by the Kingdom of Morocco in addressing the elimination of child labour, the study will focus on policies aimed at eradicating social problems contributing to child labour.

##### **4.18.1 National Human Development Initiative**

This initiative was implemented between the years 2011 to 2015, targeting rural communities where poverty is rampant. The primary objective of the initiative was poverty reduction.<sup>1276</sup> Furthermore, the initiative aimed at implementing projects that help gain access to basic social services and basic infrastructure.<sup>1277</sup> Not only does the initiative conform to the international human rights conventions whose provisions obligates member states to implement policies that alleviate poverty, but also responds to one of the major factors contributing to child labour particularly in rural Morocco.

Furthermore, the government of Morocco set up the Social Cohesion Support Fund aimed at financing a number of programs including Tayssir programme.<sup>1278</sup> The primary goal of the Tayssir programme also referred to as Cash Transfer Programme for Children, assisted children socially through increase in rural participation in primary and secondary education.<sup>1279</sup> Children therefore received an amount of MAD 60 in both first and second years of primary school. This amount increases as one joins higher grades.<sup>1280</sup> The Tayssir

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<sup>1275</sup> *Ibid.*

<sup>1276</sup> ICR Review Independent Evaluation Group: Morocco. (2014). Available at: <http://documents.worldbank.org/curated/en/817541475092702301/pdf/000180307-20141120030237.pdf> (Accessed 28 March 2019).

<sup>1277</sup> General Assembly National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2\* Morocco (2017).

<sup>1278</sup> *Ibid.*

<sup>1279</sup> Tayssir (Cash Transfer Programme for Children). Available at: <https://socialprotection.org/programme/tayssir-cash-transfer-programme-children> (Accessed 29 March 2019).

<sup>1280</sup> *Ibid.*

programme not only helped poor families, but encouraged enrolment and decreased the number of dropping out.<sup>1281</sup> Consequently, the program afforded all children an opportunity to access both education and income. This helped reduce the burden of poverty and lessened the need for children to engage in child labour activities.

It is worth concluding that the Kingdom of Morocco has made a notable and significant advancement in addressing child labour. Giving a speech at The Hague Global Child Labour Conference in Geneva, 2010, Minister Jamal Rhmani pledged that the Kingdom of Morocco will amongst others adopt a national law against domestic work for children under 15 and revision of the Hazardous Work List<sup>1282</sup> and this has been achieved. The Kingdom of Morocco enacted legislation aimed at protecting the rights of children, the engagement of children against work that is hazardous and implemented time bound policies that not only seek to eliminate child labour but rather deal with the core factors contributing to child labour, particularly poverty. While child labour continues to exist in Morocco, it is worth noting that it has decreased. For the advancement of child rights in Lesotho as well as implementing strategies that will better protect children against child labour, the Kingdom of Lesotho must learn from and emulate Morocco's good practices.

#### **4.19 Conclusion**

While the calls for the ban of child labour cannot be emphasised enough, the scourge of child labour continues to persist; leaving millions of children in Africa vulnerable, prone to exploitation, oppression abuse and human rights violations. It is evident that no child willingly engages in child labour. It is also evident that in all countries discussed including the Kingdom of Lesotho, circumstances that breed child labour and its proliferation are common to all. Poverty, HIV/AIDS pandemic, culture, child headed household and orphanhood to state a few contribute significantly to child labour. Particularly worst forms of child labour.

Although child labour continues to persist, the adoption of legislation and policies towards the eradication of child labour remains the desired goal. It is therefore crucial to recognise and applaud efforts made by the Republic of South Africa, the United Republic of Tanzania

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<sup>1281</sup> Bureau of International Labour Affairs. Moderate Advancements: Morocco.

<sup>1282</sup> The Hague Global Child Labour Conference (2010).

and the Kingdom of Morocco in conforming to the International human rights by reforming and revising national laws, adopting and implementing policies that have progressively reduced child labour.

A decline in poverty, unemployment, HIV/AIDS and an increase in school attendance in the three countries serve as evidence for the advancement made in eliminating child labour. Not only should Lesotho emulate these practices but the entire African continent. The adoption of the above strategies and policies will not only provide better protection for children involved in child labour but will help to ultimately eradicate child labour practices in Lesotho.

The study proposes for the amendment of customary, harmonisation of both international and customary law. Moreover, the study advocates for the strengthened relations between the government and civil society organisations, NGOs, community leaders and stakeholders in order to adequately address issues of child labour.

## CHAPTER FIVE – CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Introduction

The undertaken study evaluated the practice of child labour with the aim of identifying strategies that will help provide better protection of children involved in child labour and their rights. The study assessed child labour in Lesotho and the extent to which this practice violates the rights of children in Lesotho.<sup>1283</sup> The primary focus of the study investigated whether the Children's Welfare and Protection's Act of Lesotho adequately address the plight of child labour within the informal sector, whether the Act provides measures to be considered and enforced in order to protect children against child labour, reduce the practice and ultimately eradicate it.<sup>1284</sup> The research investigated a number of secondary questions as means to answer the research question. This includes investigating:

- (a) the reasons, causes and factors contributing to the prevalence of child labour<sup>1285</sup>
- (b) types or forms of child labour<sup>1286</sup>
- (c) children's rights violated as a result of child labour practices<sup>1287</sup>
- (d) responses to child labour by the Kingdom of Lesotho, South Africa, Tanzania and Morocco<sup>1288</sup>
- (e) responses by Lesotho in collaboration with UN and ILO agencies, NGOs and CSOs<sup>1289</sup>
- (f) the application of the international law aimed at addressing child labour in Lesotho<sup>1290</sup>
- (g) and finally, best practices to be emulated by the Kingdom of Lesotho in order to curb the prevalence of child labour from South Africa, Tanzania and Morocco<sup>1291</sup>

The study therefore commenced with analysis of the research problem through a detailed background of global perspectives, then narrowed it down to evaluating the practice of child

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<sup>1283</sup> See paras 1 above.

<sup>1284</sup> For more details see paras 1.2 above

<sup>1285</sup> For more details see paras 1 above, see also chapter 2, see paras 2.1,2.2,2.3,2.4,2.5, 2.6 on the theoretical explanations of child labour which also highlights reasons for child labour beyond those considered obvious such as poverty, inequalities among others. My emphasis is on this chapter is stating that child labour is and should be understood to be a result of more underlying issues that are unpacked by a number of theories behind its existence. See also paras, 3.2., 4.2, 4.7, 4.12 above.

<sup>1286</sup> For more details see paras 3.3, 4.2, 4.6 and 4.11 on Morocco which details the different forms most children find themselves partaking in.

<sup>1287</sup> See paras 1 above. For more details see also the prospective chapters detailing the extent to which child labour violates the fundamental rights of children. See also paras 2.2 above.

<sup>1288</sup> For more details see paras 3.4, 3.5, 4.8,4.9, 4.14, 4.15 above.

<sup>1289</sup> For more details see paras 3.7, 3.8, 4.4.4, 4.10, 4.16, 4.17 above.

<sup>1290</sup> For more details see paras 3.8 above.

<sup>1291</sup> For more details see chapter 4 above.

labour in Lesotho.<sup>1292</sup> Furthermore, the study provided theoretical explanation of child labour, identified reasons as well as factors contributing to prevalence and proliferation of child labour practice globally in the informal sector including the Kingdom of Lesotho.<sup>1293</sup> In responding to the plight of child labour, the study critically examined existing legislation and policies aimed at responding to and addressing child labour in Lesotho.<sup>1294</sup> The study probed into the responses to child labour by international organisations, NGOs and CSOs existing in Lesotho as means to help the country tackle the problem of child labour. Finally, the study undertook to identify strategies that will help provide better protection for children involved in child labour by critically evaluating positive advancements made by countries such as South Africa, Tanzania and Morocco in addressing the plight of child labour, therefore adopting a comparative study. Child labour practices within the three countries were critically evaluated. Furthermore, the study investigated how these countries responded to child labour, by examining the implementation of national and international legislation as well as policies adopted that have resulted in the reduction of child labour.<sup>1295</sup> Based on the study's deliberations, this chapter presents conclusions drawn from the research findings and submits recommendations with respect to the study.

## 5.2 General Findings and Conclusions

### **The following key findings stem from this thesis:**

- It appears that child labour is indeed a problem facing the African continent, particularly the Sub-Saharan region, of which the Kingdom of Lesotho forms part of, with a great majority of children found partaking in economic activities in the informal sector.<sup>1296</sup> This sector of the economy is said to be a notable feature of the African economy with nearly 70 percent of the population including children partaking in different forms of economic activities.<sup>1297</sup> It was pointed that this sector of the economy is neither regulated nor inspected.<sup>1298</sup> Resultantly, many involved in it

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<sup>1292</sup> See chapter 1 above.

<sup>1293</sup> See chapter 2, 3 and 4 on the different causes and factors contributing to child labour in the different countries investigated and evaluated by the study. While other factors may be similar or common some countries have identified other factors unique to other states despite being within the same continent.

<sup>1294</sup> For more details see paras 3.4 above.

<sup>1295</sup> See chapter 4 above.

<sup>1296</sup> For more details see para 1 above.

<sup>1297</sup> Adams, A. V, Johnson de Silva, S & Razmara, S. (2013) 1.

<sup>1298</sup> See para 1 above.

including children are exposed to exploitation and abuse without protection, be it social or legal protection.

- The study pointed out that child labour was not only a result of social, economic and political instabilities but also the growth of economic activities within the informal sector, which attracted many child labourers.<sup>1299</sup> Cognisant of the prevalence of child labour globally, new laws in the form of treaties, conventions and covenants were adopted and ratified by many countries in Africa including Lesotho as means to protect children and curb harmful practices such as child labour.<sup>1300</sup> The enactment of the Children's Protection and Welfare Act by the Kingdom of Lesotho was recognised as an adherence to the conventions and realisation of the urgent need to protect children and promote children's rights.<sup>1301</sup> However, despite these efforts, it appears that the implementation and enforcement of these laws relating to the protection of children, especially those involved in child labour within the informal sector continues to be a challenge.<sup>1302</sup> As a result, many countries including the Kingdom of Lesotho continue to witness an increase in the prevalence of child labour practices in both rural and urban areas.<sup>1303</sup> It appears that many children in African countries work as street vendors, domestic workers and herd boys, while others work for their relatives or neighbours in farms or households,<sup>1304</sup> in agriculture and in prostitution or commercial sex work.<sup>1305</sup> In fact, children as little as five years of age engage in child labour,<sup>1306</sup> engaging in work that exposes them to economic and sexual exploitation, long and dangerous working conditions that is detrimental to their health thus violating the rights of children without protection.<sup>1307</sup> These rights include the right to education, development and wellbeing.<sup>1308</sup> Therefore, child labour should be recognised as a human right's issue.
- While it seems that the lack of regulation of the informal sector results in the proliferation of child labour, it was revealed that distinguishing between child labour and child work continues to be a challenge. It appears that ambiguities in the

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<sup>1299</sup> For more details see para 1 above.

<sup>1300</sup> For more details see para 1 above.

<sup>1301</sup> For more details see paras 1, 1.4 & 3.5.4 above.

<sup>1302</sup> For more details see para 1.5 above. See also chapter 3.

<sup>1303</sup> Unicef data. See also para 1 above.

<sup>1304</sup> Kimane (2006) 4. For more details see also Letuka (1998) 210-215 para 3.3 above.

<sup>1305</sup> See paras 3.3, 4.1, 4.11, 4.13 & 4.14.4 above.

<sup>1306</sup> See para 3.1 above.

<sup>1307</sup> For more details paras 1, 1.6.2 and prospective chapters of the study on the consequences of child labour above.

<sup>1308</sup> For more details see para 1 above.



definition of child labour and child work has resulted in the failure to adequately address the problems of child labour.<sup>1309</sup> While there is an assumption that these definitions are subjective to countries or societies, there is a failure to protect children against such harmful labour practices.<sup>1310</sup> Therefore, there is need for the development of a single definition in line with international law for the above concepts. This will help inform the legislation and help legalise and regulate the informal sector.

- Chapter two pointed that the practice of child labour should be understood beyond empirical evidence. It seems that the existence of these practices can also be explained through a number of theoretical viewpoints adding also on to the limited scholarship on child labour in Africa.<sup>1311</sup> The study revealed that children engage in harmful labour activities for various reasons, but primarily as a means of survival.<sup>1312</sup> However, it appears that the practice of child labour cannot be attributed solely to survival, but beyond that. Therefore, in an attempt to explain extensively the existence of child labour practices and help respond to its effects,<sup>1313</sup> the study analysed the different approaches including, Human Rights Approach, Sociological perspective or Social theory, Cultural perspective, Economic perspective and Legal perspectives.<sup>1314</sup>
- From a human rights perspective, it was pointed that children by virtue of being human beings, possess basic and fundamental rights that need to be protected, particularly against any forms of practices detrimental to their welfare and wellbeing such as child labour.<sup>1315</sup> Recognising the extent to which child labour violates the rights of children, the practice should be viewed as a human rights issue.<sup>1316</sup> Therefore the adoption of legislation aimed at promoting the rights of children and protecting them against harmful labour practices by many African countries including the Kingdom of Lesotho illustrated the pursuit to protect children, promote children's rights and ultimately putting an end to such practices.<sup>1317</sup> It seems that becoming party to the CRC, ILO, ICCPR, ICESCR, ACHPR, and ACPWC among others as well as

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<sup>1309</sup> See para 1.6.1 above. See also Letuka (1998). The author attributes the inconsistencies of definitions of a child and child labour to ambiguity of the concepts. Furthermore, Letuka asserts that definitions are subjective and dependent on a society or a culture. Definition of a child is not defined in relation to a numeric value.

<sup>1310</sup> Letuka (1998) 206. For more details see para 1.6.1 above.

<sup>1311</sup> See para 2 above.

<sup>1312</sup> See paras 2.1 & 2.2 above.

<sup>1313</sup> See chapter two above.

<sup>1314</sup> See Chapter two above.

<sup>1315</sup> For more details see para 2.2 above.

<sup>1316</sup> See para 2.2 above.

<sup>1317</sup> See paras 1, 1.5, 2.2, 3.5.4 and 3.9 above. See also chapter 4 on the South Africa, Tanzania and Morocco.

the enactment of the national laws in line with the international standards aimed at protecting the rights children will help curb child labour practices.<sup>1318</sup>

- While many countries such as Lesotho, South Africa, Tanzania and Morocco have adopted and ratified the international instruments, obligating themselves to domesticate these laws and undertake measures to address child labour through the enactment of national legislation to this effect, many African countries including Lesotho still continue to contend with high levels of child labour and its effects thereof.<sup>1319</sup> The study found that “child labour practices”<sup>1320</sup> were in fact culturally acceptable.<sup>1321</sup> For instance, engaging in domestic work, farming, rearing and herding livestock was regarded as a norm, therefore not a problem. However, it is revealed that this cultural assumption fails to consider the extent of harm and brutality caused by such work. Furthermore, the study found that the rejection of child labour as a human rights issue on the basis of culture by the Kingdom of Lesotho not only poses a challenge but also fails to adhere to human rights conventions.<sup>1322</sup> From the human rights approach it appears that this approach plays an advocacy role - advocating for the recognition of child labour as an infringement on children’s rights and need to eradicate it. The human rights perspective acknowledges that protection of children’s rights and achievement of child labour free society requires progressive measures, through the adoption of short and long terms policies.
  
- From a Sociological Perspective, the prevalence and persistence of child labour is a result of a number of social problems. The dysfunctions of social institutions such as the family unit and the role of communities forces children to forfeit their childhood and other rights, including education. For instance, absence of parents due to either migration or divorce has resulted in the breakdown of the family unit, causing children to assume parental roles and engage in work as means to provide and care the younger siblings.

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<sup>1318</sup> For more details see chapter one, two and three, paras 1.5, 2.2, 3.5.4,3.9 above.

<sup>1319</sup> See paras 2.2,

<sup>1320</sup> Author’s emphasis.

<sup>1321</sup> See paras 2.2, 2.4, 3.2.7 above.

<sup>1322</sup> See paras 2.2 & 3.9 above.

- Furthermore, from social exclusion approach, the study revealed that in the case of death of parents, children often find themselves rejected by their family members and communities or societies, therefore compelling them into finding work to survive and sustain themselves.<sup>1323</sup> While high levels of poverty, high costs of education were identified by the social theory as some of the primary reasons for child labour, the study revealed that a girl child is most affected.<sup>1324</sup> A girl child is often compelled to drop out of school to work or marry.<sup>1325</sup> One would conclude that child labour is gender biased. There is therefore an urgent need to protect a girl child against labour activities and afford them the same opportunities as male children.
- Political instabilities and demand for cheap labour have given rise to child labour.<sup>1326</sup> The study found that many children who fled from their conflict stricken countries often engage in child labour in the country of refuge as means to survive, working in harmful and under hazardous conditions. In addition, the study found that in some countries, the presence of multinational companies have resorted to subcontracting into informal and smaller enterprises therefore attracting and employing a number of children because of lower costs of labour. This is evident in DRC where children work in cobalt mines under Samsung and iPhone for little pay.<sup>1327</sup> Finally, it was also revealed that “sense of agency” plays pivotal role in the prevalence of child labour. Children’s desire to be financially independent has resulted in children engaging in economic activities constituting forms of child labour.<sup>1328</sup>
- Based on the economic perspective, the study found that, the need to help low income families, children are coerced to partake in child labour practices.<sup>1329</sup> However, in families that are considered economically stable, the study found that such families often invest in child primary education to help develop some skills that will help a child be employable.<sup>1330</sup> Finally, the economic perspective revealed that child labour is a result of trade-offs. Children are compelled to trade their education and rather work and to assist the family financially.

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<sup>1323</sup> See paras 2.3, 3.2.3, 4.7.3 & 4.12.3 above.

<sup>1324</sup> See para 2.3 above.

<sup>1325</sup> See paras 2.3, 3.2.6 & 4.2.3 above.

<sup>1326</sup> See paras 2.3, 2.5, 4.7.7, 4.13 above.

<sup>1327</sup> See para 2.3 above.

<sup>1328</sup> See paras 2.3 & 4.7.6 above.

<sup>1329</sup> See paras 2.3 & 4.7.7 above.

<sup>1330</sup> See paras 2.4 & 2.5 above.

- Viewing child labour as a rite of passage to adulthood, the cultural perspective<sup>1331</sup> argues that engagement of children in labour activities is merely a performance of duties given to children. According to the study, the ability to perform duties is considered as being responsible and mature. It seemingly appears that insisting on having children work disregards violation of children's rights. There is therefore needed for cultural conceptions of child work or labour to change. Finally, the study under the legal perspective found that the practice of child labour was recognised as constituting unlawful and prohibited practices.<sup>1332</sup> Therefore, it is clear that these practices constitute a criminal offence. While Lesotho's customary law does not recognise child labour as an illegal practice but a culturally accepted practice,<sup>1333</sup> this fails to recognise the danger in work children engage in and the need to be protected against such work. For instance a boy child's responsibility to herd livestock which usually happens during the day, denies a child the privilege to be in school as a result infringing on the child's right to education. It is crucial therefore that customary law be reviewed in order to protect children against human rights violation that result from work.

Having established reasons for the high prevalence of the practice of child labour through theoretical explanations, the study sought to evaluate this practice within the context of Lesotho.

- Considered one of the least developed countries in Africa, the majority of Lesotho's population live under extreme levels of poverty that is below the poverty line.<sup>1334</sup> The study pointed that, the economy of Lesotho depends greatly on the agricultural sector and migrant labour, with the public sector being the main employer.<sup>1335</sup> However, with the escalation in unfavourable climatic conditions or global warming and the rise of retrenchments of migrant labourers, the country witnessed an increase in both poverty and adult unemployment.<sup>1336</sup> The growth in HIV and AIDS have also resulted in deaths of parents, the proliferation of orphans and child headed households as well as lack of household income. The study showed that because of these circumstances children have been compelled to find work within the informal sector to help provide

<sup>1331</sup> See paras 1.6.2, 2.4, 3.2.7, 3.4, 3.5.3, 3.5.4, 4.2 & 4.2.6 above.

<sup>1332</sup> See para 2.6. See also the Sec 32 of the Constitution of Lesotho and Sexualoffence Act 2007 which criminalises exploitation of children economically and sexually. These acts constitute the worst forms of child labour.

<sup>1333</sup> See paras 1, 1.5, 2.1, 2.4, 2.6, 3.2.7, 3.5.3 & 4.2.6 above.

<sup>1334</sup> See para 3.1 above.

<sup>1335</sup> See paras 3.2.1 & 3.2.2 above.

<sup>1336</sup> See para 3.2 above.

for their families.<sup>1337</sup> Furthermore, the study revealed that migration, culture and child marriages were among factors contributing significantly to child labour in Lesotho.<sup>1338</sup>

- In Lesotho, the study found that a number of children were involved in traditional and paid labour, traditional non-commercial child labour; working for relatives as a way of showing appreciation and loaning of children to their relatives and paid labour.<sup>1339</sup>
- In an assessment of legal responses to child labour, it was revealed that both the Constitution of Lesotho and the Children's Protection and Welfare Act, prohibits child labour or the use of children in exploitative work.<sup>1340</sup> The study also found that the Kingdom of Lesotho adopted and ratified a number of international treaties and conventions aimed at prohibiting worst forms of child labour and protecting and promoting the rights of children.<sup>1341</sup> This includes CRC, ILO Conventions, and ACRWC among others.<sup>1342</sup> The application of these treaties was however met with a number of challenges. This included lack of conformity and inconsistencies with the customary law. The study also revealed that implementation and enforcement of the national laws was challenging. It appears that there inconsistencies in domestic and customary laws (which accepts child labour as a process of socialisation and cultural norm).<sup>1343</sup> The Labour Code on the other hand, seems to protect the rights of children working in the formal sector, therefore excluding the informal sector where child labour is dominant.<sup>1344</sup> The evident inconsistencies in legislation have resulted in the intensification of child labour practices in Lesotho hence being a concern. Although the study examined other pieces of legislation including the Education Act 2010 No.3 of 2010, the Sexual Offence Act No.3 of 2003 and Anti-Trafficking Persons Act of 2011 as means to respond to child labour practices, it appears that these laws in spite of the conformity to international law, seem to address or respond to factors contributing to child labour,<sup>1345</sup> as opposed to the practice of child labour.

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<sup>1337</sup> See paras 3.1, 3.2.1, 3.2.3 & 3.2.4 above. See also chapter 4 particularly on the discussion on factors contributing to child labour in South Africa and Tanzania above.

<sup>1338</sup> See paras 3.2.5, 3.2.6, 3.2.7 above.

<sup>1339</sup> See para 3.3 above.

<sup>1340</sup> Section 32 of the Constitution of Lesotho and Section 226 of the Children's Protection and Welfare Act.

<sup>1341</sup> See paras 3.1 above

<sup>1342</sup> See paras 1, 1.5 & 2.2 above.

<sup>1343</sup> For more details see para 3.9 above.

<sup>1344</sup> See para 3.5.2 above.

<sup>1345</sup> See paras 3.5.5, 3.5.6. & 3.5.7 above.

- While it is evident that there has been lack of enforcement and implementation of laws prohibiting child labour, it was revealed that a number of policies were also adopted and implemented by the kingdom of Lesotho.<sup>1346</sup> Founded on strong and positive objectives aimed at addressing child labour and finding ways to end it, the study revealed that the policies seem to respond to factors contributing to child labour. For instance, The National Policy on Orphaned and Vulnerable Children (NPOVC) recognised that vulnerable children (this includes orphans, children living and working on the streets among others) needed protection.<sup>1347</sup> The National Strategic Plan on Vulnerable children (OVC), although met with implementation challenges, was successful in the establishment of child justice committees and Child protection and Gender Unit as well as issuing of social grants among others.<sup>1348</sup> Although the Gender Unit seek to protect victims of violence particularly women and children, it was revealed that its mandate does not include victims of child labour who are continually abused and exploited.<sup>1349</sup>
- While the policies seem to focus on vulnerable children and the need to protect them without explicitly addressing child labour, Lesotho introduced programmes and action plans aimed at fighting against child labour. This included Programme Towards the Elimination of the worst forms of labour (TECL) and Action Plan for the Elimination of Child Labour (APEC). It was revealed that the TEC dealt directly with issue on child labour particularly the worst forms of child labour.<sup>1350</sup> Furthermore, while adoption of (APEC) was a success, the study found detailed information on its progress was missing.<sup>1351</sup> Although it is evident that a number of national policies and programmes sought to help eradicate the practice of child labour, it however appears that such policies and programmes address status of children (particular groups of children) that need to be protected and factors contributing to child labour. Child labour is in essence indirectly addressed. It is therefore crucial to adopt policies directly addressing the plight of child labour facing Lesotho, implement measures to

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<sup>1346</sup> See paras 3.5 & 3.6 above which details the laws and policies enacted and adopted respectively by the Kingdom of Lesotho.

<sup>1347</sup> See para 3.6.1 above.

<sup>1348</sup> See para 3.6.2 above.

<sup>1349</sup> See paras 3.6.2 & 3.6.4 above.

<sup>1350</sup> See para 3.6.3 above.

<sup>1351</sup> See paras 3.8 & 3.9 above.

protect children against such practice and put in place report systems on the progress of adopted programmes order to address child labour adequately.

- The role of COS and NGOs as well as the UN and ILO agencies in addressing child labour in Lesotho has been notable. For instance, Women and Children Commission called for the police forces to scale up their protection measures against perpetrators of sexual abuse. World Vision International on the hand has helped the country in poverty reduction programmes also offering humanitarian assistance to children and families living in poverty. SOS provides shelter for the abandoned and vulnerable and Sentebale provided extended education to herd boys, many of them study in the evenings.<sup>1352</sup> Although it appears that COS or NGOs have extended help in responding to factors contributing to child labour and serving as safety nets<sup>1353</sup>, the practice is still not directly and adequately addressed.
- The study revealed that in addressing the practice of child labour, the government of Lesotho in partnership with the UN agencies have accomplished a number of goals aimed at protecting children and protecting them against child labour. Government of Lesotho in partnership with UNICEF and other stakeholders have under a number of humanitarian assistance achieved good results. This includes the implementation of the national Child Grant Programme (CGP) as means to extend help to the poorest, elderly; HIV infected and disabled people as well as children. Health and child protection interventions have been intensified, protecting boys and girls alike against forms of violence, abuse and exploitation. Cash Grant Top-ups were granted to victims of drought by UNICEF in 2016 to mention but the few. It is evident that these interventions help address the plight of child labour in Lesotho. UNESCO on the other hand addresses issues relating to human trafficking and suggested that Lesotho adopts a culturally sensitive and holistic approach in order to fight human trafficking. While Lesotho adopted the UN SDG target 8.7, information on the progress of the goal particularly on eradicating child labour is unclear<sup>1354</sup> hence there is a need for mechanisms to ensure achievement of sustainable goals.

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<sup>1352</sup> See para 3.7 above.

<sup>1353</sup> Tamasane (2011).

<sup>1354</sup> For more details see para 3.8 above.

Whilst the problem of child labour in Lesotho seem to rather escalate as opposed to decreasing despite the enactment of domestic legislation, implementation of policies and domestication of international law, the study revealed based on research that a number of countries in Africa have made progress in addressing the problem of child labour. Even though these countries continue the fight against child labour practices it is worth noting that unlike Lesotho, they have been able to adequately address this problem. These countries include South Africa, Tanzania and Morocco.<sup>1355</sup>

- The study found that factors contributing to child labour in South Africa, Tanzania and Morocco are common to that of Lesotho. Cognisant that child labour constitutes to human rights violations, South Africa, Tanzania and Morocco sought to address these issues and ultimately put an end to child labour practices.
- Responding to child labour issues, the Republic of South Africa's compliance to the international and regional instruments aimed at protecting children against harmful cultural and labour activities but also protecting the rights of children was notable. In fact, the study found that the enactment of Basic Conditions of Employment Act (BCEA), was initiated on the principles of International Labour Organisation Minimum Age Convention, 1973 (ILO C 138). The study in addition revealed that the revision of the South African's Children's Act marked progress in the era where children's rights are crucial and abolishing child labour is the ultimate goal.<sup>1356</sup> The study nevertheless found that the law was insufficient to respond to the factors breeding child labour. Furthermore, other pieces of legislation such as the School's Act, Sexual Offences Act and South Africa's Social Assistance Act enacted<sup>1357</sup> appear to deal with that aspect left out by the BCEA and Children's Act.
- Responding to circumstances contributing to child labour, South Africa adopted national policies in line with the ILO standards and principles.<sup>1358</sup> The study found that grants for the poor were introduced, awareness campaigns on child labour were made and education was made accessible to all. It was also established that although the National Programme of Action for Children in South Africa (NPA) promoted and

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<sup>1355</sup> The Hague Global Child Labour Conference 2010 report.

<sup>1356</sup> See paras 4.3.2 & 4.3.3. above. See for more details the Basic Conditions of Employment Act No. 75 of 1997(BCEA) and The Children's Act 38 of 2005 (as amended by the Children's Amendment Act 41 of 2007) respectively.

<sup>1357</sup> For more details see The School's Act No. 84 of 1996, The Sexual Offences Act No. 32 of 2007 & The South Africa's Social Assistance Act No.13 of 2004 (SAA) above.

<sup>1358</sup> See para 4.4 above.



protected the rights of children, it prohibits exploitative labour practices. The study found that nonetheless, the NPA monitoring and reporting system was flawed hence the need for re-evaluation of the NPA.<sup>1359</sup>

- It appears also that there are collaborations between government, international organisations and Non-Governmental Organisations (NGOs) such as COSATU, FTTSA, CINDI and UNICEF among others through adoption of programmes such as Tsireledzani, aimed at protecting children against commercial sexual exploitation and human trafficking. Save the Children (SOS) implemented Sustainable Development Goals (SGDs) aimed at alleviating poverty; this helped reduce child labour in South Africa as it sufficiently addressed factors that contribute to child labour.<sup>1360</sup> The calls by trade unions to alleviate child labour increased awareness of child labour and helped focus and shift towards the protection of children engaged in child labour practices<sup>1361</sup>. It appears therefore that the partnership between the government of South Africa and NGOs have resulted in prioritising and addressing the problem of child labour. The idea of prioritising child labour seem positive and worth emulating by the Kingdom of Lesotho.
- In Tanzania, although the Constitution does not make provisions for the protection of children's rights or prohibition of child labour, it recognises the need to protect children.<sup>1362</sup> The study revealed that Child Act No. 21 of 2009 and the Children's Act No. 6 of 2011 as well as the Employment and Labour Relations Act of No. 6 of 2004 of Tanzania prohibits employment of children in age inappropriate and below the age of 14 years. Condemning also the exploitative and detrimental practices of child labour.<sup>1363</sup> It is evident therefore that these pieces of legislation seek to protect children against any form of work that is injurious.
- It was moreover established that the Republic of Tanzania also adopted plans, policies and programmes aimed at eradicating child labour. This includes National Action Plan for the elimination of child labour (NAP), Development Policy of 2008, National Time-Bound Programme (TBP) and National Strategy on Elimination of Child labour

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<sup>1359</sup> For more details see para 4.4.2 above.

<sup>1360</sup> For more details see para 4.4.4 above.

<sup>1361</sup> Congress of South African Trade Unions (COSATU) 'COSATU demands an end to child labour' Available at: <http://www.cosatu.org.za/show.php?ID=7600> (Accessed 18 February 2019).

<sup>1362</sup> See para 4.8.1 above. See also Article 11 of the Constitution of the United Republic of Tanzania of 1977.

<sup>1363</sup> See para 4.8.2, 4.8.3 & 4.8.4 Child Act No. 21 of 2009, Children's Act No. 6 of 2011 & Employment and Labour Relations Act of No. 6 of 2004 respectively above.

(2018-2022) among others.<sup>1364</sup> The study found there were systems in place monitoring the laws aimed at abolishing child labour. For instance, the NAP was characterised by the updating and revising of laws to ensure that child labour is abolished. Furthermore, the NAP sought to protect children from their living conditions that have compelled them to engage in child labour thus addressing the causes and factors contributing to the prevalence of child labour.<sup>1365</sup> In addition, National Strategy on Elimination of Child labour (2018-2022) ensures that multi-sectoral partnerships and coordination are strengthened, consistencies between international law and domestic law on children's rights exists, particularly laws prohibiting child labour, children are empowered and household earnings are strengthened among others.<sup>1366</sup> The study revealed that Tanzania was the first African country to launch and implement the national Time Bound Programme (TBP) to eliminate the Worst Forms of Child Labour, adhering therefore to Article 7 ILO Convention No. 182. Due to child labour predominance within the mining, commercial agriculture and prostitutions sectors, TBN focuses on fighting child labour within these sectors.<sup>1367</sup> Furthermore, TBP emphasised the implementing of education policies (that promote accessible education), National Poverty Monitoring Systems (based on poverty reduction) and Social Welfare Systems (based on improving the health and welfare of those affected by HIV) as best strategies to culminate incidences of child labour. This notable mechanism by the Republic of Tanzania can be emulated and implemented in Lesotho in order to address child labour.

- The study also revealed that the government of Tanzania in partnership with a number of NGOs and trade unions including TACOSODE and KIWOHEDE as well as TFTU and OTTU respectively successfully took part in campaigning against child labour. Private sector agents including Independent Television (ITV), sisal, tea, tobacco and coffee plantation associations also took part in creating awareness on child labour and the rights of children.<sup>1368</sup> The study demonstrated that reduction in child labour practices in Tanzania seem to be alluded to the progressive policies the country has

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<sup>1364</sup> See para 4.9 above.

<sup>1365</sup> See para 4.9.1 above.

<sup>1366</sup> See para 4.9.5 above.

<sup>1367</sup> See para 4.9.4 above. See also Article 7 ILO Convention No. 182.

<sup>1368</sup> See para 4.10 above.

adopted and implemented with success. These policies and strategies address both child labour and its root causes.

- In Morocco like many other African states, children were found working in agriculture, automobile repairs, handicrafts, domestic work services and prostitution. While these children were not previously protected by the law,<sup>1369</sup> the study found that a number of national laws in Morocco which previously did not protect children against harmful practices or promote children's rights were either revised or reformed to address issues concerning children.<sup>1370</sup> Recognising the need to protect human rights and in this case; children's rights, the Constitution of Morocco, the Labour Code, the Penal Code and Domestic Worker's Law were some of the documents of legislation that were reformed. It appears therefore that this notable advancements and reformations helped respond positively to the plight of child labour.<sup>1371</sup> The study also found that Morocco's reformation of the domestic law resonated with the international and regional human rights standards. These include conforming to ILO minimum age convention, ILO Convention on Forced labour and Convention the Abolition of Forced Labour among others. From the study, it is concluded that cognisant of the negative effects domestic work and violations domestic workers endure, Morocco adopted Domestic Work law.<sup>1372</sup> This was thought to be a remarkable and positive response to child labour worth emulating. This law also appears to be consistent with the ILO Domestic Workers Convention.<sup>1373</sup>
- The study found that in Morocco, a National and Sectoral Plan of Action Against Child Labour was adopted in response to the call against child labour. This plan advocated for conformity to international laws, ensuring that the visibility of child labour laws increased.<sup>1374</sup> Morocco in addition, received technical assistance from ILO/APEC in order to confront child labour on a number of levels by advocating for the strengthening of social protection systems and educational facilities.<sup>1375</sup> In partnership with NGOs, the study found that the Kingdom of Morocco in collaboration with UNICEF and a number of stakeholders launched an Integrated Public Policy on the Protection of Children (PPIPEM) focused on protecting children

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<sup>1369</sup> See paras 4.11 above.

<sup>1370</sup> See para 4.14 above.

<sup>1371</sup> See paras 4.14. 1, 4.14.2 & 4.14.3 above.

<sup>1372</sup> See para 4.14.4 above.

<sup>1373</sup> Domestic Worker's Law, see also ILO Domestic Workers Convention no. 89 of 2011.

<sup>1374</sup> See para 4.15.1 above.

<sup>1375</sup> See paras 4.15.1 & 4.16.16 above.

against abusive, violent and exploitative circumstances.<sup>1376</sup> At least 450 professionals were trained under this program on relevant laws and human rights. Child protection units were established, ensuring access to justice to child labour victims. Furthermore, the study found that Morocco with the help of UNICEF launched Out-of School Initiative. This initiative helped reduce a number of school dropouts, at least 588 000 children have benefited from this initiative and has contributed to the reduction of child labour in Morocco.<sup>1377</sup>

- The study also concluded that in responding to child labour, the Kingdom of Morocco developed independent mechanisms for reporting human right violations and encouraging participation of children in the monitoring reporting systems on children's rights under the National Council for Human Rights (CNDH).<sup>1378</sup> Children are recognised as both rights and duty bearers.<sup>1379</sup> The study also established that, National Human Development Initiative played a critical role in implementing projects aimed at ensuring basic services are accessible to all including children, implementing poverty reduction policies and finally introducing grants for the poor through Cash Transfer Programme.<sup>1380</sup> It is evident therefore that Morocco has made progress in addressing child labour and fighting against the root cause of this practice.

In conclusion, it is evident that amongst many challenges facing the Kingdom of Lesotho today, the country still grapples with the problem of child labour. While this problem cannot be alluded to a single cause. It is revealed that child labour stems from a number of factors and therefore should be understood as a result of multidimensional problems. These include economic, social, legal and cultural adversities, with economic problems being paramount. These problems have compelled a great majority of children to find work in order to help and provide for their families. Majority of children engage in economic activities within the informal sector of the economy, engaging in work that often infringes on their rights and exposing them to exploitation and abuse with little to no protection. Though the responses to child labour by the Kingdom of Lesotho have been notable, addressing the problem of child labour has been met with a number challenges.

Despite a number of safeguards existing within both international and domestic laws against child labour, the persistence of this practice cannot be ignored. Although the enactment of the

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<sup>1376</sup> See para 4.17 above.

<sup>1377</sup> See para 4.17.1 above

<sup>1378</sup> See para 4.17.2 above.

<sup>1379</sup> UNICEF Annual Report: Morocco (2017).

<sup>1380</sup> See para 4.18.1 above.

CPWA of Lesotho marked a milestone in the realisation of the need to promote and protect the rights of children against many issues they face today, covering a great spectrum of rights, including the right to education and health and the right to protection against human trafficking, sexual offences, harmful cultural practices and exploitative child labour among others, the practice of child labour remains high. It is therefore concluded that high prevalence of child labour in Lesotho could be attributed to the fact that child labour is not seen as harmful practice but as means of socialising children into adulthood. In reality, it is culturally acceptable in Lesotho for children to work as it shows sense of responsibility and maturity. Performance of work by children is not based on the numeric value or age but one's ability to carry out a task. As a result this not only fuels the practise of child labour but also makes it an acceptable norm. Furthermore, absence of distinction between child labour and child work by the Kingdom of Lesotho has resulted in failure to acknowledge work done by children as harmful and detrimental to their welfare. This makes it difficult to implement and enforce legislation aimed at prohibiting child labour and protecting children against such harmful practices.

Although the CPWA's definition of a child is in line with international standards, the evident inconsistencies in the definition of a child between the Children's Protection and Welfare Act and Labour Code order has resulted in the difficulty in the enforcement of the CPWA and international law. Moreover, the failure of customary law to recognise violation of the rights of children as result of work they perform poses a difficulty in addressing and ultimately alleviating the practice of child labour in Lesotho. It is apparent therefore that although the CPWA seeks to protect children against harmful labour practices, enforcement and implementation of the Act remains a challenge. The lack of monitory and reporting systems on child labour, weak social protection systems, invisibility of child labour laws and poor means to access justice for violation of children's rights and lack of trained personnel in human rights and children's rights have also contributed to the insufficient implementation of the CPWA as well as international laws prohibiting child labour but escalation of child labour in Lesotho.

Finally, cognisant of the progress made by South Africa, Tanzania and Morocco the study concludes that it is crucial for the Kingdom of Lesotho to emulate, adopt and finally implement the positives practices and strategies that will better protect children and alleviate the plight of child labour in Lesotho.

## **5.2 Recommendations**

In light of the findings on the prevalence of child labour in the Kingdom of Lesotho, a number of shortcomings in legislation and explanations or definitions of primary concepts have been identified. This has resulted in failure to adequately address the problem of child labour in Lesotho and a fragile framework aimed at protecting the rights of children involved in dangerous child labour practices. Therefore, the following proposed recommendations will help address the problem of child labour sufficiently and implement positive strategies for better protection.

### **5.2.1 Definition of key terms**

#### **1. Child**

As mentioned in this study, there is no clear definition of a child, stating that the definition of a child varies from society to society.<sup>1381</sup> Although the Constitution and customary law of Lesotho do not provide a definition of a child, the CPWA<sup>1382</sup> (in line with international law) defines a child as any person below the age of 18. However, under the Labour Code Order a child is defined as anyone below the age of 15.<sup>1383</sup> There is therefore evidence of inconsistencies in the definition of a child in domestic law, thus presenting challenges in addressing the problem of child labour in Lesotho. It is therefore important for the Kingdom to adopt a standard definition of a child. The study proposes that a consultative process between government of Lesotho through the Ministry of Social Welfare, the Ministry of Gender, Youth, Sports and Recreation and the Ministry of Justice, Human Rights and Correctional Services, cultural leaders and relevant NGOs and CSOs working in areas concerning children's rights should work together to formulate and adopt a single definition of a child in line with international standards. That said, the study recommends that a child should be defined as anyone below the age of 18. This will help ensure that persons under the ages of eighteen are protected from harmful labour and cultural practices.

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<sup>1381</sup> See para 1.6.1 above.

<sup>1382</sup> The Children's Protection and Welfare Act of 2011.

<sup>1383</sup> The Labour Code Order of 1992.

Furthermore, this will help decrease the prevalence of harmful child labour practices and violations of children's rights both within and outside the labour market. This definition will help implement and enforce international laws in Lesotho without any contradictions. As a result this will ensure protection of all children including vulnerable children, orphans and disabled children among others. The study also recommends that the definition of a child under the Labour Code Order be revised and raised to 18 in order to align it with the international law's definition of the term. The study proposes that this definition be enforced and implemented through the help of law enforcements agencies, NGOs and CSOs.

## **2. Child labour**

As noted previously in the study, defining child labour has proven to be difficult.<sup>1384</sup> In most African countries including Lesotho, the term child work and child labour have been used interchangeably to mean the same thing. However, it should be noted that the two terms are not the same and therefore crucial to distinguish between both. While the Kingdom of Lesotho places emphasis on child work, stating that work done by children as important and cultural practice associated with maturity, duty and responsibility; therefore not harmful, it is however worth noting that not all work is harmless, in fact a great majority of children engage in work that is dangerous and detrimental to their wellbeing, including herding of livestock, domestic work and working on the streets among others. Children engaging in these forms of work are often exposed to sexual and economic exploitation, abuse, have their health endangered and ultimately violation of their rights.<sup>1385</sup> As a result this can not be considered acceptable. Therefore the work done by most children in Lesotho should be redefined as child labour.

The study proposes that child labour should be defined in line with international law as work that is harmful, affecting negatively the mental, physical and psychological aspects of a child's life and finally hindering the children's ability to attain education and enjoy their fundamental human rights. Furthermore, cognisant of the fact that the adoption of this definition requires consensus, the study proposes that in order to redefine work done by children as child labour practices:

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<sup>1384</sup> Edmonds (2009).

<sup>1385</sup> See paras &3.3 above.

- Discussions must be carried out between the relevant government ministries including the Ministry of Labour, Ministry of Justice, Human Rights and Correctional Services, councillors, traditional leaders (chiefs) and societies at large to adopt a working definition of child labour, identifying features or characteristics of child labour and explaining how it differs from work
- Communities and families should be taught and sensitised of work constituting child labour practices, differentiating between culturally acceptable practices and practices that are punishable by law.

While the study recognises that it is culturally acceptable for children to work in Lesotho, the study proposes that the definition of child labour should be culturally sensitive, meaning children should be allowed to perform work/ duties that do not affect them negatively or violates their rights. For instance, performing household chores or other chores they may be given appropriate for their age. Having a clear definition of child labour will help enforce legal and social protective measures, help inform policies addressing child labour practices and put in place structures that will help alleviate practices of child labour within the different communities.

### **5.2.2 Addressing drivers of child labour**

The study has identified several socio-economic drivers of child labour within the Kingdom of Lesotho. These include poverty, unemployment and inequality, inability to access education, HIV/AIDS and unemployment to name a few. Despite implementations of a number of national policies, plans and strategies in an effort to address these issues, thus far little success has been made. It is with this in mind that the study recommends that each of these initiatives be reviewed in order to identify gaps and put efficient measures in place that will help the state to respond favourably to both the individual challenges and the issue of child labour. The study proposes an establishment of a monitoring and evaluation committee by government in partnership with NGOs and CSOs. The committee will help in:

- Monitoring of policies to ensure that policies are sufficiently implemented,
- Assessing and reviewing periodically national policies aimed at addressing child labour (for instance every six months), identifying therefore if the policies have been successfully executed or not



- Ensuring continuous transparent reporting on either the success or failures of policies
- Ensuring that accountability mechanisms are in place
- Strengthening social protection systems as done in Morocco through the training of society in human rights laws
- Finally, to ensure that child labour laws are visible and adhered to.

In addition to this, a child centred framework must be adopted when formulating policies. This will enable the state to adopt child sensitive policies, not only addressing socio-economic problems but the problem of child labour and therefore prompt appropriate response in line with these concerns.

### **5.2.3 Government support for initiatives focusing on child labour**

#### **1. Special Action Programme for the Elimination of Worst Forms of Child Labour (APEC)**

One of the programmes mandated to tackle issues around child labour within Lesotho is the Special Action Programme for the Elimination of Worst Forms of Child Labour programme. While it is evident that the programme was successfully adopted, it was however revealed in the study that the implementation process has been slow owing to lack of financial support from the government and has therefore resulted in limited information on its progress.

To fully pursue the mandate of the program, the study recommends that:

- Government needs to participate in ensuring that the programme is sufficiently implemented through intense supervision of the programme by government officials and concerned agencies.
- A committee must be established to monitor the implementation of the programme and rigorously evaluate the progress of the programme through data collection and reporting systems.
- Accountability systems ought to be put in place to investigate and follow up on the progress of the programme and make recommendations if need be.
- Furthermore, the study recommends that the government work in collaboration with stakeholders including NGOs, CSOs, political leaders and private sector to ensure effective implementation of APEC at the grass roots or at society level where the worst forms of child labour are evident. Communities at the Chief's or Councillor's recommendation should elect and train members of the society to ensure effective

implementation of the programme and protect children against harmful child labour practices.

- Finally, the government of Lesotho must support the programme financially in order to help reduce prevalence of child labour particularly the worst forms of child labour in Lesotho.

## **2. Child Protection and Gender Unit**

Although Child Protection and Gender Unit focuses on violence against woman and children and the persecution of perpetrators among others, it does not extend the scope of its mandate to child labour victims whom also experience forms of abuse and exploitation. Based on this concern, the study recommends that the fight against child labour should be incorporated into the Unit's mandate. In addition, through partnership with the government ministries such as the Ministry of Social Development and Ministry of Justice, Human Rights and Correctional Service, the government of Lesotho should create awareness about child labour practices and the effects of such practices on children. The study moreover proposes that the unit should be made more visible and accessible to victims of child labour through the establishment of more offices, in the rural areas in particular where child labour practices are most prevalent. This will not only ensure greater awareness but also ensure easy access for children in need of the unit's services.

For the proposed recommendations to be attained effectively, government will also need to ensure that the unit is equipped with personnel trained in children's rights and child protection issues at community level. As a key institution that deals with children's issues, the unit needs to be strengthened and financially supported in order to reach out to the victims of child labour.

### **5.2.4 Revision to national legislation**

#### **1. Amendment of the Constitution**

Drawing from Morocco's good practices in revising and reforming legislation, the study proposes an amendment of the constitution and customary law. As the supreme law of the state, the Constitution of Lesotho prohibits the employment of children in paid employment,

work that is socially and economically exploitative as well as work detrimental to the welfare of a child. While the constitution does not make provision on definition of a child, it also does not stipulate the minimum age of employment.

Therefore, in order for Lesotho to adequately tackle the issue of child labour, the study proposes that the unified definition of a child be achieved. While this might take time, the study recommends that the Constitution should define a child as ‘every human being below the age of eighteen years’. Not only does this definition conform to international standards but also the Children’s Protection and Welfare Act of Lesotho.<sup>1386</sup> Although it is pointed out in the study that many children between the ages of 5 and 17<sup>1387</sup> have been coerced by severe living conditions to partake in child labour, the study recommends that the Kingdom of Lesotho should emulate the Republic of South Africa and set the minimum age of employment at fifteen; that is, on a condition that children between the ages of fifteen and eighteen are only permitted to be employed in work deemed appropriate for their age and does not place them in any form of risk. Having these additional stipulations outlined in the Constitution will not only ensure that there is consistency in the national law but also international standards.<sup>1388</sup>

## **2. Amendment of Customary law**

Under customary law, children have a responsibility and obligation to perform several duties and tasks given to them by their parents as means of socialisation. Often, children find themselves performing duties that appear harmless but are instead not age appropriate and detrimental to them.<sup>1389</sup> For instance, herding livestock or working in farms is usually done for long hours under harsh climatic conditions; thus putting children’s health in danger. Some duties children perform are not age appropriate. It is evident therefore that in customary law child labour is acceptable. It is hence crucial that customary laws is amended to recognise that some duties infringes on the rights of children therefore not in their best interest.

In order to curb such practices, the study proposes that parliament should amend customary law to recognise the rights of children. Traditional leaders together with relevant government

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<sup>1386</sup> See Section 3 of the CPWA of Lesotho, Article 2 of the ILO convention no. 182 and Article 1 of the CRC.

<sup>1387</sup> See para 1 above. Often children in child headed households and orphaned children are compelled by circumstance to partake in economic activities a tender age, therefore need to be protected.

<sup>1388</sup> This provision also conforms with Article 2 (3) & Article 7 (1) of ILO convention 138.

<sup>1389</sup> See para 3.5.3 above.

ministries should work together to go through engagements/consultative processes to ensure the amendments are adopted and implemented. The study proposes that customary law should include or make provision for the protection of children against harmful cultural practices such as child labour. It should in addition adopt punitive measures be taken against anyone who employs a child in economically and sexually exploitative work. This should include fines or imprisonment.

The study recommends that customary law should be in line with the international standards prohibiting the use of children in harmful cultural practices through the consolidation of both laws. Finally, the study recommends that customary law must recognise and take into consideration the voice and opinions of children through consultation processes on issues affecting them.

### **5.2.5 Establishment of the Child labour commission**

Despite the prohibition of child labour in Lesotho by the Children's Protection and Welfare Act, there continues to be high levels of child labour practices. This is attributed among others to the fact that perpetrators or employers of children are not held accountable for their actions.

In order to ensure that there is implementation and enforcement of the Act, the study proposes that the government establishes the child labour commission. The mandate of the commission would be to provide a platform for individuals to report incidences of harmful child labour practices evident in communities, report violations of children's rights and lay charges or complaints against perpetrators (employers of children), be it within the family or outside. Furthermore, the commission will investigate and follow-up on these cases and ensure that perpetrators are held accountable in accordance with the provisions of the law or Act.<sup>1390</sup>

As noted in the study, child labour is considered an illegal activity therefore constituting a criminal offence which should be dealt with under criminal law.<sup>1391</sup> As a result, the study recommends that, the commission in partnership with the children's court must ensure that

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<sup>1390</sup> See s 226 of the Children's Protection and Welfare Act.

<sup>1391</sup> Cullen (2007).

Act is enforced through criminal prosecutions and administrative fines. . Perpetrators or anyone found forcing children to engage in any form of harmful child labour practices, particularly human trafficking, commercial sex work and domestic work among others should be liable for punishment including incarceration and serving a stipulated jail term in accordance to the Act. In addition, perpetrators should be liable for fines in monetary terms and finally compensate victims of child labour. Furthermore, the study recommends that the commission should work with relevant legal enforcement institutions, government bodies and ministries as well as the Child Protection and Gender Unit to ensure that victims of child labour receive remedial assistance through restoration processes which include, counselling and rehabilitation. The establishment of the commission in Lesotho will ensure both the enforcement of the law and ultimately the protection of children against the worst forms of child labour.

### **5.2.6 Enactment of the Child Labour Act of Lesotho**

Having witnessed the intensification of child labour in Lesotho, the violation of children's rights as result, the inadequate measure on the protection of child labourers as well as the urgent need to protect children against harmful child labour practices, the study also proposes that the Kingdom of Lesotho should adopt and enact a new law on child labour; that is the Child Labour Act.

The study recommends that with the help of the Ministry of Labour, a Bill should be drafted and presented before parliament and the National Assembly, stating the need to enact a new law aimed at addressing child labour directly. The Act shall be considered as a supplementary legislation to the existing Children's Protection and Welfare Act. Furthermore, the Act will deal directly with the practice of child labour and the rights of children within the labour sector. The Act will focus on the employment or engagement of children within the formal and informal work sectors of the economy.

Moreover, issues concerning working conditions, hours of work, remuneration, regulation and inspection by labour inspectors of the work environment as well as protection of the rights of child labourers provide alternative means of survival for children below the age of 18 such as social grants. Lastly, the Act shall ensure the conformity to international principles on the rights of children also taking into consideration cultural and traditional values of the

nation of Lesotho. Protection of children and access to justice notwithstanding the importance of duties and responsibilities of children shall inform the proposed Act.

While the definitions such as child, child labour and child work among others have proven to be difficult, this has resulted in accepting the engagement of children in work that is dangerous and not age appropriate, it is therefore crucial that children are protected. The study therefore proposes that under the Act:

- A child should be defined as anyone below the age of 18.<sup>1392</sup>
- Child labour should be defined as work that is harmful, affecting negatively the mental, physical and psychological aspects of a child's life and finally hindering the children's ability to attain education and enjoy their fundamental human rights.<sup>1393</sup> This includes herding animals, domestic work and commercial sex work, street vending to state the least.
- Child work should be defined as work that is not harmful and enables children to enjoy their fundamental rights such as education and does not pose any danger to their development and health.<sup>1394</sup> This includes helping parents in the household or family businesses. This kind of work does not interfere with children's education
- While it is evident that most children are involved in work that is harmful, hindering the attainment of education and affecting their well-being negatively, the study recommends that the minimum age of employment should not be below the age of 18.<sup>1395</sup> Although many children below the age of 18 find themselves obligated to engage in work as a result of adverse conditions, the Act shall ensure such children are allowed to work in environments not harmful and do not infringe on their basic human rights. Through data collection processes, all children participating in child labour will be identified and measures to protect children from engaging in harmful child labour practices will put in place including constant regulation of their economic activities and holding accountable anyone found exploiting the child. This will help address child labour and help protect the children involved in child labour.

It is noted in the study that child labour is more prevalent in the informal sector as opposed to the formal sector. The informal sector refers to the sector of the economy where many are self-employed and working in family business as well as small scale enterprises. Employment

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<sup>1392</sup> This definition is in line with both international and state laws, the CRC and CPWA respectively.

<sup>1393</sup> See 5.2.1 under the revision of concepts above. See also definition by the International Labour organisation (ILO).

<sup>1394</sup> This definition is in line with ILO definition of of child work.

<sup>1395</sup> This definition conforms to the CPWA of Lesotho and ILO Convention 138 on the the Minimum Age

within this sector is not registered with the Ministry of Labour, hence it has no fixed wages and hours, not taxed or subject to labour laws.<sup>1396</sup> As a result, the informal sector is not inspected and regulated. The formal sector on the other hand has written rules and is subject to labour laws and regulations among others. The Act recommends that the informal sector should be considered as important sector contributing to the economy of the country therefore should be inspected and regulated to ensure protection of children working within this sector.

The Act shall place an obligation upon states to adopt policies and strategies that will ensure the effective implementation and enforcement of the Act, also establishing committees and commissions that will ensure violations of children under the Act which will be reported and dealt with accordingly. Under the Act, coordinating, monitoring and evaluation systems should be put in place to ensure successful implementation of the Act. This recommendation stems from emulating a good practice by Morocco which enacted the Domestic Worker's Law as means to address child labour and rights of domestic workers.

### **5.2.7 Labour Code Order**

The Labour Code Order, forms one of the vital laws in relation to child labour in Lesotho as it is the key law that regulates all employment relations within the country, including the employment of children. To date the Code has been instrumental in ensuring that the rights of children within the formal economy are protected. Despite this significant role, the Code fails to protect the rights of children within the informal sector due to lack of regulation and enforcement within this sector. The study therefore argues that the government needs to deploy labour inspectors who should identify violations of the Code to child labour practices, refer cases to the courts and ultimately work towards the eradication of child labour practices in the country. The fact that most child labour practices are found within the informal economy means that by enforcing the Labour Code Order and facilitating greater regulation of the sector, the state of Lesotho would have made great strides towards the elimination of child labour within the country.

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<sup>1396</sup> Fox, L & Gaal, M. S. (2008).

### **5.2.8 Harmonisation of customary law and international legislation on the rights of children**

There continues to be inconsistencies between customary law and international law with regards to children rights particularly those involved in child labour. Therefore the study proposes for the harmonisation of customary and international law in order to protect and promote the rights of children.

### **5.2.9 Effective implementation of policies and strategies on child labour**

Despite having adopted a good number of policies and strategies to address the issue of child labour, many of this lack implementation. To date it remains unclear what the main reasons for the lack of implementation. The study therefore recommends that further research be done to investigate the challenges behind the lack of implementation of both policies and strategies. It is imperative to have this information as lessons learnt will assist the effective implementation of both current and future policies.

For effective implementation of the policies and strategies aimed at protecting children against labour malpractices, the study recommends the adoption of monitoring and evaluation mechanisms as well as accountable and efficient reporting systems on the progress of policies. Furthermore, the study recommends that Lesotho should adopt progressive or time bound policies as it was done in Tanzania. These policies as in South Africa should prioritise child labour, prosing measures to eradicate the practice and protect children against child labour practices.

### **5.2.10 Stakeholders, Civil Societies Organisations (CSOs), NGOs and UN/ILO Agencies**

It is should be submitted that work done by various stakeholders CSOs, NGOs and UN or ILO agencies in Lesotho has been evident, although met with a number of challenges.

The study therefore recommends the relationship between the government and these agencies be strengthened in order to address issues concerning child labour and implement legislation aimed at protecting the rights of children. Collaborations between all the agencies will not only help child labour but address also the circumstances breeding its proliferation.



Continuous consultation with stakeholders regarding issues concerning children should be conducted to establish the progress of implementation of legislation and the promotion of children's rights. Additionally, through government financial support, awareness campaigns on the child labour at grassroots level by the agencies should be made.

Finally, the study recommends that the Kingdom of Lesotho should commit itself to undertaking research on child labour through the adoption of a child centred approach as means to understand the importance of children's rights, importance of protecting children against child labour and help identify strategies that will provide better protection for children.

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