

**UNIVERSITY OF KWAZULU-NATAL**

**RECONCILING CHILD LABOUR PRACTICES IN SOUTH  
AFRICA WITH INTERNATIONAL STANDARDS:  
PROSPECTS AND CHALLENGES**

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## DECLARATION

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

**Signed:** .....

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**Dated:** .....

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## **ABBREVIATIONS AND ACRONYMS**

<b>ACHPR</b>	African Charter on Human and People's Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>BCEA</b>	Basic Conditions of Employment Act
<b>CDG</b>	Care Dependency Grant
<b>CLPA</b>	Child Labour Programme of Action
<b>CRC</b>	Convention on the Rights of the Child
<b>CSG</b>	Child Support Grant
<b>CWC</b>	Concerned for Working Children
<b>DSD</b>	Department of Social Development
<b>FCG</b>	Foster Care Grant
<b>HIV</b>	Human Immunodeficiency Virus
<b>ILO</b>	International Labour Organisation

<b>IP</b>	Implementation Committee
<b>IPEC</b>	International Programme on the Elimination of Child Labour
<b>NACSA</b>	National Adoption Coalition South Africa
<b>NPA</b>	National Prosecuting Authority
<b>NSNP</b>	National School Nutrition Programme
<b>OAU</b>	Organisation of African Unity
<b>SA</b>	South Africa
<b>SAA</b>	Social Assistance Act
<b>SASA</b>	South African School's Act
<b>SAYP</b>	Survey of Activities of Young People
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNICEF</b>	United Nations Children's Fund

## ABSTRACT

Child labour proves to be a social and economic problem throughout the world. Millions of children around the world remain trapped in child labour, compromising their individual and collective futures. However, while child labour is a problem that affects children worldwide, it is a phenomenon that is of particular concern amongst developing countries. Research indicates that Sub-Saharan Africa still continues to be the region with the highest incidence of child labour. As a result of such concerns, the ILO has enacted various Conventions aimed at eradicating child labour globally.

South Africa's support of international conventions aimed at eradicating child labour implies a high degree of concern for the welfare of the child and is indeed laudable. Working children are subjected to extreme forms of exploitation. However, statistics relating to the extent of child labour leads one to question whether a one-size-fits-all approach can deal adequately with this complex issue in countries that differ fundamentally from the West with regards to their socio-economic and cultural circumstances. For example, within traditional societies in South Africa, child work is viewed as part of ones socialization and development. In addition, given the socio-economic circumstances within South Africa many children work in order to contribute to the survival of their families.

Thus while acknowledging the negative effects of child labour on the development of the child, this dissertation stresses that in order to be effective, interventions on child labour should take into account the very circumstances that compel children to engage in child labour in South Africa. In this regard this dissertation argues that a child centered approach to child labour should be adopted. This approach is rigorously child centered, taking as its point of departure the child, how the child experiences work and what the child needs to survive and develop. A child centered approach will essentially make less use of minimum age laws, public sector inspection of workplaces, although these might still have a vital role to play. It instead relies more on mobilizational activities such as poverty reduction, advocacy campaigns, child participation and improvement of school accessibility. This dissertation concludes by arguing that ultimately a child centered approach will ensure that the best interest of the child is protected.

<b>TABLE OF CONTENTS</b>	<b>PAGE NO</b>
<b>DECLARATION</b>	i
<b>ACKNOWLEDGEMENTS</b>	ii
<b>ABBREVIATIONS AND ACRONYMS</b>	iii
<b>ABSTRACT</b>	v
<b>TABLE OF CONTENTS</b>	vi
<b>CHAPTER ONE: INTRODUCTION</b>	
1.1 Background to the study and research problem	1
1.2 Research questions	5
1.3 Objectives	5
1.4 Significance of the study	6
1.5 Literature review	6
1.6 Principle theories upon which this study is based	9
1.7 Research Methodology	10
1.8 Limitations of the study	10
1.9 Structure of the dissertation	11

## **CHAPTER TWO: THE INTERNATIONAL LEGAL REGIME RELATING TO CHILD LABOUR**

2.1 Introduction	12
2.2 International instruments	12
2.2.1 ILO Convention 138: Minimum Age Convention (1973)	12
2.2.2 The ILO's Worst Forms of Child Labour Convention No 182 of 1999	16
2.2.3 United Nations Convention on the Rights of the Child, 1989	19
2.3 Regional Instruments	20
2.3.1 The African Charter on the Rights and Welfare of the Child, 1990	20
2.3.2 The African Commission on Human and People's Rights	21
2.4 Conclusion	22

## **CHAPTER THREE: LITERATURE REVIEW**

3.1 Introduction	23
3.2 What is child labour?	23
3.3 Prevalence of child labour globally	25
3.3.1 Child Labour and Gender	26
3.4 Prevalence of child labour in South Africa	27
3.5 Types of work that children are engaged in within South Africa	28
3.5.1 Employment type labour	28
3.5.2 Household chores	28
3.5.3 Non-market economic work	29
3.5.4 Child domestic work	30
3.6 Conclusion	31

## **CHAPTER FOUR: THE CAUSES OF CHILD LABOUR IN SOUTH AFRICA**

4.1 Introduction	32
4.2 Causes of child labour	32
4.2.1 Poverty	32
4.2.2 Unemployment	33
4.2.3 HIV/AIDS	34
4.2.4 Child-headed households	35
4.3 Conclusion	36

## **CHAPTER FIVE: THE SOUTH AFRICAN LEGAL FRAMEWORK ON CHILD LABOUR**

5.1 Introduction	37
5.1.1 Constitution	37
5.1.2 Basic Conditions of Employment Act	38
5.1.3 The Children's Act	39
5.1.4 The South African School's Act	40
5.1.5 The Sexual Offences Act	41
5.2 Government Policies on child labour	42
5.2.1 Child Labour Programme of Action for South Africa: Phase three: 2013-2017	42
5.2.2 South African Education Action Plan	44
5.2.3 Social Grants	44
5.2.4 National School Nutrition Programme	45
5.3 Conclusion	46

## **CHAPTER SIX: THE CONFLICT BETWEEN INTERNATIONAL STANDARDS ON CHILD LABOUR AND THE REALITY IN SOUTH AFRICA**

6.1 Introduction	47
6.2 The conflict between international child labour laws and the reality in South Africa	47
6.2.1 Socio-cultural perspectives of work and childhood	48
6.2.2 Socio-economic conditions in South Africa	53
6.2.3 Education and Schooling in South Africa	57
6.3 Conclusion	60

## **CHAPTER SEVEN: CONCLUSION AND RECOMMENDATIONS**

7.1 Introduction	61
7.2 A Child Centered Approach to child labour	62
7.2.1 Poverty Reduction	63
7.2.2 Schooling and Education	65
7.2.3 Employers	70
7.2.4 Information, Advocacy and Awareness Raising	72
7.2.5 Child Participation	73
7.2.6 Trade Unions and Children's Organisations	75
7.3 Capturing culture specific issues in South Africa within international norms	77
7.4 Conclusion	79

<b>BIBLIOGRAPHY</b>	<b>81</b>
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# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the study and research problem

Child labour is a social and economic problem throughout the world. Global estimates and trends indicated by the International Labour Organisation (hereafter referred to as the ILO) reveal that 168 million children worldwide are child labourers. However, while child labour is a problem that affects children worldwide, it is a phenomenon that is of particular concern in developing countries. Studies indicate that Sub-Saharan Africa continues to be the region with the highest incidence of child labour. Specifically within the South African context, research indicates that 116 000 children are engaged in work that is prohibited by the Basic Conditions of Employment Act 75 of 1997.

The high incidence of child labour within South Africa, as in most countries in Africa, can be attributed to the socio-economic, cultural and developmental circumstances of the region. While it is not the single contributing factor to child labour, poverty remains a major push factor for many children to work under exploitative conditions within South Africa. As a result of such concerns, the last two decades have seen the emergence of an international movement, representing a multiplicity of forces to abolish child labour globally. Among the main international instruments adopted in this regard include the ILO's Worst Forms of Child Labour Convention, the Minimum Age Convention, and the United Nations Convention on the Rights of the Child (hereafter referred to as the CRC). On a regional level, the African Charter on the Rights and Welfare of the Child (hereafter referred to as the ACRWC) further provides for the right of the child to be protected against economic exploitation.

The ILO's Minimum Age Convention 138 (hereafter referred to as the Minimum Age Convention) seeks to achieve the total abolition of child labour and places an obligation on state parties to "pursue a national policy designed to ensure the effective abolition of child labour." The ILO's Worst Forms of Child Labour Convention 182 (hereafter referred to as Convention 182), calls for urgent action to eliminate the worst forms of child labour, including all conditions akin to slavery, work in the sex trade and work in illicit activities. In terms of this Convention

there is general agreement amongst scholars that the Convention reflects a global consensus that there should be an immediate end to the most offensive forms of child labour. Thus, unlike the Minimum Age Convention, Convention 182 has not been the subject of much debate. Similarly the arguments raised in this study will focus on the general forms of child labour which most children are engaged in, and not the worst forms of child labour as covered by Convention 182 which are rightly condemned. Such forms of child labour deprive children of their childhood and negatively impact on their welfare, development and dignity and therefore can never be justified. It also renders them vulnerable to exploitation, physical and verbal abuse as well as harmful working conditions, thus compromising both their present and collective futures. In addition, the CRC further provides for the rights of all children to be protected from economic exploitation and work that is detrimental to their development. On a regional level ACRWC provides for a similar approach in this regard.

It is acknowledged that the attempt of minimum age laws both internationally and nationally to abolish child labour and thus ensure the best interest of all children are indeed laudable. However, it is argued that the ILO's Conventions and the CRC are based on Western theories of child development, and thus drafters of such international laws have assumed a universally applicable model of childhood. Such a model is based on the notion that children everywhere have the same basic needs which can be met with a standard set of responses. Such instruments emphasize the role of individualism and professional interventions on childhood, and marginalize the influence of the wider social, economic, political and cultural circumstances. However, the indigenous cultures of countries like South Africa do not view the individual as an autonomous being possessed of rights above society. Thus, African children are still considered to have a duty to work for the cohesion and survival of their families, to put their physical and intellectual abilities at the service of their communities and to preserve cultural values in their relations with each another. Children represent lineage community and most importantly, the material survival of their families.

It is acknowledged that in an ideal world children would not have to work for their survival, and there would be no poverty. Sadly however, we live in a world in which such an ideal is far from reality. Thus history has proven that attempts to monitor and regulate child labour with rigid and

fixed standards that are applicable to all countries are unsuccessful and unenforced. Due to cultural differences and varying poverty levels, some countries have no choice but to engage in child labour. In this regard it is argued that the key issue in the protection of children is therefore not the fact that children engage in work, but the nature of their work situation, how their work affects them and how it relates to other aspects of their lives such as their family life. Given the fact that engaging in work often contributes to the survival of such children, it is imperative to understand thoroughly the meaning of work for children, and its advantages and disadvantages before intervening in it.

South Africa's approach to child labour stems largely from the way in which international law has attempted to solve issues relating to child labour. Thus, in order to give effect to its international obligations, South Africa has enacted minimum age legislation aimed at abolishing child labour. The primary legislation in South Africa is the Basic Conditions of Employment Act (hereafter referred to as the BCEA) which prohibits the employment of a child under the age of 15 years, or who is under the minimum school leaving age. However, statistics indicate that despite such efforts to abolish child labour, Sub-Saharan Africa still remains the region with the highest incidence of child labour. These statistics therefore put into question the relevance of applying international standards on child labour to a developing country like South Africa, which differs fundamentally from the West with regards to its socio-economic and cultural circumstances. It has also resulted in much academic debate as to whether children's rights necessarily involves imposing on them characteristics of a supposedly "ideal childhood" and whether it is ever legitimate to interfere in the lives of others without being sure that an adequate improvement is available.

The aim of this research is therefore to critically examine the effectiveness and appropriateness of applying universal standards to child labour in South Africa, a country in which, like most indigenous countries in Africa, differs fundamentally from the West with regards to social, economic, political and cultural circumstances.

## **1.2 Research Questions**

This study has the following critical questions to answer, namely:

- 1.2.1 What are the circumstances that compel children to engage in child labour in South Africa?
- 1.2.2 What are the challenges in applying fixed and rigid universal standards to child labour in developing countries like South Africa?
- 1.2.3 Can a child-centered approach to child labour complement legislation in effectively addressing child labour in South Africa?

### **1.3 Objectives**

The study had the following objectives:

- 1.3.1 Determine the circumstances that compel children to engage in child labour in South Africa.
- 1.3.2 Identify the challenges in applying fixed and rigid universal standards to child labour in developing countries like South Africa.
- 1.3.3 Examine how a child-centered approach to child labour can complement legislation in effectively addressing child labour in South Africa.

### **1.4 Significance of the study**

Although child labour in general has received much attention among scholars, most research has addressed and to a great extent supported, the complete abolition of child labour. Those in support of the complete abolition of child labour argue that child labour can best be dealt with by the imposition of strict minimum age labour laws. Fontana *et al* argues that in terms of the abolitionist approach to child labour, the introduction of strict rules as well as codes of practice at a national level, will ultimately ensure the best interests of all children. Unfortunately attempts

at the complete abolition of child labour have been unsuccessful, thus legal writing and research proves to be deficient in suggestions for alternative means in addressing issues relating to child labour. The importance of such research is even more apparent in developing countries where the difficulties faced by children remain critical due to the unique factors of their socio-economic and cultural-traditional circumstances. Thus, it is pertinent that strategies are adopted to address child labour in developing countries like South Africa which take cognisance of the various circumstances that require children to engage in child labour. This study therefore seeks to offer new proposals that will inform and enlighten policy and law makers in South Africa, on how a child-centered approach to child labour can complement legislation in effectively dealing with the problem of child labour in South Africa.

## **1.5 Literature Review**

The term “child labour practices” can be defined as practices that deprive children of their childhood, their potential and their dignity, and is harmful to both their physical and mental development. As will be discussed further in Chapter 2, the ILO was mandated to achieve the total abolition of child labour through the imposition of minimum ages. The age limits specified in the Minimum Age Convention forms the basis for international and national legislation. It is argued that such minimum age laws are founded on the notion that children should not engage in “work or employment” of any kind below a certain age, normally defined as the age at which compulsory education ends. The terms “work” and “education” are thus mutually exclusive in the lives of children, and the “child labour” problem is to be solved by a blanket prohibition on work performed below a certain specified minimum age.

Fivat argues that this approach worked out well during the first three or four decades of the ILO’s existence, as it mainly focused on the needs of Western countries, but became problematic with the entry of many developing countries into the organisation during the course of decolonization. This is due to the fact that the ILO’s legalistic approach seems anachronistic in most of today’s developing countries where children work in order to ensure survival and where social welfare laws have little or no impact on the everyday life of the poor.

However, apart from the socio-economic factors that compel children to work in developing countries, including South Africa, cultural factors also play an important role. In this regard scholars have argued that the issue of child labour is contentious not only because many children work illegally, but also because their work concurrently involves varying notions of socialization, participation and childhood.

Nhenga argues that the notion of childhood in indigenous cultures within South Africa differs fundamentally from the romantic notions of childhood as portrayed by Western ideals and values. Thus, within many communities in South Africa, the prohibition of work for children based on fixed and arbitrary minimum ages is often met with resistance.

Nhenga further argues that this requires developing countries to “push for multiculturalism and to emphasize the importance of maintaining cultural integrity, whereby children can be raised to appreciate and fit into their own social milieu, as well as into an expanding world. In this regard it is vital that developing countries including South Africa take a more active role in articulating their perspectives with force and clarity during the drafting of international laws and policies.

Thus, there are many challenges in applying universal standards on child labour to developing countries, like South Africa. No one disagrees with the obligation to protect children. However, such approaches to child labour do not address the very circumstances that compel children in South Africa to engage in child labour. Therefore as mentioned above, despite efforts to eradicate child labour both internationally and nationally, many children are still engaged in the practice. Thus, what is required is an analysis of the relationship between children and work, a different approach posing new questions that will lead to more effective protection of working children's best interests.

This study therefore aims to illustrate how a child centered approach to child labour can complement legislation in effectively dealing with the problem of child labour in South Africa. This approach is rigorously child centered, taking as its point of departure the child, how the child experiences work, and what the child needs to survive and develop.

In this regard Myers & Boyden argue that in order to respond more adequately to the problems and needs of working children, governments must adopt a more child centered view of child work in both legislative and administrative policies. Bessell explains this approach further by arguing that “[t]o be child-focused [or child-centered] is to find ways of bringing children into the foreground, so that their lives can be as clearly seen as those of adults”.

It is contended that ultimately a child centered approach will ensure not only that the child is protected against economic exploitation but will also promote the best interests of the child.

## **1.6 Principle theories upon which this study is based**

### **Universalism versus Cultural Relativism**

The idea of universalism upholds the notion that rights are based on a fundamental philosophical claim, which holds that there exists a rationally identifiable order, an order whose legitimacy surpasses contingent social and historical conditions and applies to all human beings everywhere and at all times. Thus, the universalistic perspective of children’s rights advocates that “childhood constitutes a coherent group or a state defined by identical needs and desires, regardless of class, ethnicity, or racial differences”. Since children across the world are deemed to have the same needs, universalist argue that the same support and protection mechanism can and should be applied to children all around the world. In addition, given the fact that universalists consider child labour an abuse of children’s rights, and advocate that all children require the same protection, the universalist agenda within the international children’s rights’ movement is to strictly regulate and/or punish the use of child labour.

Cultural relativism on other hand, upholds the notion that in principle different cultures and traditions, cannot be compared as cultures can only be understood on their own terms. Thus cultural relativists argue that childhood is a “social construct; its meaning is negotiated between different individuals and groups, often with conflicting interests”. As childhood is relative, cultural relativists are critical of the universalistic perspective for ignoring the social, cultural and political diversity of the meaning of childhood, and hence of children’s rights in various cultures. White argues that the problem of cultural relativism in relation to child work and child exploitation issues, is part of the more general issue raised in various debates on children’s rights

and universal norms, that is, “can one defend the principle of universality in international conventions and debates, while at the same time promoting openness, flexibility and sensitivity to different cultural contexts in the implementation of standards?”

Most scholars agree that the tension between universalism and cultural relativism is real and necessary, and thus human rights’ practice has to learn to essentially operate in the middle ground to adopt approaches which involve neither the embrace of an artificial and sterile universalism, nor the acceptance of an ultimately self-defeating cultural relativism.

### **1.7 Research Methodology**

This is a desk and library based study. It draws on both primary and secondary sources of law. It therefore involves an analysis of materials such as legislation, international conventions, case law, journal articles and scholarly material from the internet.

### **1.8 Limitations of the study**

This study would have benefited from field research. However, due to time and resource constraints this was not possible.

### **1.9 Structure of the dissertation**

This dissertation comprises of seven chapters. Chapter one provides the background and general introduction to the study.

Chapter 2 provides a discussion of the main international and regional instruments that have been adopted in order to respond to issues relating to child labour.

Chapter 3 provides a literature review of child labour. It provides a discussion of the concept of child labour as well as the extent of child labour internationally and nationally. It further discusses the types of work that children are engaged in within South Africa.

Chapter 4 provides a discussion of the different circumstances that compel children to engage in child labour in South Africa.

Chapter 5 provides a discussion on the legal framework in South Africa as it relates to child labour as well as a discussion on the inadequacy of relying solely on such laws in order to eradicate child labour in South Africa.

Chapter 6 highlights the problems in applying international labour laws on child labour to developing countries such as South Africa. It questions whether a one-size-fits-all approach can deal constructively and adequately with the complex issue of child labour in countries that differ fundamentally from the West with regards to their social-economic, political and cultural circumstances.

Chapter 7 consists of the conclusion and recommendations of the study. It illustrates how a child centered approach to child labour can complement legislation in effectively addressing child labour in South Africa. In doing so it provides a discussion on some best practices with regards to child labour currently being implemented in developing countries such as India, Brazil and the Philippines.

## **CHAPTER TWO**

### **THE INTERNATIONAL LEGAL REGIME RELATING TO CHILD LABOUR**

#### **2.1 Introduction**

The international campaign against child labour is strongly linked to international Conventions which are a form of treaty which is legally binding for ratifying nations. As the primary organisation concerned with labour issues in general, the ILO has since its creation focused on child labour questions. With its two core Conventions on this subject, the ILO lobbies for a complete and unconditional ban on child labour. In addition, the CRC has further become a vital

global reference point for national and international policy regarding child labour. On a regional level, the ACRWC has been inspired by the trends evident in the CRC with regards to child labour. This chapter will essentially provide a discussion of such international and regional instruments that have been adopted in order to respond to issues relating to child labour.

## **2.2 International Instruments**

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

The Minimum Age Convention was adopted by the ILO in 1973 and was subsequently ratified by South Africa in 2000. This Convention revised industry specific Conventions that had been adopted by the ILO after 1919. Article 1 of the Minimum Age Convention provides that the purpose of the Convention is to encourage member states to enact national policy designed to ensure the “effective abolition of child labour and to raise progressively the minimum age for admission to work”. Thus, the Convention commits state parties to the “total abolition of child labour”, and also to a progressive implementation of that goal through the periodic increasing of the minimum age for employment. Article 1 directs member states to draft policies that abolish child labour, but does not define what child labour is, either in this particular article or anywhere else in the Convention. Mavunga argues that it is difficult for member states to abolish child labour if they are not aware of what kind of work and practices they are meant to abolish. As a result, the definition of child labour differs from country to country, thus having a negative impact on the universal implementation of the Convention. For example, in many traditional societies child work is considered part of acceptable child-rearing practices and children are encouraged to work in order to support their families while developing a skill or trade.

In addition, article 1 does not impose any obligation on member states to take any specific measures beyond the enactment of policies to ensure the effective abolition of child labour. However, as will be discussed in Chapter 5, child labour is a multifaceted problem that requires more than just policy making and legislative measures to abolish it. Article 1 also does not provide much guidance as to what ought to be the form or content of policies which are directed towards the realisation of its objectives. Furthermore, article 1 places an obligation on member states “to raise progressively the minimum age for admission to work to a level consistent with the fullest physical and mental development of young persons.” However, it does not provide

any guidance or criteria on how a state can assess whether a specified minimum age is at a level that is consistent with both the physical and mental development of the child concerned.

In addition, the Minimum Age Convention prohibits children from taking part in any economic activity below a certain specified minimum age. Article 2 (1) of the Convention places a positive duty on member states to specify a minimum age for employment in any occupation. Article 2 further stipulates that the minimum age for work or employment should not, however, be less than the age of completion of compulsory schooling and in any case, not less than fifteen years. However, article 2(4) provides an exception to developing countries, it stipulates that such countries may under certain conditions initially set the minimum age at 14 years. The provision however includes the word “initially” which indicates that the ILO expects member states to eventually increase the minimum age of employment. It does not however indicate what factors ought to be considered in eventually increasing the minimum age.

Such minimum ages mentioned above are not limited to children within a specific industry or sector, but to all children in any form of work or employment. The use of the words “employment” or “work” means that all labour performed by children, regardless of whether it is performed under a contract of employment or while a child is self-employed, falls within the scope of the Convention. The content of article 2(1) further indicates that such minimum ages are equally applicable to children working in the informal sector, for example in family undertakings, and in the home, irrespective of whether they receive remuneration. Further, the Convention provides that any employment or work which is likely to jeopardize the health, safety or moral health of the child should not be done by anyone under the age of 18, although those who are at least aged 16 may do so if properly protected and instructed.

Thus, in terms of the Convention age is used as a determining factor of when a child should engage in any work or employment. The employment of children under such minimum ages is thus regarded as unlawful. In this regard Bourdillon *et al* argues that “any universalized policy of excluding children below a certain age from employment or work, in any occupation is unjustified as there have been insufficient attempts to determine the real impact of work on children”. Similarly, Mavunga argues that prohibiting children from all forms of work on the basis of age alone seems to be unjustified. She argues that some children develop more quickly than others, and that minimum age legislation reflects a paradigm that assumes that children

benefit from being withdrawn or excluded from work, yet there is little empirical evidence to support this notion. In addition, linking the concepts of minimum age and compulsory education proves to be problematic in developing countries, including South Africa. As will be discussed in Chapter 5, in developing countries the problems associated with free and compulsory education often contribute to child labour and thus issues relating to child labour cannot be solved through compulsory education alone.

The Convention further provides that children between the ages of 13 and 15 (or in developing countries between the ages of 12 and 14) may engage in light work, provided that it does not threaten their health and safety, or hinder their educational or vocational orientation and training. The Convention does not provide any definition, or operational guidelines as to what “light work” is. However, despite the lack of specificity of this term, the ILO has on many occasions requested member states to adopt legislation and measures to establish and regulate the light work of children. Given the fact that article 7 of the Convention sets the minimum age for engaging in light work at 13 years in the case of developed countries, and 12 years in the case of developing countries, it can be implied that the Convention does not permit children below the age of 12/13 years to engage in light work, even if such employment is not hazardous to their health, morals or development, and does not prejudice school attendance. The Convention also prohibits children below the minimum age from finding employment even if they are already out of school and have no reasonable chance of continuing their schooling

Many authors contend that the Convention advocates a rather Western view of children as helpless victims needing adults to intervene on their behalf, and thus not providing children with the opportunity of having a say in what happens to them. Consequently, and as will be discussed further in Chapter 5, the Minimum Age Convention has met with much resistance within those societies that have different child rearing values, and differ fundamentally from the West with regards to their socio-economic and cultural circumstances.

### **2.2.2 The ILO’s Worst Forms of Child Labour Convention No 182 of 1999**

The Worst Forms of Child Labour Convention came into force in November 1999 and was subsequently ratified by South Africa in 2000. The ultimate purpose of this Convention is to achieve the effective abolition of the worst forms of child labour.

Thus, Convention 182 emphasizes the importance of ensuring that actions taken to eliminate the worst form of child labour are treated as a matter of urgency. Article 1 of the Convention provides that member states who ratify the Convention “shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”. Thus, with 165 ratifications in only 9 years, Convention 182 has produced a broad global consensus that there should be a total abolition of the worst forms of child labour. Therefore, unlike the Minimum Age Convention, Convention 182 has not been the subject of much debate as it is correctly agreed amongst scholars that there should be an immediate end to the worst forms of child labour.

White argues that article 1 of Convention 182 represents formal recognition and acknowledgment of the principle that it is both helpful and possible to draw a distinction between the worst forms of child labour and other forms of child labour which are tolerable. The acknowledgement of this distinction is important, as current international campaigns place much emphasis on the worst forms of child labour while there appears to be neglect of other forms of child work, such as the light work of children. As will be discussed further in Chapter 5, child labour is a reality, particularly among developing countries including South Africa. Thus, while it is vital that the worst forms of child labour are addressed as a matter of urgency, it is equally important that other forms of child work are given adequate attention.

In terms of Article 3 of the Convention the worst forms of child labour include:

- “a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and

d) work done which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

The first three categories (a-c) of article 3 are termed “unconditional” worst forms of child labour because improving the working conditions of such forms of child labour would never make them acceptable or legal. On the contrary, the work described in article 3(d) is often referred to by scholars as hazardous work, or a conditional worst form of child labour. This is due to the fact that the conditions of the work described in article 3(d) can be improved by changing the conditions under which such work is performed.

Further, article 6 obliges member states to design and implement programmes of action in order to eliminate as a priority, the worst forms of child labour. Article 6 further requires that such programmes are designed and implemented in consultation with relevant government institutions, employer and worker organisations and other concerned groups where appropriate. In this regard Convention 182 can be commended for its ability to protect children beyond the legislative provisions, and for being action-orientated by requiring the implementation of programmes. Convention 182 requires a comprehensive and integrated approach in order to address the socio-economic and educational needs of children. Thus, unlike the Minimum Age Convention above, Convention 182 goes beyond a simple prohibition of child labour, and legislation and policy making is not the only measure used to deal with problems associated with child labour.

This multi-dimensional approach is commendable, as child labour is both a complex and diverse problem. However, it is vital that this approach is adopted effectively and with caution. This is due to the fact that scholars often express the concern that those who subject children to various forms of child labour, for example employers, are the very same persons who are placed with the responsibility of adopting appropriate mechanisms to ensure the implementation of the Convention. In this regard it is argued that it is imperative that governments take a stand and adopt adequate strategies with regards to identifying offenders who subject children to exploitative labour practices, as well as adopt appropriate penal sanctions in this regard. While Convention 182 requires consultation with all relevant key role players in the design of child labour programmes and policies, it is argued that such a provision is not adequate enough to require governments to consult with children themselves. This is unfortunate as child

participation is vital when it comes to issues surrounding child labour, as it will ensure that interventions designed are context appropriate, locally sustainable and child centered. The importance of child participation when it comes to addressing issues surrounding child labour will be discussed in greater detail in Chapter 6.

### **2.2.3 United Nations Convention on the Rights of the Child, 1989**

In November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child, an instrument that established global international standards on the rights of children. The key principles underpinning the Convention include non-discrimination, the best interests of the child, respect for children's views and freedom of expression, child participation, among others. The Convention asserts the right of the child to education directed at the development of the child's personality, talents and mental and physical abilities to their fullest potential, and to leisure and preparation of the child for a responsible life in a free society. Like the ILO's Conventions, many scholars contend that the CRC is fundamentally based on notions of childhood as depicted by Western societies.

Article 32 of the CRC provides that children are to be protected against "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." The Convention further requires that States set unspecified minimum ages for entry into employment, and regulate the hours and conditions of employment. Nhenga argues that article 32 of CRC has paved the way for a renewed understanding of the concept of child labour, although it does not define the term. Child labour can now be determined not according to the activity but according to the effect of the activity on the child concerned. Bourdillon *et al* argues that the CRC provides a more effective and widely agreed base for considering children's work. They argue that it focuses specifically on the protection and elimination of the harm in work, rather than exclusion from work altogether. In this regard the CRC is more compatible with the ILO's Convention 182 than its Minimum Age Convention which aims to ensure the effective abolition of child labour.

## **2.3 Regional Instruments**

### **2.3.1 African Charter on the Rights and Welfare of the Child, 1990**

In 1990, the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) adopted the ACRWC. It is argued that this instrument was developed by African member states out of the belief that the CRC missed vital socio-cultural and economic realities of the African experience. The ACRWC prides itself on its “African” perspective of human rights, and acknowledges the values of the African cultural heritage, which are expected to shape the African concept of the rights and welfare of the child.

The preamble of the ACRWC provides that the situation of most African children remain critical due to the unique factors of their socio-economic, cultural-traditional and developmental circumstances, and thus special safeguards should be taken to protect such children. In this regard, it is argued that the ACRWC acknowledges the peculiar context of Africa and notes with concern the unique and critical situation of African children. The Charter takes into consideration the virtues of African culture and heritage which are expected to inspire the African concept of the rights and welfare of the child.

However this is questionable when it comes to issues relating to child labour, given the fact that the ACRWC proves to have followed the approach taken by the CRC with regards to child labour. Like the CRC, article 15 of the ACRWC provides that all children have the right to 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”. In addition, Nhenga argues that in line with western thinking, the ACRWC defines a child as every human being below the age of 18 years, although interestingly, it does not grant the flexibility of the CRC, which allows states to exercise the option of lowering the maximum age of childhood below 18. As will be discussed in chapter 6, this arbitrary setting of the age limit for childhood at 18 by the ACRWC and the CRC is problematic when applied to African culture where the detriments of adulthood are both biologically and socially constructed.

Nhenga further argues that the charter further directs state parties to take all appropriate legislative and administrative measures to ensure the implementation of article 15, which covers both the formal and informal sectors of employment, but does not provide much detail or guidance in this regard. It is argued that the failure of the ACRWC to expressly direct state parties to respond to the very circumstances that encourage children to engage in child labour in undermines what would otherwise have been a progressive approach to child labour.

### **2.3.2 The African Commission on Human and People's Rights**

The commission was established by the African Charter on Human and People's Rights (ACHPR). The commission is tasked with the responsibility of ensuring the protection and promotion of human and people's rights, and with the interpretation of the ACHPR. Although the ACHPR does not expressly provide for the rights of the child, it calls upon State parties to ensure the protection of the rights of the child as stipulated in both international declarations and Conventions. The ACHPR refers to a number of human rights which are relevant to the protection of children from harmful labour practices. Some of these rights include the right to freedom of expression, health care, education, social security amongst others. The commission has noted with concern that implementing these rights requires resources which make their realization a difficult task, in light of the poor socio-economic conditions within most countries in Africa including South Africa. However, the commission has tasked countries within Africa with the responsibility of taking full advantage of their available resources in order to ensure that the rights of all are realised without discrimination of any kind.

## **2.4 Conclusion**

It thus becomes apparent that various instruments have been adopted at both the international and regional level, in order to address issues relating to child labour. Such efforts are indeed commendable. However as will be discussed in Chapter 5, history has proven that such international and regional laws and policies cannot by themselves solve issues relating to child labour. Therefore as noted in this chapter, although well intentioned such laws have been the subject of much critique. As the primary organisation concerned with labour issues in general, the ILO has committed itself to improving the lives of children who are. However, as discussed above there are still many critical points with regards to its laws and policies on child labour. This highlights the need for more multi-dimensional approaches which can effectively

complement legislation in order to adequately address issues surrounding child labour in South Africa.

## **CHAPTER THREE**

### **LITERATURE REVIEW**

#### **3.1 Introduction**

This chapter provides a discussion of the concept of child labour, as well as the prevalence of child labour both globally and specifically within the South African context. Chapter 3 concludes by discussing the most common types of work that children are engaged in within South Africa.

#### **3.2 What is child labour?**

Child labour is not a new phenomenon. It is an old phenomenon which forms an integral part of the socio-economic conditions of society, and as such a worldwide problem that has existed for centuries. There is unfortunately no universal definition of “child labour”. According to Duncan and Bowman the difficulty in defining child labour is partly due to the fact that the usage of and the connotations attached to the term, depend substantially on the socio-cultural contexts in which it is deployed.

In this regard, Nhenga argues that the term “child labour” is an emotive one. Thus, for some people it invokes images of dirty, malnourished children shackled in chains, but for others, particularly those from developing countries, the word simply means the work done by children with no negative implications attached to it. Lieten however argues that child labour is a new phenomenon that emerged with the arrival of capitalism. He argues that the growth of capitalism flourished on the exploitation of children, just as globalisation in developing countries depends on child labour. However, Nanjunda argues that “child labour” can be understood in two different ways: first, as an economic practice and second as a social evil. In the first context, child labour entails the employment of children in gainful occupations with a view to ensuring the survival of their families. However, child labour is generally viewed within the second context, that is, as a social evil. In assessing the nature and the extent of this social evil, the nature of the work in which the children are engaged in, the dangers to which they are exposed to and the opportunities of development they have been denied are important factors to be considered.

Thus, one of the initial problems relating to the regulation of child labour proves to be the difficulty in defining the scope of behaviour that requires regulation. At present no single international instrument explicitly defines child labour. As a result of such uncertainty, organisations such as the United Nations Children’s Fund (UNICEF), and children’s rights’ activists have attempted to fill the lacuna by juxtaposing the terms “labour” and “work”. In terms of such definitions, “child work” refers to beneficial work that promotes a child’s physical, cognitive and social development without interfering with the child’s scholastic activities, recreational activity and rest. “Child labour” on other hand refers to dangerous and exploitative work which is carried out at too early an age, involves long working hours, carried out in inadequate conditions, not sufficiently paid, involving excessive responsibility, and undermines the child’s dignity and self-esteem. However, this distinction is unhelpful as it fails to provide any effective method of determining what qualifies as ‘labour’ or ‘work’. In this regard Muzvidziwa, argues that the futility of definitions that aim to differentiate between “child labour” and “child work” stem from the realisation that whether work is defined as good or bad

depends upon its visibility, the context, and situational circumstances under which a child performs certain activities.

Specifically within the South Africa context, the Children's Act 38 of 2005 defines child labour as work which is "exploitative, hazardous or otherwise inappropriate for a person of that age and places at risk the child's wellbeing, education, physical or mental health, or spiritual, moral, emotional or social development." Thus, like the CRC, the Children's Act in South Africa defines child labour, not according to the activity, but in terms of the effect of the activity on the child concerned. The Act can be commended in that it acknowledges that defining child labour requires going beyond immediate threats to the health and safety of the child, but should also include concerns for a child's education, spiritual, moral, emotional and social development.

### **3.3 Prevalence of child labour globally**

Recent global estimates as provided by UNICEF, the ILO and the World Bank Organisation indicate that 168 million children aged 5 to 17 are engaged in child labour, accounting for almost 11 percent of the child population as a whole. In addition, approximately 150 million of such children are below the age of 14. Research further indicates that millions of children suffer in the worst forms of child labour, including slavery and slavery-like practices such as forced and bonded labour, child soldiering, sexual exploitation, or are used by adults in illicit activities including drug trafficking.

Child labour spans various sectors, including agriculture, manufacturing, mining and domestic service and such work is often hidden from the public eye. However, while child labour is a problem that affects children all over the world, research indicates that approximately 95 percent of child labourers live in developing countries. In this regard Sub-Saharan Africa continues to be the region with the highest prevalence of child labour. For the overall 5-17 years age group, Sub-Saharan Africa has almost 59 million children engaged in child labour, while in Latin America and the Caribbean there are 13 million and 9.2 million in the Middle East and North Africa. The net impact of these estimates is that the worldwide population of child labourers has become more concentrated in the Sub-Saharan African region.

#### **3.3.1 Child Labour and Gender**

Research indicates that developing effective policies to combat child labour requires an understanding of the gender differences among working children. This is due to the fact that the economic activities of boys and girls differ both by country and industry and the determinants and consequences of child labour often differ by gender. Studies however indicate that the prevalence of child labour is much higher among boys than girls for the 5-17 years age group. Statistics released by the ILO indicate that 99.8 million boys were engaged in child labour, compared to 68.2 million girls. In addition, the extent of decline in child labour amongst girls was greater than that of boys, and therefore the gender gap in terms of involvement in employment increased. While girls accounted for 46.2 percent of all child labourers in 2000, they accounted for only 40.6 percent in 2013.

However, it is important to note that these figures might be inaccurate as research indicates that boys are often more concentrated in formal sectors of employment such as manufacturing, trade and transport. Such sectors of employment are often regulated and thus data collection on such forms of child labour is ongoing. In contrast to this, research indicates that girls are often present in less visible forms of employment such as domestic work in private households and household chores, and such forms of child labour are therefore underreported. Such informal sectors of employment are seldom included in global estimates and thus standard definitions of child labour often tend to underestimate the involvement of girls in child labour. Given the fact that global statistics tend to focus on the formal sectors of employment, as opposed to the informal sectors in which many girls are engaged in, it can be argued that the true impact of child labour is uncertain.

In this regard it is argued that the different experiences of both girls and boys when it comes to issues relating to child labour make it vital to integrate gender concerns into child labour research and advocacy programmes. Research that reflects the gender inequality of child labour will essentially provide a more solid basis for action aimed at reducing the practice. In addition, gender-sensitive programmes and policies on child labour will ensure that the rights of both boys and girls including the right to an education, healthy childhood and protection from violence and abuse are protected.

### **3.4 Prevalence of child labour in South Africa**

As mentioned above, while child labour affects millions of children across the world, Sub-Saharan Africa still continues to be the region with the highest incidence of child labour. It is estimated that 116 000 children are engaged in child labour in South Africa. For children who are 15 years or younger, this includes all employment-related work, regardless of the number of hours worked, and for children aged 16 or 17, this includes children working more than 40 hours in a week. Research further indicates that 36 000 children in South Africa are absent from school as a result of work related activities. Furthermore, 290 000 children report having being injured at work or exposed to hazardous conditions, while 15% of children who do market-related work do so in private households, mainly as domestic workers. Lastly, research indicates that 81% of children aged 7-17 years are engaged in household chores, and 4% of these children spend more than 15 hours in the week on such activities.

### **3.5 Types of work that children are engaged in within South Africa**

#### **3.5.1 Employment type labour**

The Survey of Activities of Young People (SAYP) indicated that 25 percent of children aged 7-17 years had engaged in some form of economic work over the past seven years. Economic work includes all market production (paid work) and certain types of non-market production (unpaid work), including the production of goods for own use. The survey found that approximately 121 000 children aged 7-17 years were reported to have engaged in market economic work, and of these 41 000 were said to have worked for a wage, salary, commission or payment in kind, while 30 000 were said to have run or done a business. In addition, 56 000 children were said to have worked unpaid in a household business. Research indicates that such children often engage in market economic work in order to supplement family income, and such work often contributes to their survival. In this regard it is argued that poverty, adult unemployment and the lack of social safety nets are some of the main factors that drive children in South Africa into employment, often leading to their abuse and exploitation. For example, research indicates that such working children are not only at risk of physical injury, but are also vulnerable to workplace toxins and chemical hazards.

### **3.5.2 Household chores**

Unpaid work in the home, doing basic chores is one of the most prevalent types of child work. Household chores are not necessarily detrimental to the child's wellbeing as it can teach children useful skills and this in turn allows them to contribute to the household. However, household chores become harmful to the child's wellbeing if they involve excessive hours and in particular, if they interfere with a child's education, health, wellbeing and development. For example research indicates that such forms of child labour negatively impacts on the development of children in that their working conditions do not provide the stimulation for proper physical and mental development.

The Survey of Activities of Young People indicated that in 2010 approximately 8.9 million children in South Africa aged between 7 and 17 years were involved in at least one household chore during the reference week period. Studies further reveal that children between the ages of 15-17 years (93.1%), were more likely to be involved in household chores than children between 11 and 14 years of age (87,5%). Further, 83.7% of girls were found to be involved in at least one household chore as compared to 75.5% of boys. Interestingly, while one would have generally expected the proportion of children who were involved in household chores to be higher among children who were not attending school than among those who were attending school, statistics reveal the contrary. In this regard the SAYP indicated that among children both enrolled and attending school, 81.3 % were involved in at least one household chore as compared to 73.3% of children who were not attending school. This indicates that despite legislative provisions that prohibit child labour, children in South Africa still continue to combine both school and work.

### **3.5.3 Non-market economic work**

Non-market economic work refers to work that produces goods that are not sold on the market, but are instead consumed by the household. The most prevalent form of this type of work in South Africa is the collection of fuel and water. Research conducted in 2010 indicates that 25 percent of all children aged 7-17 years reported collecting water for household use, and 11 percent reported collecting wood for fuel.

The other comparatively common activity was subsistence farming, with 7 percent of children reporting having done this type of work in 2010. Research conducted in selected sites in the

Western Cape, KwaZulu-Natal and Mpumalanga provinces in 2007, found high levels of participation by children in commercial and subsistence farming in these areas. A rapid assessment survey was conducted on school attending children aged 12 to 16 years in these selected sites. The survey indicated that approximately 45 percent of children surveyed across these three regions engaged in farming activities, with 50 percent participating in commercial farming and 35 percent in subsistence farming. According to educators, parents and employer farmers, poverty and the duty to contribute to the wellbeing of their families are the main reasons for children participating in agricultural work.

### **3.5.4 Child Domestic Work**

Child domestic labour is both a widespread and growing global phenomenon. This practice traps millions of children around the world, predominately girls, in hidden forms of exploitation often involving abuse, health risks and violence. Children who are victims of domestic labour are usually invisible in their communities, toiling for long hours with little or no pay, frequently abused and often deprived of the opportunity to adequate education. Such children comprise a substantial portion of children working in the world today. However, due to the hidden nature of child domestic work, it is difficult to obtain representative data as such children are often hidden from the public view and labour inspection. Nonetheless studies indicate that specifically within South Africa, approximately 53 000 children are victims of child domestic work. Research indicates that within South Africa, factors such as the status of women and girls, child poverty, social exclusion, the lack of education, the increasing number of AIDS orphans and the persistence of traditional hierarchies are some of the primary causes for children engaging in domestic work that is detrimental to their wellbeing and development.

### **3.6 Conclusion**

It thus becomes apparent that child labour is a social and economic problem throughout the world. However, as discussed in this chapter, while child labour affects millions of children across the world, Sub-Saharan Africa still continues to be the region with the highest incidence of child labour. Child labour spans various sectors among children in South Africa, whose situations remain critical due to the peculiar nature of their socio-economic and cultural

circumstances. It is therefore vital that strategies adopted to solve issues relating to child labour, respond to the very circumstances that compel children in South Africa to engage in the practice.

## **CHAPTER FOUR**

### **THE CAUSES OF CHILD LABOUR IN SOUTH AFRICA**

#### **4.1 Introduction**

This chapter provides a discussion on some of the main causes of child labour in South Africa. In doing so it aims to provide a better understanding of the various circumstances that compel children in South Africa to engage in child labour. The purpose of this discussion is to ensure that any legislative programme or policy adopted to deal with issues of child labour in South Africa takes into account such circumstances and is thus context appropriate.

## **4.2 Causes of child labour**

### **4.2.1 Poverty**

The South African society is one in which there are great disparities in wealth, with many people living in deplorable conditions and extreme levels of poverty. Racially discriminatory laws of the past resulted in high levels of inequality, with many of today's children inheriting the inequalities of the apartheid government. According to the United Nations Development Programme's (UNDP) poverty index, South Africa ranks 55 out of 108 developing countries. In addition, research indicates that in 2012, 56 percent of South African children lived on an income below the lower poverty line (R635 per month).

Therefore, while poverty is not the only reason for child labour, it remains a major push factor for many children to live under exploitative conditions. Many children in South Africa like the rest of Africa, are vulnerable because they come from marginalised and vulnerable families. As a result, poor and resource starved families are forced to diversify their financial resources by deploying as many of their members into the work force as possible. Thus for most parents, many children are economic assets due to the fact that their earnings contribute to their family income. Such children therefore work for their survival either independently or as part of the survival strategies of extended families for which they form an active part of. In this regard it is argued that while it is important to create anti child labour laws at a national and international level, it is vital that the drafters of such laws bear in mind that child labour is a mere consequence and itself is not among the root causes of the problem, as far as the problem of underdevelopment is concerned.

### **4.2.2 Unemployment**

The high level of unemployment within South Africa proves to be another cause of child labour. Generally, employment provides people with an income enabling them to improve their standard of living. Thus, the most vital source of household income in South Africa proves to be wage income representing more than 50 percent of household income. Research indicates that in 2014, South Africa's unemployment rate rose to 25.2 percent from an initial 24.1. Research indicates that in 2012, 68 percent of children in South Africa lived in households with atleast one working

adult, and the other 32 percent (over 6 million children) lived in households where both parents were unemployed. Such families are often dependent on the labour of their children for survival as it is often their only source of income. In such circumstances, legislation directed at abolishing child labour without providing adequate alternative means of survival for children in need is not only counter-productive, but fails to ensure the best interests of such children.

### **4.2.3 HIV/AIDS**

Studies indicate that the number of AIDS orphans in South Africa is escalating at an alarming rate. As the pandemic grows in both size and intensity, the situation among children becomes increasingly precarious. As a result, advances in the wellbeing of children in terms of social-welfare and health are affected in both the short term and long term. Although HIV/AIDS is not the only factor, the pandemic has been one of the many contributing factors to child labour since the mid 1990s. Studies reveal that there has been a significant increase of people living with HIV in South Africa, an increase from 5,3 million in 2008 to 6,4 million in 2012. Studies reveal that children are affected in various ways when their parents are infected and later fall ill as a result of the pandemic. For example, many children are compelled to seek employment in order to supplement family income lost as a result of parental death or illness due to HIV/AIDS. With no assistance or material support to call upon, many orphans drop out of school to find their way into the labour market in order to survive. It is argued that in circumstances such as these, legislation and policies directed at banning child labour without providing adequate alternatives for such children becomes a misplaced and misguided good intention because it fails to pay adequate attention to the circumstances under which children engage in child labour.

### **4.2.4 Child-headed households**

The number of child-headed households in South Africa proves to be increasing at an alarming rate, particularly due to the impact of the HIV/AIDS pandemic. Child-headed households can be defined as those where “both parents have died and the head of the household and primary income earner is below the age of eighteen years”. Research indicates that more often than not, child-headed households are solely dependent on the income generated by children for their

survival. As a result, income generation is typically informal and such households often have limited or no source of income. In this regard Couzens, *et al* argues that as bare survival increasingly becomes the main concern for such children, members of child-headed households (and particularly children in charge) often drop out of school, and as a consequence their education is neglected. Studies have found that because such children are often below the age of legal employment, they are forced to seek illegal employment with low wages. The need to generate income in order to ensure survival drives children living in these households into dangerous employment such as prostitution and work in illicit activities. The result is that such children are exposed to sexual exploitation and unacceptable behaviour such as pick-pocketing and gangsterism.

In this regard it is acknowledged that child labour continues to remain a grave concern within South Africa. Working children are not only at risk of physical injury, but are also frequent victims of maltreatment as well as physical and psychological abuse. Viewed in this context, one cannot argue with the fact that international conventions and minimum age laws that seek the total abolition of child labour are indeed commendable. However, as shown by the discussion of the causes of child labour above, it is evident that many children in South Africa engage in child labour in order to ensure the survival of their families. Due to the economic environment in which both children and their families have to live in, such work makes a pivotal contribution to their livelihood.

Thus, given the vital role that work plays in the lives of vulnerable children in South Africa, many scholars argue that protection from abuse does not necessarily mean preventing children from working, in some instances removing children from their work can be as damaging and traumatic as the original abuse. Importantly, where the rights and wellbeing of children are truly protected they will be left observably better off as a result of interventions on their behalf. While this should be obvious, the fact is that relatively few child labour laws and policies are planned and implemented in a way that will ensure that children are left with more rather than fewer options for their survival. In this regard scholars contend that the proper focus of attention should therefore not be the desire to eradicate all forms of work from the lives of children; rather, there is a need to understand better the nature and problems of child and youth employment, to

identify types of work which constitute abuse, and to support the efforts of working children in trying to improve their conditions of life and work.

### **4.3 Conclusion**

It thus becomes apparent that child labour is both a complex and multifaceted problem. Many children in South Africa like the rest of Africa are vulnerable because they come from marginalised and vulnerable families. Given the persistent high incidence of child labour in South Africa it is imperative that any legislative intervention or policy initiative adopted by the government effectively takes into account the underlying causes that result in child labour in South Africa.

## **CHAPTER FIVE**

### **THE SOUTH AFRICAN LEGAL FRAMEWORK ON CHILD LABOUR**

#### **5.1. Introduction**

This chapter provides a discussion of the legislative provisions that have been enacted in South Africa in order to deal with the challenges associated with child labour. It also provides a discussion of the various policies that have been adopted by the South African government in order to reduce the high incidents of child labour within the country. The chapter concludes by highlighting the inadequacy of relying solely on such laws and policies in order to improve the lives of vulnerable children.

##### **5.1.1 Constitution**

The right of the child to be protected against economic exploitation is expressly provided for in the South African Constitution. In this regard, section 28 of the Constitution provides for the right of all children to be protected against exploitative labour practices. Section 28 further prohibits children from performing work that is detrimental to their age or “places at risk the child’s wellbeing, education, physical or mental health or spiritual, moral or social development.” Further, section 28 establishes that “a child’s best interests are of paramount

importance in every matter concerning the child”. The inclusion of section 28 in the Constitution is therefore a vital development for South African children. This provision was adopted as a result of acknowledging that children need special protection because they are amongst the most vulnerable members of society. As a result, the drafters of the South African Constitution have made children’s rights a priority, and have therefore stipulated that the best interests of the child is the overriding concern when it comes to any matter affecting him or her.

Section 28 of the Constitution thus aims to protect and give effect to the rights of children within South Africa. More specifically, section 28 (2) of the Constitution aims to promote the best interests of the child by acting as a directive in relation to the manner in which the rights of the child should be interpreted and weighed up against other rights. Further, section 28 (2) acts as a directive with regards to the interpretation, limitation and application of the rights, competencies, functions and duties of others dealing with children. In this regard it is argued that the principle of “the best interest of the child” is fundamental in that its ultimate purpose is to safeguard and protect the needs and entitlements of children within South Africa.

### **5.1.2 The Basic Conditions of Employment Act**

South Africa’s approach to child labour stems largely from the way in which international law has attempted to solve issues relating to child labour. The Minimum Age Convention requires state parties to enact national policies aimed at both abolishing child labour and setting a minimum age of employment. The primary legislation in South Africa in this regard is the Basic Conditions of Employment Act.

The BCEA prohibits the employment of a child under the age of 15 years, or who is under a minimum school leaving age, in terms of any law. The employment of a child under the age of 15 thus constitutes an offence under the Act. In addition, the Basic Conditions of Employment Amendment Act extends the scope of the prohibition and regulation of work by children. In terms of the Basic Conditions of Employment Amendment Act, the protection of children contained within section 43 of the BCEA is extended beyond the employer of such children to incorporate anyone (which includes a parent) who requires or permits a child to work. This change will provide protection to children working without a contract.

Edmonds argues that while minimum age regulations have the potential to help combat child labour, as currently implemented, they do not appear to have substantively influenced child labour. This is especially so in developing countries which differ fundamentally from Western societies with regard to their socio-economic and cultural circumstances. In this regard it is argued that while minimum age laws are an effective tool for change, there is little evidence of widespread enforcement. Thus many authors argue that there is an imperative need for more meaningful reforms which can effectively complement legislation in solving issues relating to child labour.

### **5.1.3 The Children's Act**

The Children's Act, No.38 of 2005 amended in 2007 came into effect on 1 April 2010 and provides a new legal framework for the care and protection of children and promotes the rights, responsibilities and participation of children, parents, caregivers and service providers. The Act prohibits child labour and the exploitation of children.

Elements of exploitation in terms of the Act include child slavery, forced labour, commercial sexual exploitation and all work that is harmful to the physical and mental development of the child. In addition, the Children's Act defines a child who is in need of care and protection as one who is a victim of child labour. With regards to such children, the Act provides that social workers must, where necessary take measures to assist such children through mediation and early intervention and prevention services. The Children's Act is commendable in that while it prohibits child labour it also takes into account the needs of children. For example, section 150 of the Children's Act recognizes children that are vulnerable to poverty, abuse, neglect and maltreatment as children that are vulnerable and require care and protection.

### **5.1.4 The South African School's Act**

The Minimum Age Convention provides that 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. In order to give effect to its international obligations, South Africa has adopted a similar

approach in terms of section 43 of the BCEA. The South African School's Act (hereafter referred to as SASA) complements the BCEA in this regard. The Act provides for compulsory attendance at school and obliges parents to ensure that their children attend school at least until the age of 15.

The approach of the law in terms of such conventions and legislative provisions is based on the notion that compulsory education will render children less susceptible to exploitative labour practices. However, while the importance of education cannot be emphasized enough, history has proven that compulsory education cannot by itself solve issues relating to child labour. In this regard studies have revealed that a large majority of both learners and educators state a preference for new approaches to child labour, such as a regime that would allow a combination of school and work. In this regard Bourdillon argues that there is no evident reason why this preference should be denied on the basis of abstract notions of schooling and childhood, especially when it is vital to consider that adequate nutrition is a prerequisite for full cognitive development.

### **5.1.5 The Sexual Offences Act**

Commercial sexual exploitation proves to be one of the most hazardous forms of child labour, and is a particular threat to child protection in a number of countries including South Africa. The issue of sexual exploitation for commercial purposes is dealt with in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act. The Act has helped to intensify South Africa's efforts to fight sexual crimes against all persons, especially vulnerable groups including women and children. In terms of child labour specifically the Act prohibits the sexual exploitation of children for financial reward or compensation and stipulates that such conduct constitutes a criminal offence.

It should be noted however, that while this provision is commendable, research indicates that the enforcement of provisions relating to sexual crimes against children proves to be problematic. This is due to the fact that sexual crimes against children are rarely reported due to the sensitive nature and the stigma attached to such crimes. In this regard, it is argued that it is imperative that children in South Africa are offered appropriate education and guidance on the reporting of

sexual crimes. It is also vital that greater efforts are made by the government in order to strengthen the systematic recording of such crimes against children as such information could help inform early intervention and prevention strategies.

## **5.2 Government Policies on child labour**

### **5.2.1 Child Labour Programme of Action for South Africa: Phase three: 2013-2017**

The Child Labour Programme of Action (hereafter referred to as CLPA) is South Africa's primary policy aimed at the prevention, reduction and eventual elimination of child labour. The CLPA was initially adopted in 2003 after extensive consultation with government and various non-governmental organisations. The second phase of CLPA was adopted by the cabinet in February 2009, and the third phase covers the period April 2013 to March 2017. The policy calls for activities across government and the enactment of new laws against the worst forms of child labour. The policy also targets the implementation of government and other stakeholders' programmes and policies on poverty reduction, educational policies and adequate provision of social security. It aims to strengthen national capacity to enforce legislative measures against child labour and to increase public awareness and social mobilization on issues relating to child labour. The implementation of the CLPA is coordinated by the Implementation Committee (IC) which includes representatives from government departments, organised businesses and civil society. In terms of the monitoring of the programme, reports are received from the various national government departments and agencies which have roles assigned in the implementation of the CLPA.

The CLPA is commendable in that it takes into account some of the circumstances that compel children to engage in child labour. With regards to the progress made thus far, research indicates that overall, the government has performed relatively well in areas of awareness raising and training and development of materials. However, evidence of performance in service delivery and implementation of what has been imparted in the various training initiatives proves to be less consistent. It is argued that it is on this aspect that the CLPA 2013-2017 will need to focus if it is to make a significant difference in the lives of children in South Africa. In this regard it is suggested that one possible refinement of the CLPA could be the delivery of indicators (such as the number of children to whom services were provided) for parts of the programme that require on-going service delivery. In addition it is vital that effective strategies are adopted which will allow for the improvement of monitoring and implementation of the programme in order to ensure that progress is made on an ongoing basis.

If implemented successfully, the CLPA could lead to the eradication of child labour, in that it aims to, among others, focus on poverty reduction and to strengthen national capacity to enforce legislative measures against child labour. It is acknowledged that such aims are vital as poverty remains a major push factor that drives children to engage in child labour in South Africa. However, it can be argued that such aims are overly ambitious given the current socio-economic conditions in South Africa. Therefore, while such steps are pivotal when it comes to issues relating to child labour, they cannot by themselves lead to the improvement and development of vulnerable children in South Africa. This highlights the need for more multi-dimensional approaches which can effectively complement such programmes and legislative provisions in order to adequately improve the lives of vulnerable children in South Africa.

### **5.2.2 South African Education Action Plan**

The South African Education Action Plan of 2014 serves as the first phase of a comprehensive national educational plan through to 2025. The plan was developed in consultation with teacher

unions, the provincial departments of education as well as representative organisations and individuals. This government policy focuses on addressing 27 goals concerning education, including ensuring that all learners stay enrolled at school. The ultimate aim of the plan is to improve the quality of education provided to learners. It also aims to provide training to educators in order to ensure effective curriculum delivery. While such efforts are laudable, research indicates that approximately 200 000 children in South Africa still do not have access to formal education. Studies further reveal that a large majority of such children come from poor and impoverished communities and as a result are unable to afford the cost associated with attending school.

### **5.2.3 Social Grants**

South Africa's Social Assistance Act (hereafter referred to as SAA) is the primary legislation in terms of social security and stipulates the criteria and procedures for access to social grants for children living in poverty, children in need of foster care and children with disabilities. The Act currently provides for three grants which are particularly relevant to children: the child support grant (CSG), the foster care grant (FCG) and the care dependency grant (CDG).

The CSG, provided for in terms of section 6 of SAA is a government social assistance grant that provides monthly cash transfers to primary caregivers of vulnerable children. The CSG aims to lower the costs associated with raising a child and to relieve economic pressure. Research indicates that as a result of the Child Support Grant, recipients may be less likely to send their children to seek employment and are more likely to have positive educational outcomes. In addition, the FCG and the CDG funded by government aims to assist families and children, including those vulnerable to the worst forms of child labour, by encouraging children to remain in school and not to enter the labour market.

However, while such government programmes in the form of social grants aim to improve the lives of vulnerable children, research indicates that such grants do not pay enough to reduce the extent of children's participation in economic activities. This is particularly so with regards to the CSG. Further, it is argued that the process involved in accessing these grants essentially discriminates against poor children. As a result many children in need are unable to access the

benefits of these grants. For example, during the application process for the CSG, documents such as the applicant's identity document and the child's birth certificate are a prerequisite. However, more often than not, children from disadvantaged backgrounds particularly those in rural areas, do not possess such documents. In addition, caregivers do not always have the financial means to pay all the costs that is incurred during the application process for the CSG.

#### **5.2.4 National School Nutrition Programme**

The National School Nutrition Programme (hereafter referred to as NSNP) was introduced in 1994 in order to enforce the right of vulnerable children to basic food and nutrition. The programme which is funded by the Department of Basic Education ensures that nutritious meals are served to learners during school days. The programme also provides an incentive for children to attend school regularly and punctually. However, the overall purpose of the programme is to enhance learning capacity and improve access to education for primary and secondary school learners. In order to enhance programme implementation and management, the NSNP Directorate has engaged the services of a number of individuals with specialised skills such as researchers, nutritionist, dieticians and educational specialists. At a national level, a team of 20 officials are tasked with the responsibility for programme implementation, monitoring and coordination. The NSNP is commendable in that health and nutrition is an essential part of a child's learning. However, the programme has encountered several challenges since its inception. Some of these challenges include the unavailability of the necessary and needed infrastructure, delays in the delivery of food, and non-cooperation by stakeholders in the implementation of the programme.

### **5.3 Conclusion**

While South Africa has a fairly comprehensive legal framework when it comes to issues relating to child labour one cannot rely solely on such initiatives to address issues relating to child labour. As discussed in this chapter, such legislative polices and programmes aimed at abolishing child labour are accompanied by various challenges. In this regard it is imperative that interventions are adopted which will effectively complement legislation in order to adequately improve the lives of vulnerable children in South Africa.

## **CHAPTER SIX**

### **THE CONFLICT BETWEEN INTERNATIONAL STANDARDS ON CHILD LABOUR AND THE REALITY IN SOUTH AFRICA**

#### **6.1 Introduction**

This chapter provides a discussion of the difficulties in applying fixed and rigid international human rights' standards on child labour to a developing country such as South Africa. In doing so it discusses the conflict between international child labour laws and the reality in South Africa. This chapter concludes by highlighting the importance of adopting interventions on child labour in South Africa that takes into account the socio-economic and cultural circumstances of such children.

#### **6.2 The Conflict between international child labour laws and the reality in South Africa**

One cannot argue with the fact that the attempt of minimum age laws both internationally and nationally to abolish child labour and thus ensure the best interest of all children are indeed laudable. However, this does not eliminate the need to analyse and critique such laws. Good intentions are not enough, especially in relation to children, for children generally must live with the actual effects of efforts made on their behalf and are in many situations not able to mitigate those effects or protect themselves.

It is acknowledged that there are many situations in which children are obliged to work to the detriment of their education, health and development. Such situations constitute the abuse of

working children and are thus rightly condemned. However, the abolitionist approach to child labour as portrayed by the ILO's Conventions is at best questionable. At worst, abolitionist approaches to child labour has shown in many situations to work against the interests of children who are already disadvantaged. In this regard, rather than simply accepting such approaches to child labour that have been developed by and for the upper classes of high-income countries, it is important to take into account and understand the value and context of the work that children do before developing strategies to protect their best interests.

### **6.2.1 Socio-cultural perspectives of work and childhood**

The Minimum Age Convention, like South Africa's BCEA, is founded on the notion that children should not be involved in "work or employment" of any kind below a certain age, normally defined as the age at which compulsory education ends. In terms of such approaches to child labour, "work and education" are mutually exclusive in the lives of children, and issues relating to child labour are to be solved by a blanket prohibition on "work" or "employment" below a certain specified minimum age. Such minimum age laws reflect a paradigm that assumes that children benefit from being withdrawn or excluded from work, yet there is little empirical evidence to support this assumption.

As discussed in Chapter 2, the Minimum Age Convention does make provision for children below the minimum age of employment to engage in light work. Further the Convention prohibits children below the specified minimum ages to find employment even if they are already out of school and have no reasonable chance of continuing their schooling. The fact that such children cannot work, even if such work is not detrimental, seems somewhat unfair and restrictive. As will be discussed below, in many traditional African societies and cultures, children are taught skills through work at a young age.

It is acknowledged that for children below the age of 12, engaging in child work can be dangerous and detrimental to their development. However, a blanket prohibition on the work of children is unrealistic, particularly for children from developing countries like South Africa. In this regard scholars have argued that child labour is a contentious issue not only because of the large number of children that work illegally, but also because the work of such children

concurrently involves interdependent realities of survival, socialization, participation, abuse and exploitation. It is thus important that interventions adopted on behalf of such children are context specific and appropriate in order to ensure that their best interests are protected.

In this regard it is argued that minimum age standards express an ideal of childhood as a “privileged phase of life, properly dedicated only to play and schooling, and with an extended period of dependence during which economic activity is discouraged or actually denied.” In an ideal world, such a notion of childhood would undoubtedly serve the best interests of all children. However, for many children in developing parts of the world such an ideal is far from reality. It is argued that the international law approach to child labour stems largely from the way in which childhood is viewed, particularly amongst societies of the Western world. The ILO’s Conventions and the CRC are based on such Western theories of child development and thus drafters of such international laws have assumed a universally applicable model of childhood. In Western societies, childhood is seen as a time of happiness, innocence and freedom from responsibility. Such romantic views of childhood are often based on an idyllic, bourgeois model of childhood which originated in the European context of the 19<sup>th</sup> century industrial revolution. Bourdillon argues that in terms of such approaches to childhood, any economic value that children once had as contributing to their family’s livelihood, is replaced by a sentimental and moral value. He further states that alternative childhoods are often viewed as lost, stolen or pathological and requiring rehabilitation. Such a view is in line with the modernization perspective, which places the Western world as an ideal that the rest of the world should follow.

In this perspective, a high incidence of child labour is viewed as a sign of underdevelopment, whereas the dissonance of childhood from the performance of valued work is a yardstick for modernity. It is acknowledged that such universal accounts of normative child development offer a useful basis for realising the rights of children. However, such approaches to childhood tend to overlook the diversities in children’s experiences, including differences in the ways children learn, play, and develop a personal identity and social understanding. Therefore, ensuring that children are left better off as a result of strategies and policies implemented to protect their

interests requires looking beyond dominant, Universalist perceptions of normality and childhood. It instead requires that interventions taken on behalf of children are flexible and based on a critical analysis of empirical situations including the context, meaning and the value of work in the lives of children. Universalistic notions of childhood based on Western ideals and values prove to be problematic in their assumption that developing countries must go through a similar process of changing perspectives of childhood. Ideals of childhood vary, as Meyers explains:

“The institutionalization of a particular Western model of childhood as the basis for global rights disenfranchises poor and working-class children – by far the world’s majority – by making their lives seem deviant, inferior, or even pathological just for departing from an inappropriately imposed culture-biased norm”.

As mentioned above, the notion of childhood in indigenous cultures within South Africa differs fundamentally from the romantic notions of childhood as portrayed by Western ideals and values. Thus, within many communities in South Africa, the prohibition of work for children based on fixed and arbitrary minimum ages is often met with resistance. In Western societies family life is often based on a nuclear family unit and in isolation from the other kin. The CRC and the ILO’s Conventions represent such ideals in that they emphasize individuality and marginalize the influence of socio-economic and cultural influences.

However, in indigenous societies of South Africa culture plays a vital role in relation to a child’s upbringing. It establishes the context in which children’s work is viewed, and influences the prevailing opinions and attitudes about the value of such work. Within African societies much emphasis is placed on collective goals such as learning to live in harmony with each other, and obedience to authority. Thus, African societies are often portrayed by more collectivist or inter-dependent cultural scripts. In such traditional societies child work is not just seen as part of one’s socialization and development, but by virtue of being an African one assumes obligations to contribute to the survival of the family and the community at large.

In indigenous cultures in Africa, a child's work in the family is viewed as part of household production, and as an ongoing process of vocational training and socialization. In most agricultural societies in South Africa, as soon as children are able, they are routinely expected to contribute to the labour needs of the household, agricultural production, and care of livestock. During such activities children learn productive and survival skills, and establish their position within society. The notion that work acquires more positive connotations within African cultures than it does amongst Western societies is both acknowledged and supported by ACRWC. The ACRWC provides that children have responsibilities to their families, their communities and their countries. The charter further provides that a child shall have the duty to work for the cohesion of the family, and in doing so he or she is to respect his parents, superiors, elders and to assist them in cases of need.

In addition, in terms of the ILO's Conventions, age is used as the determining factor of when a child should participate in work or employment. The arbitrary setting of such age limits by international instruments proves to be problematic when applied to African cultures where the determinants of both childhood and adulthood are biologically and socially constructed. Some African cultures mark the end of childhood when new economic responsibilities are acquired or when the entrance into the institution of marriage takes place. For example, in African culture children can be considered to have reached adulthood upon entering puberty, which triggers initiation, circumcision and marriage. Within South Africa, a Xhosa male child becomes an adult upon the completion of his circumcision rituals, during which he has to spend several days in the bush fending for himself by gathering and hunting. Thus, while international law marks the end of childhood at a certain age, within traditional societies in South Africa, childhood is not marked by arbitrary fixed ages, but by rites of passage that lack chronological specificity.

It is acknowledged that ensuring that the best interests of children are protected also requires that the limits of culture be taken into account. Just as culture should never be excluded from the human rights equation, so too it should never be used consistently to trump rights. There are some cultural practices in South Africa that can never be justified, for example, early child marriages which often compel female children to drop out of school and engage in child labour

in their husband's homes. Such girls are often victims of domestic violence, abuse and rape. However, Nhenga argues that such limits on culture seem to have driven the international campaign against child labour to seek the denial of all cultural practices and attitudes. Notable amongst these are the expectations that children will contribute to the sustenance of their families, and the belief that children working is an appropriate preparation for childhood.

### **6.2.2 Socio-economic conditions in South Africa**

Bourdillon argues that “much of South Africa’s past should caution us against a simplistic adoption of romantic notions of childhood dominant in developed countries”. This is due to the fact that apart from the cultural ways in which childhood is perceived in South Africa, material factors also make childhood in South Africa different from that of Europe. As discussed in Chapter 4, while South Africa has one of the most progressive Constitutions in the world, the South African society is one in which there is great disparities in wealth. Many children remain vulnerable due to the inequalities created by the apartheid government. In addition, children within South Africa live with incapacitated parents while others are the heads of households and the primary breadwinners for their families. Such children cannot simply rely on adults to run their daily lives, and State welfare grants are overstretched and not easily accessed, especially by children. In addition, children affected by HIV/AIDS work for survival either independently or as part of the survival strategies of extended families of which they form an active part of. Therefore, like children who are victims of poverty, children affected by the HIV/AIDS pandemic are important contributors of labour and resources.

Thus, due to the economic environment in which children and their families have to live in within South Africa, such work often makes a vital contribution to the livelihood of the families concerned. In this regard Mavunga criticizes the ILO’s Minimum Age Convention for not adequately drafting provisions that serve the best interests of children. She argues that with an increase in worldwide poverty, widespread disease and the significant increase of child-headed households, it could be in the best interests of children to participate in some form of work to ensure their survival. Mavunga’s contentions are valid in that research indicates that international pressure advocating for the complete abolition of child labour has in many instances resulted in more entrenched suffering for children both materially and socially. It is acknowledged that in an

ideal world children would not have to work for their survival and there would be no poverty. There would also be no country in which the economy was not adequately developed in order to provide for the young and old without any contributions being made by them. Sadly however, we live in a world in which such an ideal is far from reality.

As Boyden argues:

“Undoubtedly countless children in poor countries live extremely precarious lives and are deeply exploited; they deserve all the support and assistance they can get. But the point is that the human rights discourse tends to detract from careful ethnography, as often as not calling forth simplistic explanations and solutions, many of which are inappropriate or ineffectual”.

Thus history has proven that attempts to monitor and regulate child labour with rigid and fixed standards that are applicable to all countries are unsuccessful and un-enforced. On the contrary, research indicates that depriving children in need of existing livelihood sources has often forced them into more exploitative forms of child labour, such as prostitution and work involving illicit activities. Thus, within many developing countries, including South Africa, children have to work as there is often no other alternative guaranteeing their own survival or that of the household. Given such circumstances, many scholars argue that it is rather futile to ask whether children should or should not be doing the work that they are engaged in. It is rather highly desirable, that the focus should be on the nature of their work situation, how their working conditions can be improved, how their work affects them and how it relates to other aspects of their lives such as their family life. Given the fact that engaging in work often contributes to the survival of such children, it is imperative to understand thoroughly the meaning of work for children, and its advantages and disadvantages for them, before interventions take place.

It is acknowledged that there are certain types of child labour that can never be justified or condoned, such as those prohibited by the Worst Forms of Child Labour Convention. Such activities constitute the abuse of children and are therefore rightly condemned. However, it is argued that were children are engaged in work that is not in itself dangerous, harmful or morally intolerable, but which in its present form is likely to be harmful to their development, the

conditions of such work can be improved without prohibiting such work. Such an approach is desirable, in that complete bans on child labour have proven to be counterproductive and serves the best interest of children poorly. Mavunga argues that ILO's Conventions portray children as helpless victims or potential victims needing adults to intervene on their behalf. However for children from impoverished families and communities, the ability to work often instills in them pride, and a sense of self-reliance and self-respect because of their ability to supplement the family income in order to ensure survival.

It is important to note that adopting approaches that challenge universal notions of childhood and child development is not completely foreign to South Africa. For example, the decision in South Africa to enable child-headed households to gain formal legal status directly challenges long-established views about acceptable forms of childhood and family forms. In particular, the notion that children should in some situations lawfully be able to lead households by taking on adult-like responsibilities such as producing income and allocating household resources. Couzens *et al* argues that the decision to afford legal recognition to such households was essential given the current social realities and economic needs of children in South Africa. They further argue that despite some inherent difficulties in taking such a course, it has significant advantages which outweigh the challenges, and is therefore a vital means of widening the net of protection for vulnerable children. Similarly, within the context of child labour, it is imperative that any policies and interventions implemented on behalf of children results in them being left untimely better off. While this should be obvious, the fact is that relatively few child labour laws and policies are planned and implemented in a way that ensures that children are left with more rather than fewer options for their survival.

### **6.2.3 Education and Schooling in South Africa**

In terms of the ILO's Minimum Age Convention, the minimum age of employment set by States should not be less than the age of completion of compulsory education. Thus, in terms of the Minimum Age Convention, the employment of children below the age of 15 is unlawful. South Africa's BCEA prohibits the employment of children under the age of 15. This approach is

complimented by the South African Schools Act, which provides for compulsory attendance at school and obliges parents to ensure that their children attend school at least until the age of 15.

In terms of such approaches to child labour, compulsory education is viewed as a vital tool in the elimination of child labour. Such approaches are based on the notion that compulsory education reduces child labour as it is much easier to supervise school attendance than it is to monitor children in the workplace. Therefore, as long as children attend school, they will not be susceptible to seeking out employment, as children will be less available for full time work. Further, by providing free basic education, parents will be encouraged to keep their children in school and employers will be persuaded against employing them.

One cannot argue with the fact that this approach is a noble ideal, in that the importance of education in the lives of all children can not be emphasized enough. However, it is argued that by linking the two concepts of minimum age and compulsory education, it is implied that the education infrastructure needed to provide education up to a specified age exists in all countries. Sadly however, the experience of education in South Africa differs fundamentally from the experience in contemporary developed countries. Recent statistics relating to the high incidence of child labour in South Africa indicate that issues relating to child labour cannot be solved through compulsory educational laws and policies alone.

Within South Africa, poor educational facilities and infrastructure proves to be a major deterrent to children receiving the quality education that is needed in order to improve their lives. Many schools in South Africa lack adequate resources such as textbooks, blackboards, desks, chairs and sometimes even classrooms. Further, in many rural areas there have been reports of unqualified teaching staff, extremely poor sanitation and generally low learning standards. In this regard Bourdillon argues that “estimates of the human capital benefits of schooling rarely take account of the quality of schooling, or the capabilities of particular students, and often not even of the local economic situation”. He further maintains that when people argue the advantages of school over work, they often implicitly compare an ideal education, based on good resources, with the worst kinds of productive work. However, when poor educational facilities are compared with the more benign forms of work, the conclusion is

not so clear. In this regard it is argued that defining child labour as work that keeps children away from school creates the risk of overestimating the negative effects of work, and neglecting the relevance of poor quality education in South Africa.

As mentioned above, in practice many schools in South Africa, particularly those within rural areas, do not possess adequate human and material resources. In addition, classes are often overcrowded and teachers are ill-equipped or poorly motivated due to inadequate compensation and educational facilities. Such schools are usually ineffective and demeaning places for pupils where little valuable learning occurs. In such circumstances, it becomes evident that both childhood and education have negative connotations for children in South Africa far from those in a romantic idealisation of childhood. In this regard, research indicates that a large number of children of school going age are in fact out of school, regardless of whether they work.

Furthermore, while the improvement of the availability of resources within South African schools will have a positive impact on children, research indicates that this will not necessarily guarantee better attendance or even better participation in school activities by children. This is due to the fact that, apart from issues relating to the quality of education and the availability of resources within South African schools, studies indicate that many children in South Africa cannot afford the cost that is associated with attending school. While basic education is free in South Africa, children must acquire books, stationery and clothing. Further, many children cannot afford transportation costs to and from school. In addition, physical access to school remains a problem for many children in South Africa, more especially those living in rural areas where public transport to school is lacking or inadequate, and where households are unable to afford private transport for children to get to school.

Thus, studies indicate that in practice a large majority of children in South Africa, at some stage combine school with work, both domestic work at home and productive work in order to pay the costs associated with education, regardless of whether such work is in violation of the law. It is in this sense, “the abuse of children in work”, rather than the fact of their participation in work, that the child labour problem should be understood. In this regard many scholars contend that the primary area of concern for governments and civil society should not be the fact that children

work but strategies should be developed on how to improve working conditions and maximize the benefits that children receive through work.

### **6.3 Conclusion**

It thus becomes apparent that the mere articulation of an international norm, such as those relating to child labour, is inadequate as a driver of change. Child labour constitutes an interesting example of what happens when civil society is profoundly divided and key elements of the state and society question whether the norm can even speak to local problems. In this regard it is vital that the unique socio-economic and cultural circumstances that many children in South Africa find themselves in are taken into account when designing laws and policies relating to child labour.

## **CHAPTER 7**

### **CONCLUSION AND RECOMMENDATIONS**

#### **7.1 Introduction**

South Africa's overwhelming support of international Conventions aimed at eradicating child labour implies a high degree of concern for the welfare and protection of the child. It is acknowledged that such efforts aimed at improving the lives of children are indeed laudable.

However, despite international and national efforts to abolish child labour, it still remains a significant problem in South Africa. This indicates that traditional measures such as minimum age laws, public sector inspections of workplaces, the regulation of children's work through work permits and compulsory school attendance up to a stipulated age cannot by themselves protect children who engage in child labour. What is required is an analysis of the relationship between children and work, a different approach posing new questions that will lead to more effective protection of working children's best interests. Such an approach does in fact exist, and is advocated by many who believe that the best interests of the child should be the first and most vital concern of all policies and programmes relating to children's work. The idea behind this approach is supported mainly by children's rights' activists and grass-root practitioners working with children, and by psychologists, economists and social scientists with an interest in developing measures that respond more effectively to working children's problems and needs.

## **7.2 A Child Centered Approach to child labour**

As the name suggests this approach is rigorously child centered, taking as its point of departure the child, how the child experiences work and what the child needs to survive and develop. It judges the suitability of work, and requires interventions in work according to their verifiable effects on children. Bessell explains this approach further by arguing that “[T]o be child-focused [or child-centered] is to find ways of bringing children into the foreground, so that their lives can be as clearly seen as those of adults”. Thus a child-centered approach advocates the notion that both children's views and experiences must be taken seriously if interventions to end exploitative and dangerous forms of child labour are to be child-centered, context appropriate and sustainable. In addition, a child-centered approach challenges the idea that child work should be addressed primarily as a labour issue, as is now the general rule. It instead argues that work should be viewed as an appropriate means for developing the skills and attitudes of children, which will enrich both their present lives and future prospects. It further advocates that in order to respond more adequately to the problems and needs of working children, governments must adopt a more child centered view of child work in both legislative and administrative policies.

Thus overall a child centered approach would make less use of minimum age laws, public sector inspections of workplaces and labour practices, compulsory school attendance, and other coercive measures, although these might still have a vital role to play. It would instead rely more on mobilizational activities such as poverty reduction, information and advocacy campaigns on children's rights, participation of children and their parents in policy and programme planning, improvement of school accessibility and quality, and the introduction of workplace protections and safeguards for both children and adults. Each of these will be discussed in greater detail below.

### **7.2.1 Poverty Reduction**

Poverty is not the only reason children engage in work that is harmful to their well-being and development, but it is one very important factor that also exacerbates others. It is argued that in many instances the concern for eliminating child labour distracts attention from, and even reinforces, serious social inequality that demands attention. In this regard, Bourdillon emphasises the imperative need for approaches that link policies on child labour with the alleviation of poverty, highlighting that a child centred approach to child labour must tackle the complexity of issues and deal with concrete, real life situations. Thus, there is a need to design comprehensive strategies, policies and programmes aimed at establishing a conducive environment for poverty reduction and economic growth. In developing such programmes in South Africa, practical lessons can be learnt from similar programmes adopted in India and the Philippines.

The “Butterflies Programme” in India is part of a child-centred Non-Government Organisation (hereafter referred to as NGO), which focuses on street and working children in Delhi. The organisation believes that poverty is one of the central contributing factors of child labour, and thus, without removing poverty, child labour will inevitably continue. However, it distinguishes itself from other organisations working with street and working children in that it advocates the right of the child to carry out work that is not harmful to them. As a result, while engaging in poverty alleviation programmes for children, the organisation also supports working children and stresses the positive aspects that work many bring to children, especially in comparison to other options or the lack thereof. The organisation further believes that for working children, taking

into consideration the age and capacity of the child, their work should be made easier, and their working hours should be reduced. In addition, it advocates that work should depend on the child's age and capacity, while at the same time not denying the child the right to education, or to learn a new skill so as to break the cycle of exploitation and poverty.

It is submitted that for children living under exploitation and extreme levels of poverty such an approach leaves them with much more, rather than fewer options for survival. The Minimum Age Convention makes provision for children between the ages of 13 and 15 (or in developing countries between 12 and 14) years to engage in light work. However, the Minimum Age Convention, programmes like the "Butterflies Programme" in India prove to be much more effective as such programmes do not prohibit children from engaging in work on the basis of age alone. The programme however advocates that the work that children engage in should be age appropriate, while at the same time not denying them the opportunity to develop and break away from exploitative circumstances.

On the contrary, the Minimum Age Convention follows a strict abolitionist approach in that the Convention does not permit the light work of children below the age of 12/13 years, even if such employment is not hazardous to their health, morals or development and does not prejudice school attendance. It is acknowledged that the aim of the Convention in this regard is to protect and enhance the development of such children. However, given the high incidence of child labour in South Africa, it is evident that blanket prohibitions on child labour which are based on strict and universalistic minimum ages of employment are both ineffective and unenforced.

In addition, Bourdillon explains of the child labour programme in the Philippines that focused on the specific rights of children and indicators associated with these rights, by paying attention to what children say about their work and their understanding of their rights. The work that such children are engaged in not only provides an opportunity for them to earn a living but also effectively enhances their skills. For example, many children who are part of the programme undertake productive work such as weaving and bead-work. As a result of engaging in such work, these children are able to learn skills of the craft and also establish contracts and gain experience. The programme correctly advocates the importance of ensuring that the aim of any

intervention adopted on behalf of children ultimately serves their best interests and improves their lives. Through ongoing consultation with the children and an analysis of the situation of such children, the programme has become successfully embedded in a programme to alleviate poverty. As a result of the programme, children often speak of how being able to access such work not only improves their economic situation, but also adds meaning to their lives and improves their self-esteem and confidence.

### **7.2.2 Schooling and Education**

Where the rights and wellbeing of children are truly protected they will be left observably better off as a result of interventions on their behalf. While this should be obvious, the fact is that relatively few child labour laws and policies are planned and implemented in a way that ensures that children are left with more rather than fewer options for their survival. A child centered approach to child labour will thus ensure not only that a child attends school up to a specified minimum age but also that schools are accessible to all children. Quality of teaching should be such that both children as well as their families see the benefits of school. Ensuring that schools are accessible for all children necessitates a considerable investment. The principle of accessibility requires that education be provided on the basis of both quality and non-discrimination. It also requires that education be economically and physically accessible to all.

In this regard it is submitted that it is imperative that there is collaboration amongst the relevant governmental departments. As mentioned in Chapter 5, one of the main barriers to children attending school in South Africa, particularly those from rural areas, is transportation to and from school. Thus collaboration between the Department of Education and the Department of Transport is fundamental in providing transportation subsidies to such children. It is also imperative that the government makes effective use of the information gathered from national surveys and statistics relating to the placement of schools in order to ensure that schools are built within remote areas and are accessible to children from such areas.

Bourdillon argues that education can include appropriate vocational programmes that give children more options and bargaining power. He further argues that in situations where children must be involved in economic activities, a system should be provided which can effectively

combine school and work. These could include, where practical, work-study opportunities that co-ordinate work with school in a developmental framework. This does not mean, however, that the child's right to education can be achieved by poor quality, part-time education. Research indicates that there have been some attempts to provide working children with quality education geared precisely for their lives, some of which will be discussed below.

Further, when it is imperative to separate children from work for their own protection, alternative activities that meet their developmental and economic needs should be available. This may mean offering children alternative, more appropriate employment, or perhaps establishing other family sources of support in order to sustain family income. Participatory research has indicated that a large majority of pupils and parents prefer an approach that permits a combination of school and work due to the social realities that they face on a daily basis. It is argued that there is no evident reason why this preference should be denied on the basis of abstract notions of schooling and childhood, especially when considering that adequate nutrition is a prerequisite for full cognitive development. Such an approach has proven not only to be successful but has also improved the lives of such children in many instances.

The Earn-and-Learn schools in tea and coffee plantations in Zimbabwe allow children to work and provides them with an income that enables them to pursue their education. These schools are run by tea estates in the Chipinge District, in which pupils are provided with education, meals and boarding facilities on condition that they work on tea plantations. Payment for such work depends on the amount of tea leaves plucked and the rate is the same as that paid to adult pluckers. The working hours that such children are required to work varies, but a system is provided for that effectively allows children to combine school and work through a "work-study" developmental framework. In addition, children who attend such schools, have free access to the estate's clinics and upon receiving certification from the clinic staff, are permitted to refrain from work when they are unwell.

In addition to paying the learners a wage, the tea estates also spend appreciable amounts on subsidies for such schools. Further, the Ministry of Education not only provides teachers'

salaries but also provides a small allowance for each child attending these schools. These schools enable many children from impoverished families to complete their education. In this regard studies indicate that the programme has been successful in that it has improved the lives of such children. This is due to the fact that apart from enabling children to afford uniforms and school stationery that is needed, the Earn-and-learn schools also provide learners that excel academically with scholarships to further their education.

In addition, the Concerned for Working Children (hereafter referred to as CWC) project aims to provide education to working children in India. CWC has also facilitated the establishment of an organisation for working children, called “Bhima Sangha”, through which children try to find ways to improve their situation. The project is based on the philosophy that work is central to the lives of many children, and thus working children should be supported in their work rather than torn from it. CWC has also established a training centre in the Kundapur District, the home of many young workers, for skills that would enable children to earn a living, such as weaving and leather work. This has become part of a broader movement in which children learn to identify their problems, collect accurate and persuasive information, and create initiatives to alleviate them. At the same time, CWC works to improve the quality of education in local schools. To date they have developed teaching techniques for large classes, funded affordable teaching aids and holiday training courses for teachers resulting in improved morale for teachers and quality learning for pupils. After fifteen years since the projects inception, virtually no children in Kundapur District are involved in harmful work nor deprived of education.

In this regard there is a growing body of research which advocates that combining education with productive work can both meet legitimate social demands and make educational sense. As mentioned above, it is argued that in situations where children must be involved in economic activities, a system should be provided which allows for a combination of both school and work. These could include, where practical, work-study opportunities that co-ordinate work with school in a developmental framework. Children should be given the opportunity to engage in work as part of their educational programme. For children in need, such work experience should be an extension of the school curriculum.

Such an approach should be regulated by legislation in order to ensure that the best interests of such children are protected at all times. An example in this regard is the Children and Young Persons Act of 1933 in the United Kingdom. While the Act prohibits the employment of children below the age of 13, it proves to be a useful example of legislative provisions that can be adopted in order to regulate work done by children compulsorily attending school. For example in terms of the Children and Young Persons Act, any child who is of a compulsory school going age, and who is employed in a commercial undertaking or a trade or occupation carried on for profit, must be registered with the Local Education Authority in the country.

The Local Education Authority can by a written notice served on the employer of the child, prohibit the employment of a child where he or she is being employed in a manner that is prejudicial to his or her health or education. In terms of the Act, it is not necessary to inform the Local Education Authority of the details of all individual children that are employed. However, employers (including parents) are required to keep to the specified task identified as suitable for children and to the specified hours as defined in legislation in order to ensure that such work does impede on the education of such children.

### **7.2.3 Employers**

Employers establish the jobs most children perform, as well as the working conditions under which the work is done. They therefore have the ability to change the nature of children's work experience for either better or worse. For that reason alone, it makes sense to educate and assist employers on how to protect the well-being and development of children who work for them. Since a large majority of children work for or with their families, most employers of children are in fact their family members. Protection efforts aimed at employers should therefore focus equally on both working children's families and on external employers. In this regard, policies and programmes aimed at informing parents about the health and development risks of certain kinds of work and working conditions, and assisting them to find viable solutions for protecting their working children are imperative. In addition, as mentioned in Chapter 5, for many children living in

impoverished families and communities, the importance of work lies not just in its capacity to generate income but also in its function to provide them with a socially useful place in society, to improve their self-esteem and their quality of life.

In this regard many scholars contend that the primary area of concern for governments and civil society should not be the fact that children work, but more attention should be given to ensure that the work that children engage in is appropriate to their age and gender, and protects and respects their rights, particularly their right to education. Employers can play a vital role in this regard. For example, the “Egyptian Association for Community Initiatives Development” is a project that espouses a practical interpretation of the rights of children who work. At the heart of the project is the notion that the rights of working children could be promoted through sensitive use of micro-finance institutions, by convincing and enabling employers to invest in business changes in order to provide safe working conditions for children in their workplaces and to ensure that such children receive an education. The project is effective in that it builds on the positive social, economic and learning value of appropriate work while at the same time actively prohibiting child exploitation and abuse.

Such an approach is not completely foreign to South Africa. For example, the Sectoral Determination 10 in South Africa permits employers to employ children under the age of 15 years. Such employment is however limited to the employment of children in the performance of advertising, artistic and cultural activities. The Sectoral Determination regulates the working hours of such children, the remuneration that they are entitled to and the date on which employment commences. The policy also ensures that the rights of children are adequately protected by providing that an employer is obliged to give a child a rest break of at least 30 minutes after two hours of continuous work, in the case of children over the age of 10 years and after one and a half hours of continuous work, in the case of children older than 5 years but not older than 10 years.

While such an approach is limited to the employment of children in the performance industry it recognizes that such work does not only provide an opportunity for children to

earn a living but also enhances their skills. It can be argued that this practical approach adopted by the South African government in relation to child labour should be extended to cater for other types of child work that children should be allowed to engage in. For example, as depicted by the child labour programme in the Philippines mentioned above, approaches like those adopted in terms of the Sectoral Determination 10 in South Africa can effectively be extended to allow for children to be employed on a part time basis in the manufacturing and production industry whereby they can be involved in activities such as weaving, beading and leather work.

#### **7.2.4 Information, Advocacy and Awareness Raising**

Many children in South Africa engage in work outside the formal sector, thus legislation on its own is unlikely to be effective. The informal sector is difficult to monitor and therefore legislation cannot be easily enforced. Advocacy and awareness raising is thus essential to change where necessary, ideas on what is appropriate for children to do in the home and elsewhere. Such programmes should aim not only at removing children from harmful work, but also at improving conditions of children who are working legally. In addition, information and advocacy campaigns should provide information to the community with regards to the problems that children often face and should also enlighten communities on precisely what makes work harmful to children. It should therefore address both work that is inappropriate for children as well as unacceptable conditions of work that is not in itself harmful and can be improved.

It is important to note that while a child centered approach advocates that more attention should be given to the integral role that work plays in the lives of children, it does not condone or undermine the detrimental effect that hazardous work can have on the development of children. Thus it is important that the protection of children from harmful work such as those depicted in the ILO's Convention 182, is both a high priority and an urgent task for both government and civil society. In addition, it is vital that society plays an active role in guarding the welfare of its children who work, which includes publicizing situations in which children are being seriously harmed in their work and taking action against such situations, including penal and criminal action, where this is merited. In this regard it is argued that public interest is vital in ensuring the

best of interests of children due to the fact that labour inspectors and police officials cannot do this job alone.

### **7.2.5 Child Participation**

Article 12 of the CRC provides that “state parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. Thus, while children have the right to be protected from harmful work, they also have the right to express their views on issues that directly affect them.

It is important to note that giving effect to the views of children does not undermine the importance of efforts to combat child labour that is hazardous and exploitative. On the contrary, it provides a much more sound starting point for intervening in ways that are child-centered, context-appropriate, sustainable and in the best interests of working children. Thus a child centered approach does not negate the necessity of offering children protection in certain circumstances, but it insists that this may not happen at the cost of the right of the child to power sharing and participation.

In this regard, a child-centred approach to child work places much emphasis on the participation of working children in their own protection and development. Encouraging child participation is in line with a child-centred approach which arrives at decisions about children’s work and what should be done about their work by beginning with an indept consideration of the children involved. It develops a response to children’s work problems in collaboration with the children and on the basis of what is in their best interests. Research has indicated that whether young people are affected either positively or negatively by their work experiences depends much on their personal vulnerability, which is in turn influenced by the economic, social and cultural context of their work. For this reason, listening to children’s feelings and views is a vital source of evidence on the way in which work affects their development. Research indicates that the importance of child participation with regards to issues relating to child labour is being increasingly recognized.

For example Brazil's large movement of working and street children were instrumental in mobilizing public opinion in favour of a constitutional provision ensuring children's rights and a sweeping child protection law to implement them. The movement itself developed out of a highly participative way of working that had originated in grass-roots action. Another example in this regard is the 'Child-led Organisation and Advocacy on Child Labour' in Bangladesh. The organisation is a multi-partner and multidimensional project targeting children engaged in hazardous work in Bangladesh and focuses on the participation of these children in activities and decisions concerning their own lives. It aims to reduce the number of children engaged in hazardous employment, as well as improve the working conditions for children and ensures that there is enough time for such children to attend school and play. In the context of child participation an important objective of the organisation is to provide children with enhanced capabilities to organise themselves and to engage in advocacy activities. It also promotes the development, testing, sharing and application of methods for organising child labourers and for ensuring the participation of child labourers in activities concerning their own lives.

Given the fact that the developmental and maturity levels of children vary, it is difficult to stipulate a specified minimum age in which a child should be allowed to participate in decisions affecting him or her. The approach taken by the CRC is useful in this regard which stipulates that the views of the child should be given due weight taking into account the age and maturity levels of the child. It is therefore vital that the child participation process is adapted and tailored to suit the different age and maturity levels of the children concerned. In this regard it is argued that even children of a young age, such as those below the age of 12, can effectively be involved in decision making processes as long as careful thought is given to planning and supporting their participation. This can be achieved by taking into account the child's cognitive and social development, by working with facilitators experienced in working with children of this age group and by making sure that the topics covered during discussions are practical rather than abstract.

Lastly, it is important to note that while article 12 of the CRC provides for the rights of children to be heard in matters concerning them, it does not demand that their wishes prevail. Thus, adults do not relinquish their responsibilities for society's major decisions by simply consulting children. In this regard, it is imperative that the views of children are balanced with those of

others that have an understanding of the situation, for children are not always aware of what is in their best interests.

### **7.2.6 Trade Unions and Children's Organisations**

While article 12 of the CRC defines children's individual rights as members of society, article 15 sets out their collective rights. Article 15 of the CRC provides that State parties are to recognise the rights of the child to freedom of association, and to freedom of peaceful assembly. In this regard it is argued that trade unions should consider adopting a policy that recognizes working children to be an inescapable reality, even if an undesirable one, and extend protective services to them. They could play a vital role by including working children and helping represent the children's interests to employers and other groups.

In addition, trade unions have the potential to monitor and detect abuses and to advocate for improvements in health, safety and employment practices more generally. Through public education, they can also raise public awareness on the harmful effects of specific work situations and activities, and can provide information on alternative employment opportunities for children. Trade unions could also offer other services, such as literacy classes, or training in children's and workers' rights, to both child workers and their families. They could thus play an important role in ensuring that children benefit from, rather than are harmed by the work they do. In order to ensure that the best interests of children are protected in such trade unions, children should be assisted and represented by adult role players who have an interest in child related issues. Adult representation in such trade unions is vital in that such adult role players can assist children to obtain important information and propose alternative options in order to assist children to make their own informed decisions.

The contribution that can be made by trade unions and working children's organisations to social transformation is increasingly being recognized by many developing countries around the world. For example, in Bolivia the central trade union organisation enrolled the local associations of shoe cleaners, salespersons and other child workers as member organisations and pledged to work hard to improve their working conditions. In addition, in some countries, working children's organizations have been able to gain substantial influence in both child and youth

legislation. In Senegal the national union of working children is often invited by the Government to sit on the governing council that oversees the national programme for eliminating the exploitation of children. In this regard Liebel (2003) states:

“It becomes easier to envisage children taking on tasks essential to their livelihood when they are seen to be done in a responsible and organized way, and the work of children can take on completely new forms and gain new meanings than are usually associated with ‘child labour’. The children’s organizations demonstrate through their own ‘economic’ praxis that work does not have to be put on a par with exploitation, that it does not inevitably stand in opposition to the needs of children to play and learn and that it can even contribute to promoting the personality development of the children”.

### **7.3 Capturing culture specific issues within international norms**

The mere articulation of an international norm is inadequate as a driver of change. Norms need to be made relevant and applicable to society. Child labour constitutes an interesting example of what happens when civil society is profoundly divided and key elements of the State and society question whether the norm can even speak to local problems. In this regard it is argued that the ratification of an international norm on children’s rights will work when disparate and divided civil society movements form pragmatic alliances. Norms only resonate when societies and policy makers work with them, that is, when local actors legitimize them.

Smolin argues that one of the ironies of the international human rights movement is its fundamentally undemocratic nature. Although international human rights norms are theoretically created from a representative international process, much of the process of norm creation is dominated by a small group of activist (predominantly from western backgrounds) who have created a common human rights culture which is distinct from the culture and values of the nations which they purport to represent. In this regard Boyden *et al* argues that the few representatives of developing countries who participate in the international treaty making processes therefore have to work with concepts and mechanisms already determined from Western sources. This odd relationship between human rights activists and their host nations and cultures means that local communities are to a great extent unrepresented at the “international” meetings and conferences which produce supposedly ‘universal’ international human rights

documents. Therefore, when international human rights instruments aim to alter local values and practices in order to bring them in line with international norms, they generally speak as virtual strangers to those to whom they address.

A child centered approach would assist in reconciling international norms within a cultural context as it calls upon the drafters of international laws to take into account the socio-economic and cultural circumstances of all children when drafting international laws and policies. Nhenga argues that a child centered approach requires developing countries to “push for multiculturalism and to emphasize the importance of maintaining cultural integrity, whereby children can be raised to appreciate and fit into their own social milieu, as well as into an expanding world. In this regard it is vital that developing countries including South Africa take a more active role in articulating their perspectives with force and clarity during the drafting of international laws and policies. Nhenga further argues that instead of being the “guests” in international treaty making processes, developing countries must initiate negotiations themselves and take charge of the discussions that affect their lives in such a vital way.

It is further imperative that international laws and policies are developed in order to make way for a more pluralistic concept of childhood as this will lead to the understanding that work has different meanings for different people. It is vital that drafters of international laws and policies consider that cultures within developing countries including South Africa are internally diverse. Thus the evaluation of any laws and policies that aim to accommodate a cultural minority must take into account its effects on different cultural groups and the way in which the law or policy may affect the power relations within those groups.

#### **7.4 Conclusion**

It thus becomes evident that while there is an international consensus on the concerns for children, societies differ on the conception of childhood, child development, how a child's welfare may best be secured and acceptable forms of child activity. Therefore, the imposition of international laws based on modern economic and social practices have thus far created problems, due essentially to a failure to sufficiently consider the state of development of the communities upon which they are imposed. In this regard, whatever the concession of

proponents or opponents alike, the advantages in adopting a child-centered approach to child labour far outweighs the disadvantages because it introduces a new era in African development discourse in relation to children. It introduces the freshness of children's voices, allows new perspectives for understanding the needs and preferences of children, presents a better understanding of African childhood, and how the totality of these actors affect the decisions children make at different stages in their development which is essentially different from that of children within the Western world.

The CRC declares that in all matters affecting the child, his or her interests must be paramount. It would help to sharpen the focus of our interventions if the views of children are taken into account, and if language focused on the children concerned, rather than on a particular category of activities. No one disagrees with the obligation to protect and support working children. However, this kind of discourse encourages attention to the particular situations of South African children, and the expansion of possibilities open to these children, thereby improving their chances in life. The lives of such children are more likely to be improved by access to more and better options, rather than by removing their chosen options for improving their situation. In this regard, it is contended that a child centered approach will ensure, not only that children in South Africa are protected against economic exploitation, but will also promote the fundamental principles of the CRC, namely the right to be heard, the right to survive and develop, the right against discrimination and the best interests of the child principle.

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06 August 2015

Ms Sarah Mae Kannapathi (210519636)  
School of Law  
Howard College Campus

Dear Ms Kannapathi,

**Protocol reference number:** HSS/1102/015M

**Project title:** Reconciling child labour practices in South Africa with international standards: Prospects and Challenges

**Full Approval – No Risk / Exempt Application**

In response to your application received on 23 July 2015, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

**Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.**

**PLEASE NOTE:** Research data should be securely stored in the discipline/department for a period of 5 years.

**The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.**

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

.....  
Dr Shenuka Singh (Chair)

/ms

Cc Supervisor: Ms Rowena Bernard  
Cc Academic Leader Research: Dr Shannon Bosch  
Cc School Administrator: Mr Pradeep Ramsewak

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Humanities & Social Sciences Research Ethics Committee

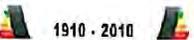
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