

The effectiveness of labour legislation in regulating child labour in South Africa: A comparative study of Uganda and the United States of America

by

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"The Sovereign Lord is my strength;
he makes my feet like the feet of a deer,
he enables me to tread on the heights." (Habakkuk 3:19)

ABSTRACT

The purpose of this study was to analyse the adequacy of South African labour legislation in regulating child labour in South Africa. The study consisted of two parts: a theoretical analysis and an empirical study. The theoretical aspect encompassed a comparative analysis between the South African legislation and policies governing child labour, international regulations on child labour, and the legislation and policies of Uganda and the United States of America on child labour. The study evaluated these South Africa's minimum standards against the child labour legislation in Uganda and the United States of America. The study investigated the minimum standards under international law for the minimum age of employment, the protection of children from the worst forms of child labour, and the protection of children from excessive and detrimental activities that impede their right to education. The empirical study consisted of an investigation regarding the challenges in addressing of child labour in the city of Pietermaritzburg. The findings between the empirical study and the comparative analysis of the legislative framework highlight significant discrepancies in labour legislation regulating child labour in South Africa. This provides insight regarding the challenges that labour inspectors and social workers encounter in addressing child labour in Pietermaritzburg. The findings of the empirical study highlight those deficiencies that exist in current child labour legislation. The study evaluated the findings of the empirical research against the gaps presented in the comparative analysis between national and international law. This highlighted weaknesses in the current child labour framework in South Africa. The study provides suggestions on how legislation could be improved to enhance the protection of children from child labour. In addition, the study makes recommendations on how government, businesses and society need to collaborate with each other to eradicate child labour.

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ACRONYMS

ACWRC	African Charter on the Welfare and Rights of Children
CRC	United Nations Convention on the Rights of the Child
CFPU	Child and Family Protection Unit
CLPA	Child Labour Program of Action
DOL	Department of Labour
HBCBC	Home-Based and Community-Based Care
MGLSD	Ministry of Gender, Labor, and Social Development
NIP	National Integrated Plan for Children Infected and Affected by HIV/AIDS
NPA	National Prosecuting Authority
OAU	Organisation of African Unity
TECL	Towards the Elimination of the Worst Forms of Child Labour
UNICEF	United Nations International Children's Emergency Fund
WHD	Wage and Hour Division

CHAPTER ONE: INTRODUCTION

1.1. BACKGROUND TO THE STUDY

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1.1 BACKGROUND TO THE STUDY

> "Children are precious members of our society and any law that affects them must have due regard to their vulnerability and their need for guidance. We have a duty to ensure that they receive the support and assistance that is necessary for their positive growth and development."[1]

Children are the progeny of the ideals instilled by society. Hence, the trajectory of a country and its success is largely attributed to how it cares for its children.[2] Children are defenceless members of society; thus, greater cognisance must be ascribed to their well-being and development.[3] The United Nations Convention on the Rights of Children[4] (hereafter referred to as the CRC) regards a child as being any person below the age of 18.[5] The CRC has laid the foundation for the recognition of children's rights.[6] At the national level, South Africa has

[1] *Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development* 2013 (12) BCLR 1429 (CC) at para 1.

[2] M Budheli 'Children's rights and protection against child labour in South Africa' (2012) 1(2) *Commonwealth Youth and Development* 1.

[3] S Philpott 'Too little, too late? The CRPD as a standard to evaluate South African legislation and policies for early childhood development' (2014) 2 *African Disability Rights Yearbook* 51.

[4] The General Assembly of the United Nations passed this convention in 1989. South Africa ratified the convention in June 1994.

[5] CRC; Article 1, JA Robinson 'The right of child victims of armed conflict to reintegration and recovery' (2012) 15(1) *PER* 45.

[6] J Tobin 'Increasingly seen and heard: The constitutional recognition of children's rights' (2005) 21(1) *South African Journal on Human Rights* 86; M Biggery… et al 'Children conceptualizing their capabilities: Results of

endorsed the protection and development of children's rights through legislation that recognises children as a vulnerable and dependent group with characteristics that are distinct to those of adults.[7]

The Constitution of the Republic of South Africa, 1996 (hereafter referred to as the Constitution), endorses the fundamental rights of children which encompass civil and political rights. as well as socio-economic rights.[8] A pertinent feature of the Constitution regarding child labour is that it explicitly entrenches the right for children to be protected from economic abuse and exploitative labour that is hazardous to their health or development.[9] Hence, child labour is regarded as an infringement on the basic human rights of children.[10]

Child labour has been defined as work that is

> mentally, physically, socially and morally dangerous and harmful to children; and interferes with their schooling: by depriving them of the opportunity to attend school, or by obliging them to leave school prematurely, or by \requiring them to attempt to combine school attendance with excessively long and heavy work.[11]

Child labour is considered a form of exploitation and abuse.[12] The fundamental reason is that child labourers are generally compelled to engage in arduous labour that not only endangers them physically and psychologically but also denies them a normal childhood and the right to obtain an education.[13] "Work" may include activities such as domestic chores, work for a family business or farm, work for a wage, or even trading and heavy physical work.[14] Whether such work is considered child labour depends on the age of the child, the kind of work undertaken, the number of hours worked, the circumstances under which work is conducted as well as the cultural beliefs of various countries.[15]

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a survey conducted during the first Children's World Congress on Child Labour' (2006) 7(1) *Journal of Human Development* 60.

[7] L Berry 'Protecting South Africa's children: What difference will the new Children's Bill make?' (2007) 25(4) *Continuing Medical Education* 168; G Buchner-Eveleigh 'Children's rights of access to health care services and to basic health care services: a critical analysis of case law, legislation and policy' (2016) *De Jure* 307-308.

[8] The Constitution; s 28. Coetzee E 'Can the application of the human rights of the child in a criminal case result in a therapeutic outcome?' (2010) 13(3) *PER* 126.

[9] The Constitution; s 28.

[10] TC Nhenga-Chakarisa 'Who does the law seek to protect and from what? The application of international law on child labour in an African context' (2010) 10 *African Human Rights Law Journal* 162.

[11] ILO Convention No. 182, *The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention* (1999).

[12] A Deringto & RA Okunola 'Push, pull and sustaining factors of child labour in Nigeria' (2009) 3 *Ife Psychology* 174.

[13] J Mukherjee 'Child labour, education, participation and economic growth in sub-Saharan Africa: An empirical study' (2008) 24(1) *Research Review* 54.

[14] C Grootaert & R Kanbur 'Child labour: An economic perspective' (1995) 134(2) *International Labour Review* 188.

[15] K Geldenhuys 'Child abuse prevention-child labour' (2011) *Servamus* [5].

The International Labour Organisation (ILO) Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (hereafter referred to as Convention 182) identifies particular activities as the 'worst' forms of child labour and unequivocally prohibits these. These are: bonded or slave labour or related acts, such as forced labour and child trafficking; the utilisation of children in pornography or prostitution; the use of children in illegal practices; and engaging children in hazardous work that entails the use of harmful substances, unsafe machinery, or is performed underwater or underground.[16] It is imperative to note that not all work is considered to possess harmful connotations as critics have argued that there is a distinction between 'work' and 'labour'.[17] The involvement of children in work may be considered acceptable if it takes place in environments that enhance the child's development and maturity.[18]

1.2. STATEMENT OF PROBLEM

South Africa's endeavours to entrench the rights of children have been regarded as a pinnacle of achievement.[19] These effort have included the foregrounding of the best interests of children in the Constitution and the ratification of the CRC, as well as the African Charter on the Rights and Welfare of the Child, which is discussed later in this thesis.[20] Furthermore, South African courts have wielded much influence in developing the paramountcy of the best interests of children.[21] South Africa has implemented a legal structure to protect children from child labour.[22] It is imperative to note that none of South Africa's laws entrench an absolute prohibition on work by children. This is indicative of the legislature's acknowledgment of the country's unique socio-economic impediments.[23]

There are two enactments – the Constitution and the Basic Conditions of Employment Act[24] (hereafter referred to as the BCEA) – that deal hegemonically with child labour. The Constitution seeks to regulate child labour by entrenching parameters of work that

[16] Convention 182, Article 3.
[17] L Wilson 'Child labour and the Charter' (1995) 6(1) *Winsor Review of Legal and Social Issues* 3.
[18] H Akabayashi & G Psacharopoulos 'The trade-off between child labour and human capital formation: A Tanzanian case study' (1999) 35(5) *The Journal of Development* 121.
[19] S Rosa & M Dutschke 'Child rights at the core: The use of international law in South African cases on children's socio-economic rights' (2006) 22(2) *South African Journal on Human Rights* 224.
[20] A Louw 'The constitutionality of a biological father's recognition as a parent' (2010) 13(3) *PER* 157; M Couzens 'An analysis of the contribution of the South African Human Rights Commission to protecting and promoting the rights of children' (2012) 28(3) *South African Journal on Human Rights* 554.
[21] *S v M* 2007 (2) SACR 539 (CC).
[22] I Levine *Children of a Bitter Harvest: Child Labour in the Cape Winelands* (2013) 54.
[23] J September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* (Unpublished Master's thesis, University of Cape Town, 2014) 73.
[24] The BCEA; s 43 (2)(*a*)-(*b*).

are considered unlawful. The Constitution explicitly prohibits children from engaging in labour that is exploitative or inappropriate to the child's age or endangers the 'child's well-being, education, physical or mental health or spiritual, moral, or social development'.[25] As the fundamental role of the Constitution is the entrenchment of rights, the regulation and control of child labour is enforced through complementary legislation.

The BCEA endorses further regulations for the curtailment of child labour.[26] The BCEA, in line with the Constitution, prohibits children from engaging in labour that is inappropriate to their age, or is detrimental to their well-being and development.[27] The BCEA additionally sets a minimum age of 15 years for the lawful employment of children.[28] The Department of Labour is mandated to sanction regulations to expand and implement the provisions of the BCEA. One of the regulations that have been drafted details the types of hazardous employment in which children younger than 18 years may not engage.[29] The Children's Act[30] seeks to protect children by prohibiting them from performing illegal activities or practices that include commercial or sexual exploitation, trafficking or slavery.[31] In doing so, the Children's Act seeks to address issues pertaining to the worst forms of child labour, as defined in Convention 182.[32]

South Africa is currently revising the position on child labour articulated in sections 43 to 47 of the BCEA. Although these proposed amendments have been published the date that they will be put into effect is still to be pronounced.[33] The proposed amendments aim to increase the number of years of imprisonment for child labour offenses to a maximum of 6 years.[34] One of the proposed amendments replaces the word "employ" with "work" to bring our domestic law in line with the language used by the ILO in international standards.[35] The effect of the proposed amendment is to extend the ambit of protection to include all children

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[25] The Constitution; s 28(1)(*e*)-(*f*)(i)(ii).
[26] 'The BCEA Regulations', available at *www.labour.gov.za/DOL/downloads/documents/useful-documents/basic-conditions-of-employment/childlabour2012.pdf,* accessed on 2 May 2017.
[27] The BCEA; s 40.
[28] The BCEA; s 43 (1)(*a*).
[29] The BCEA; s 43 (1)(*a*).
[30] The Children's Act 38 of 2005.
[31] The Children's Act; s 121.
[32] Convention 182; Article 3.
[33] S Harrison 'The latest on the labour law amendments' available at *https://www.ensafrica.com/news/The-latest-on-the-labour-law-amendments?Id=1321&STitle=Employment%20ENSight,* accessed on 12 July 2017.
[34] P Benjamin 'The LRA and the BCEA Amendments: what is all the fuss about?' *25th Annual Labour Law Conference* (2012) 34.
[35] 'Summary and Explanation of the Labour Law Amendments' available at *http://www.growinggreatness.co.za/wp-content/uploads/2015/10/Summary-and-Explanation-of-the-Labour-Law-Amendments-2014-08-26.pdf,* accessed on 12 July 2017.

who engage in work and not only those children who are classified as employees.[36] The amendment thus addresses all types of work that can be undertaken by a child, including domestic chores. The purpose of classifying such activities as work is to acknowledge that there are certain chores that interfere with the development, well-being and education of children and should thus be regarded as child labour.[37]

South Africa thus acknowledges the diverse forms that child labour can take, particularly in rural, domestic and agricultural contexts.[38] This proposed amendment should, however, undergo careful scrutiny to determine its value to the regulation of child labour. As the proposed amendment only lists specific types of domestic chores as child labour once the ILO has tabled its list of prohibited domestic chores, domestic chores cannot be prohibited in South Africa until the ILO provides clarity on this issue.[39] In addition, the proposed amendment only augments the existing prohibitions of acts regarded as child labour: there is no indication how the undertaking of domestic chores will be monitored by authorities to ensure that children are protected from child labour.

The 2019 South African Young People (SAYP) report (the most recent SAYP report) highlighted that the South African province of KwaZulu-Natal had the largest number of children from the ages of 7-17 years in South Africa – representing 22,9%.[40] Children from 7-17 years constituted 2,2 million of the 11,4 million children in South Africa who were involved in economic activities weekly. The age group from 15 and 17 years was identified as the most commonly engaged in economic activities.[41] However, it must be noted that much of the work undertaken by children is undocumented by authorities; the number of children who are working can thus be assumed to be higher.[42] Thus, while South Africa's legislation regarding the rights of children is considered progressive,[43] the reality continues to negate the principles of the law. This brings into question whether South Africa's progressive positions

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[36] 'Memorandum of Objects: Basic Conditions of Employment Amendment Bill, 2012' available at *www.labour.gov.za/DOL/downloads/legislation/bills/proposed-amendemnt-bills/bceamemorandum.pdf*, accessed on 12 July 2017.
[37] Ibid.
[38] K Beegle, R Dehejia & R Gatti 'Child labour and agricultural shocks' (2006) 81 *Journal of Development Economics* 82.
[39] 'Basic Conditions of Employment Amendment Bill, 2012' available at *https://www.ceosa.org.za/wp-content/uploads/2012/10/Basic-Conditions-of-Employment-Amendment_Bill2012-CEO.pdf,* accessed on 12 July 2017.
[40] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 6-30.
[41] Ibid.
[42] DLVeeran 'Combating child labour - a South African challenge' (2003) 39(1*) Social Work* 83.
[43] JA Robinson & R Prinsloo 'The right of the child to care and constitutional damages for the of parental care: some thoughts on *M v Minister of Police and Minister of Police v Mboweni*' (2015) 18(5) *PER* 1670.

with regard to children's rights are only reflected in policy, and not in practice. This study responds to this question by evaluating the implementation of legislation that prohibits child labour to assess the divergence between the laws prohibiting child labour and the extent to which children actually engage in child labour in South Africa.

The implementation and monitoring of labour legislation, including the prohibition of child labour, is enforced through labour inspectors working under the auspices of the Department of Labour. Labour inspectors are the key officials who are responsible for the implementation of child labour law.[44] First, section 65 (1)(*a*) of the BCEA empowers labour inspectors to enter the premises of any workplace without rendering prior notice to the employer. Second, labour inspectors are permitted to enter the private homes of individuals that are suspected to be engaging in child labour; however, permission to enter the premises of private homes must be obtained from the owner of the home or the relevant authorities.[45]

In terms of the law regarding an individual's right to privacy, it would be entirely reasonable to obtain the permission of the homeowner prior to entering the premises, however in light of practical considerations concerning the enforcement of child labour prohibitions, this requirement creates an impediment. The monitoring of child labour within private homes where children are engaged in domestic work or child prostitution, for example, would be difficult, as private owners would be unlikely to give inspectors' permission to enter their premises if they were engaged in illegal activities. Moreover, the process to obtain a warrant from a magistrate is often time consuming and affords child labour offenders the opportunity to dismiss the child labourers or conceal their illegal activities.[46] Thus, the effective implementation and enforcement of child labour laws are limited by this condition, as it creates a loophole for child labour offenders to escape liability.

There is clearly a need to ensure that labour inspectors are given more authority to enforce child labour prohibitions without having to seek the permission of authorities or obtain warrants prior to entering private homes. This provision would be consistent with the Children's Act, which empowers social workers to enter private homes and remove children where there is neglect or abuse of the child or if the child is living in conditions that could endanger their life.[47] It is imperative to note that social workers do not need a warrant or the

[44] The BCEA; s 65.
[45] The BCEA; s 65(2).
[46] 'United States of America Trafficking in Persons (TIP) Report: South Africa' (2023), available at *http://www.state.gov/documents/organization/210737.pdf*, accessed on 23 May 2018.
[47] The Children's Act; s 136.

permission of owners when they enter the premises of private home owners. The authority afforded to social workers to undertake these procedures illustrates a child-centred approach in dealing with the urgency and vulnerability of children who need immediate intervention. Even though child labour is regarded as a human rights violation,[48] this is not reflected in the laws implementing the prohibitions on child labour as the requirements for proper monitoring of child labour conveys a lack of urgency.

Child labour must be viewed in the same light as any other violation of children's rights and be addressed with the same immediate concern that is afforded to children under section 136 of the Children's Act. It is submitted that the enforcement of child labour prohibitions should adopt the same child-centred approach and deal with all matters pertaining to the suspicion of child labour as a matter of urgency; first, to protect the child who is engaging in child labour, and second, so that any opportunity to conceal the illegal activities by the offender is prevented.

Additionally, the BCEA requires all employers to retain a record of their employees.[49] This requirement, however, exempts employers whose employees are engaged in domestic work or[50] work less than 24 hours per month[51]; it also exempts employers who have fewer than 5 people in their employment.[52] This exemption may obstruct the implementation of child labour prohibitions in several ways. First, section 28(2)(*b*) of the BCEA does not take cognisance of the high prevalence of child labour in the domestic sector due to the lack of monitoring of child labour[53]; however, the proposed amendments to the BCEA, which seek to set bans on certain forms of domestic chores but provide no monitoring of such bans, do not include an amendment to this section. Second, this exemption fails to acknowledge that the definition of child labour, as endorsed in the Constitution[54] and the BCEA, places emphasis on the type of work undertaken and the effect it has on the well-being, safety and development of a child, rather than the duration of work that the child performs.[55] Hence, in terms of the definition of child labour, a child engaging in even an hour's work that

[48] J September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* (Unpublished Master's thesis, University of Cape Town, 2014) 10.
[49] The BCEA; s 31 (*a*)-(*e*).
[50] The BCEA; s 28 (2)(*b*).
[51] The BCEA; s 28 (1).
[52] The BCEA; s 28 (2)(*b*).
[53] K Beegle, R Dehejia & R Gatti 'Child labour and agricultural shocks' (2006) 81 *Journal of Development Economics* 82.
[54] The Constitution; s 28.
[55] The BCEA; s 40.

is hazardous or detrimental to the child's well-being and development is considered to be engaging in child labour.[56] Third, this exemption disregards the possibility that employees who employ less than 5 employees could have child labourers within their employment. It also fails to consider that the reason that such employees would only employ 5 workers is because these child labourers are performing tasks which should be undertaken by double their workforce.[57] The lack of records of employees is indeed regrettable as the accurate monitoring of child labour is contingent upon employers keeping proper records of their employees' ages, as well as copies of their birth certificates, which would prevent employers from fraudulently recording false ages for their employees.[58] These loopholes in South Africa's current legislation necessitate further investigation into how the legislation could be improved to regulate child labour.

The main purpose of this study was to evaluate whether child labour persists in Pietermaritzburg due to ineffective implementation of child labour prohibitions and policies. As the effective implementation of legislation depends on the appropriate and precise drafting of legislation; hence, if the legislation itself is not adequate, implementation is unlikely to achieve the intended purpose.[59] Therefore, if the research revealed defects in the implementation of prohibitions of child labour, the thesis suggests proper mechanisms that can be implemented to improve such defects as well as investigating whether there are any amendments which may contribute to legislation that would improve the situation.

There are three parts to this study: the conceptual framework of the child labourer which lays the foundation for the current investigation; a critical analysis of the legal framework around child labour in South Africa and a comparative analysis of the relevant law in other jurisdictions, and an empirical investigation into the implementation of child labour law in the city of Pietermaritzburg.

This study seeks to engage in a comparative analysis with Uganda to evaluate the shortcomings in South African legislation pertaining to the implementation of child labour laws. The reasons for choosing this country as a comparator are related to the similarities

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[56] The BCEA; s 40.
[57] B Mason 'Tobacco companies profit from child labour in Malawi' *World Socialist Web Site Online,* 3 June 2010, available at *http://www.wsws.org/en/articles/2010/OL/mala-jo3.html*, accessed 23 May 2018.
[58] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2012) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html*, accessed 23 May 2018.
[59] T Madziwa *A Critical Analysis of Child Labour Protective Laws in Southern Africa: A Case Study of Malawi, South Africa and Zimbabwe* (Unpublished Master's thesis, University of KwaZulu-Natal, 2014) 5.

which exist between South Africa and Uganda. Uganda is a developing African country that encounters similar causes of child labour to South Africa, such as socio-economic impediments, the major problems being poverty, HIV/AIDS, lack of access to education as well as cultural perceptions which espouse working children.[60] Furthermore, Uganda has constitutionalised the protection of children from child labour[61] and has endorsed the protection of children in additional legislation such as the Children's Act Chapter 59 of 2006 (hereafter referred to as 'the Ugandan Children's Act'). The Ugandan Children's Act enshrines prohibitions against any form of work which poses harm to the development of a child and impedes the child's education.[62] Additionally, the Employment Equity Act 6 of 2006 (hereafter referred to as 'the Employment Equity Act') sets the minimum age of employment and regulates when children are lawfully permitted to undertake work.[63]

The Employment Equity Act also sets prohibitions on child labour and the worst forms of child labour.[64] The Ugandan government, much like South Africa, views education as an integral aspect of a child's development and seeks to enact this through compulsory primary education for all children.[65] Furthermore, Uganda has endorsed the National Council for Children Act 16 of 1996 (hereafter referred to as 'the National Council Act'). This Council serves as a conduit through which the issues and problems experienced by children can be communicated to government and other decision-making bodies.[66] The Council plays a crucial function in representing the viewpoints of children regarding child labour and the hardships experienced by children as a result of child labour.[67] The Council is further mandated to ensure that strategic programmes are designed and implemented to protect children and monitor the progress of these programmes.[68]

While in the Ugandan context the causes of child labour and the obstacles to eliminating the problem can be paralleled to the situation in South Africa, Uganda has been more proactive, as it has developed a number of policies to eradicate child labour and has

[60] Ministry of Gender Labour and Social Development 'National Child Labour Policy' (2013), available at *http://www.mglsd.go.ug/wpcontent/uploads/2013/07/policies/NATION%20CHILD%20LABOUR%POLICY.pdf,* accessed 21April 2018.
[61] Constitution of the Republic of Uganda, 199; Article 34.
[62] The Ugandan Children's Act; s 8.
[63] The Employment Equity Act; s 32(2).
[64] The Employment Equity Act; s 8.
[65] Uganda Education Act 13 of 2008.
[66] The National Council Act; s 3.
[67] The National Council Act; s 146.
[68] The National Council Act; s 3.

experienced success in many of them.[69] These policies are significant as they convey how realistic and pragmatic attempts can be made in implementing child labour laws, especially taking into account that both South Africa and Uganda are developing countries and share similar obstacles in the implementation of child labour prohibitions.

Uganda obtained the assistance of the International Labour Organisation (ILO) and the International Programme on the Elimination of Child Labour (IPEC) to implement the Support of the National Action Plan (SNAP) project between the period of 2009 and 2012 and achieved substantial results in the fight against child labour. The project was implemented at macro, meso and micro levels and resulted in the development of the National Action Plan for the Elimination of the Worst Forms of Child Labour (NAP). The project adopted a number of initiatives undertaken by government ministries, civil society groups, communities and children that specifically targeted areas that had a high incidence of child labour.[70] These initiatives facilitated the development of plans and budgets which allowed for the formulation of regulations focusing on child protection with special emphasis on the prohibition of child labour through community awareness programmes and the paramountcy of children completing their education.[71]

Another project implemented under the IPEC, 'Combating and preventing HIV/AIDS induced child labour in Sub-Saharan Africa: Pilot action in Uganda and Zambia' was implemented during the period 2005 to 2008.[72] This project was specifically designed to assist families and child-headed households where children were compelled to engage in child labour because they became orphans or had to care for ill parents or younger siblings as a result of the HIV/AIDS epidemic.[73] The focus of the project was the improvement of the social circumstances of these families through Income Generating Activities (IGA). The implementation of this initiative achieved great success and was able to decrease poverty which is a major contributor to child labour.[74]

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[69] Stop Child Labour 'Running for child labour free zones in Uganda' (28 January 2014), available at *http://www.stopchildlabour.org/Stop-ChildLabour/News-items/Running-for-Child-Labour-Free-Zones-in-Uganda*, accessed 23 May 2018.'

[70] Ministry of Gender, Labour and Social Development *National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2012/3-2016/7* (2013).

[71] Stop Child Labour 'Running for child labour free zones in Uganda' (28 January 2014), available at *http://www.stopchildlabour.org/Stop-ChildLabour/News-items/Running-for-Child-Labour-Free-Zones-in-Uganda*, accessed 23 May 2018.

[72] Ministry of Gender, Labour and Social Development *National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2012/3-2016/7* (2013).

[73] Ibid.

[74] Ibid.

This study also seeks to engage in a legal comparative analysis with the United States of America (USA) in an effort to identify and evaluate any limitations which may exist in our current legislative structure. The reason for choosing the USA as a comparator is that the USA is a developed country and thus offers a model against which developing countries such as South Africa could assess the competence of their country's child labour laws. It must be noted that child labour statistics indicate that Africa has the highest proportion of child labourers globally, at 32%, while the USA and other developed countries account for only 1%.[75]

This vast contrast in the prevalence of child labour between the USA and South Africa may provide a basis for the assessment of child labour legislation and its effectiveness and could yield useful insights that South Africa could take up to reduce child labour. Additionally, USA and South Africa possess certain similarities. In the USA, the notion of the working child is countenanced as an opportunity to acquire responsibility and independence, which is also the case in South Africa. In this regard, child work within lawful parameters is encouraged.[76] This perception has led to the promulgation of legislation that regulates and controls lawful child work that also seeks to identify and eradicate hazards and dangerous conditions of work so that children may lawfully perform work in environments that are safe and conducive to their growth and well-being.[77]

The USA has a federal legal framework, namely the Fair Labour Standards Act of 1938 (hereafter referred to as 'the FLSA') that addresses the issue of child labour and provides clear and precise delineations for lawful child work. The FLSA centralises its focus on specific areas of employment that identify hazards and unsafe working conditions within occupations. A definite distinction is made between the agricultural sector and the non-agricultural sector. In making such a distinction, it is averred that the legislature acknowledges that these are two highly divergent fields of employment and that the potential risks and vulnerabilities of children are peculiar to these sectors. Thus, there is a necessity for specific focus within sectors of employment.

This differentiation is pertinent because the effective implementation of child labour laws is contingent on clear and unambiguous legislation that specifies what is legal and

[75] A Khakshour et al 'Child labour facts in the worldwide: A review article' (2015) 3(14) *International Journal of Pediatrics* 470, 467-473.
[76] M Bourdillon et al 'A place for work in children's lives*?*' (2010) 11.
[77] S Donovan & J Shimabukuro 'The Fair Labor Standards Act (FLSA) Child Labor Provisions' (2016) 1-20.

what is illegal. As part of the monitoring and implementation of the FLSA, investigators are empowered to gather data on wages, hours of work, employment practices and the conditions under which they are performed. Where investigators come across violations, recommendations to change employment practices are made to ensure that the employer is brought into compliance with the FLSA.[78] The FLSA requires mandatory record keeping of all employees regardless of their age. This requirement is essential to monitoring the workforce in the USA and allows authorities to identify whether child labourers are undertaking work.[79]

Additionally, the FLSA provides a paradigm that illustrates how child labour legislation can be practically implemented through various measures such as the Department of Labour which issues news updates on violations of child labour.[80] The FLSA also provides for companies and businesses to make agreements with the Department of Labour in order to promote and strengthen their compliance with FLSA requirements within their industry.[81] Moreover the FLSA has been challenged and debated through the USA court system and this has produced a number of cases pertaining to the application of the FLSA regarding child labour.[82]

This study will also undertake an empirical investigation of child labour in the city of Pietermaritzburg. The purpose of this is to determine the extent of child labour within the city. The study will focus on those organisations and persons responsible for implementing the law.

1.3. RELEVANCE OF THE STUDY

As previously discussed, child labour still exists in South Africa. This is an injustice to children and a violation of their rights. Therefore, the problem of child labour in South Africa needs to be addressed. This study sought to improve the implementation of child labour laws and policies to enhance the protection of children against child labour. To achieve this, the researcher evaluated the current legal framework of child labour laws and policies governing the enforcement of child labour prohibitions. From this, the research intended to highlight

[78] DOL Wage and Hour Division 'Fact sheet #44: Visits to employers' available at *https://www.dol.gov/agencies/whd/fact-sheets/44-flsa-visits-to-employers*, accessed on 23 May 2018.
[79] 'Recordkeeping under the Fair Labor Standards Act (FLSA)' (2008), available at *http://www.dol.gov/whd/regs/compliance/whdfs21.pdf*, accessed on 23 May 2018.
[80] 'OHSA Laws and Regulations' available at *https://www.osha.gov/law-regs.html.*, accessed on 23 May 2018.
[81] DOL Wage and Hour Division 'Fact sheet #44: Visits to employers' available at *https://www.dol.gov/agencies/whd/fact-sheets/44-flsa-visits-to-employers*, accessed on 23 May 2018.
[82] R Willis 'The evolution of the Fair Labor Standards Act' (1972) 26(3/4) *University of Miami Law Review* 613.

deficiencies in the current legal framework that have been identified that contribute to the persistence of child labour in South Africa.

The study involved comparative case studies of the child labour legislation and implementation Uganda and the USA in an attempt to identify weaknesses in South Africa's current legal framework. The study also examined the implementation of child labour law in Pietermaritzburg. The significance of choosing Pietermaritzburg for the empirical part of the study was that no research has yet been conducted in Pietermaritzburg to determine the prevalence of child labour despite the high prevalence of factors that contribute to child labour, such as HIV/AIDS, poverty and child-headed households, in this area. Additionally, it must be noted that Pietermaritzburg falls under national legislation regarding child labour. Thus, the incidence of child labour in Pietermaritzburg reflects on the effectiveness or weakness of national legislation. Thus, it is relevant to examine both local data and the national laws regulating child labour prohibitions. The ultimate aim of the study was to make recommendations to improve child labour legislation and its implementation, in order to better protect children from child labour.

1.4. RESEARCH QUESTIONS AND OBJECTIVES

This study was guided by the following research question:

> Does SA's current labour legislation framework provide for the effective implementation of child labour prohibitions?

To answer this question, the following sub-questions were developed:

Q1. How is a child defined and how does this impact on the definition of child labour within the South African context?

Q2. How does the protection of children's basic human rights and the best interests of children form the basis for their protection against child labour, in terms of the South African Constitution?

Q3. What is the nature of the South African legal framework that protects children from child labour and how is the implementation of these laws effected?

Q4. What are the relevant laws enacted in Uganda and the USA prohibiting child labour and how do they compare with South African legislation?

Q5. How widespread is child labour in Pietermaritzburg; what are the causes of child labour in this region and how is the law regarding child labour implemented?

Q6. What recommendations can be made to improve the implementation of South Africa's existing child labour laws to ensure the protection of children?

Corresponding to these research questions, this study aimed to achieve the following objectives:

1. to critically examine the concept of the child and what constitutes child labour within South Africa in terms of literature;
2. to critically examine the basic human rights of children and the principle of the best interests of a child within the South African Constitution, in relation to the protection of children from child labour;
3. to critically examine South Africa's legal framework and its implementation with regard to the protection of children from child labour;
4. to conduct a comparative legal analysis of the legal frameworks of South Africa, Uganda and the USA with regard to child labour legislation in order to identify loopholes or oversights in South Africa's legislation that may limit the effective implementation of child labour prohibitions;
5. to conduct an empirical analysis to identify the extent of child labour in Pietermaritzburg and the impediments to the enforcement of child labour prohibitions; and
6. to make recommendations, based on an evaluation of the literature and the findings of this empirical study, to improve the regulation and implementation of child labour legislation in South Africa.

1.5. OVERVIEW OF METHODOLOGY

This section provides a brief overview of how the study was conducted. The methodology is presented in full in Chapter Two.

1.5.1. RESEARCH DESIGN AND APPROACH

The study used a mixed-method approach, employing both quantitative and qualitative research methods to enable a deeper understanding of the research problem.[83] The design involved two components: a desktop review of the child labour legislation and resulting policy and

[83] A Tashakkori & C Teddlie 'Issues and dilemmas in teaching research methods courses in social and behavioural sciences: US perspective' (2003) 6(1) *International Journal of Social Research Methodology* 711.

implementation in three countries (South Africa, Uganda and the United States) and an empirical study, using a quantitative survey and qualitative interviews, to investigate child labour in Pietermaritzburg, a South African city. The desktop review was designed to answer Research Questions One-Four, while the survey and interviews were designed to answer Question Six.

1.5.2. TARGET POPULATION

The target population identified for this study was organisations that worked directly with children and the protection of children in the City of Pietermaritzburg, South Africa. This included the Department of Labour, the Department of Social Development, and 23 NGOs. The Department of Labour was included in the study as labour inspectors are responsible for the implementation of child labour prohibitions and laws. The reason for including the Department of Social Development in the study is that NGOs indicated to the researcher that they refer matters dealing with child labour to the Department of Social Development. There is only one Child Protection Unit of the South African Police Service in Pietermaritzburg and the Pietermaritzburg South African Police Service (SAPS) indicated that they do not deal with child labour issues. Hence the Child Protection Unit and SAPS were not included in the survey population.

1.5.3. SAMPLING PROCEDURE / FRAMEWORK (IF SAMPLING IS REQUIRED/ SELECTION OF PARTICIPANTS)

The sample for this study was selected through the researcher's preliminary enquiry as well as prior knowledge of the organisations and entities that deal with child labour and the enforcement of child labour laws. The researcher personally visited all the entities identified in the population above and confirmed whether or not they were willing to participate in the research. The use of purposive sampling in this study was necessary because there are many NGOs in Pietermaritzburg that do not deal with child labour; thus it was deemed futile to include these organisations in the empirical research as this would add no value to the study. Furthermore, based on the preliminary enquiry that the researcher conducted, these NGOs declined to participate in the study as they do not deal with child labour. There were 19 NGOs that declined to be part of the study on the basis that child labour is not an issue that falls within their scope, or they are only regarded as a point of first contact with children. Only four NGOs agreed to participate in the study due to the scope of their work that included child labour issues. These 19 NGOs that declined participating and the 4 NGOs that form part of the study

are described in greater detail in Chapter Two. The Department of Labour and Department of Social Development agreed to participate in the study.

1.5.4. SAMPLE SIZE

The selection of the sample was once again decided through the researcher's preliminary enquiry. It was indicated to the researcher that the Department of Labour, the Department of Social Development and the four NGOs had one director each. Thus, there were six directors that participated in the study. Twenty social workers and labour inspectors participated. Thus, the total number of participants identified in this study was 26. The number of participants from each NGO is listed in Chapter Two.

1.5.5. DATA COLLECTION AND ANALYSIS

For the desktop review, secondary data was collected from selected literature, including books, journal articles, dissertations, conference papers, government reports, international and regional policies and regulations, legislation, case law, internet articles and newspaper articles. The literature was sourced through libraries and the Internet. For the empirical study, data was collected using survey questionnaires and interviews. The data obtained from the questionnaires was analysed using the Statistical Package for Social Sciences (SPSS) Version 24. SPSS proved ideal for this purpose as it allows for the processing, organisation, and interpretation of large quantities of data.

1.5.6. VALIDITY AND RELIABILITY

This study conducted a pre-test measure in order to ascertain the reliability and validity of the research instruments employed by administering the same questionnaires to several individuals who possess comparable characteristics to the population sample chosen for this research. In this study, the researcher administered the questionnaires to the same sample population but to different people within the respective institutions than those within the target group. Therefore, the pre-test was administered to one individual from each of the three categories of the sample population, i.e. labour inspectors, Department of Social Development and social workers. The responses from the pre-test illustrated that the respondents understood the questions. Thus no changes were made to the questionnaire (Appendix 1).

1.5.7. ETHICAL CONSIDERATIONS

This research study was guided by the regulations on research endorsed by the University of Kwazulu-Natal's Ethics Policy. The certificate of ethical clearance is provided in Appendix 6.

The researcher ensured that permission was obtained from the Department of Labour, the Department of Social Development and the selected NGOs prior to data collection. Additionally, all participants were informed of the objective of the research prior to administering the questionnaires and that they could view the results of the research at the conclusion of the study. The participants were advised that their participation in the study was voluntary and that no adverse consequences would arise should they decide to withdraw from the study at any stage of the research. They were also guaranteed anonymity during the research process as well as after the results of the research were finalised.

1.6. WORKING DEFINITIONS

Child	Any person under the age of 18 years.[84]
Child labour	Work that is mentally, physically, socially, and morally dangerous or harmful to children or interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or combining school attendance with excessive long and heavy work.[85]
Child work	Work that takes place in environments or under conditions that enhance children's development or maturity and does not hamper children's access to education.[86]
Worst forms of child labour	Bonded or slave labour or related acts such as forced labour and child trafficking, the utilisation of children in pornography or prostitution, the use of children in illegal practices, as well as allowing children to engage in hazardous work that entails the use of harmful substances, unsafe machinery, work performed under water or under-ground.[87]
Childhood	An unperturbed period of play, leisure and schooling, free from work, which prepares a child for adulthood.[88]

[84] The CRC; Article 1. The Children's Act; s 1.
[85] The CRC; Article 32.
[86] HC Gooren *Speaking of Child Labour and Education: Linking the Rights-Based Approach to Local NGOs and Former Girl Child Labourers in Tamil Nadu* (Unpublished Master's thesis, Wageningen University, 2009) 29.
[87] Convention 182; Article 3.
[88] Nhenga-Chakarisa (note 10 above; 163).

Best interests of a child	A self-standing right that is afforded to every child that is regarded as a guiding standard in every situation where children are concerned.[89]
Economic exploitation	Work that impedes a child's physical, mental, psychological or social growth and development.[90]
Hazardous	An activity or situation that is likely to be unsafe, dangerous or detrimental to the well-being of children.[91]
Slave labour/bonded labour	Labour that is forced or undertaken by children in conditions where they work for long hours with little or no pay.[92]
Child trafficking	The illegal recruitment and relocation of children for the use of illegal activities such as child labour or prostitution.[93]
Pornography/ child pornography	A type of sexual exploitation that involves children in the visual description of sexually explicit material.[94]

[89] The Constitution; s 28; the CRC; Article 3(1); the ACRWC; Article 4(1).
[90] O Ekundayo 'Does the African Charter on the Rights and Welfare of the Child (ACRWC) only underline and respect the Convention on the Rights of the Child (CRC)'s provisions? Examining the similarities and differences between the ACRWC and the CRC' (2015) 5 7(1) *International Journal of Humanities and Social Sciences* 152.
[91] SB Rathebe *The Impact of Poverty Alleviation on the Eradication of Child Labour in South Africa* (Unpublished Master's thesis, North West University, 2016) 18.
[92] M Makinen *The Concept of Child Labour of the International Labour Organisation* (Unpublished Master's thesis, University of Jyvaskyla, 2006) 95.
[93] NH Msuya 'Traditional "juju oath" and human trafficking in Nigeria: A human rights perspective' (2019) *De Jure Law Journal* 139.
[94] L Osment *Child Labour, the Effect on Child, Causes and Remedies to the Revolving Menace* (Unpublished Bachelor's thesis, University of Lund, 2014) 18.

CHAPTER TWO: METHODOLOGY

2.1. INTRODUCTION

2.2. THEORETICAL FRAMEWORK

2.3. RESEARCH DESIGN

2.3.1. EXPLORATORY RESEARCH DESIGN

2.3.2. DESCRIPTIVE RESEARCH DESIGN

2.4. RESEARCH APPROACH

2.5. DESKTOP STUDY OF CHILD LABOUR LAW IN THREE COUNTRIES

2.5.1. SOUTH AFRICA

2.5.2. UGANDA

2.5.3. THE UNITED STATES OF AMERICA (USA)

2.6. EMPIRICAL STUDY OF CHILD LABOUR IN ONE SOUTH AFRICAN CITY

2.6.1. SITE SELECTION

2.6.2. TARGET POPULATION

2.6.3. SELECTION OF SAMPLE AND PARTICIPANTS

2.6.4. DATA COLLECTION INSTRUMENT

2.7. DATA CODING AND ANALYSIS

2.8. ETHICAL CLEARANCE

2.9. LIMITATIONS IDENTIFIED IN THE STUDY

2.10. CONCLUSION

2.1. INTRODUCTION

Research methodology is regarded as a systematic approach that a researcher employs to resolve a research problem. It is used to describe, explain and predict phenomena.[1] Research is a process of generating knowledge and insight through empirical evidence. It is directed by a theoretical framework and a premise regarding the relationship between the different phenomena that is under study.[2] Scholars have put forward numerous approaches to undertaking research about people, their beliefs and behaviours, and their interactions with each other and with the world at large.[3]

[1] S Rajasekar, P Philominaathan & V Chinnathanbi 'Research methodology' available at *http://arxiv.org/pdf/physics/0601009.pdf*, accessed 26 May 2018.
[2] C Bertram & I Christiansen *Understanding Research: An Introduction to Reading Research* (2014) 6.
[3] W Neuman *Social Research Methods: Qualitative and Quantitative Approaches* 4th ed (2000) 2.

This research used two research approaches to obtain evidence to answer the research questions and meet the study's objectives (presented in Chapter One). A desktop study was used to investigate three cases, generating secondary data. An empirical study was conducted with selected organisations, generating primary data. This chapter presents the theoretical framework that guided the study and presents the design of the study and the methodology that was used, along with the rationale for this design.

2.2. THEORETICAL FRAMEWORK

There are four worldviews which seek to guide research: positivism or post-positivism, interpretivism, advocacy or participatory, and pragmatism.

Positivism, or post-positivism, espouses the position that the universe can be understood as a system of cause and effect. Positivism asserts that the aim of science is to uncover the truth, and that truth can be determined through observation and measurement.[4] Post-positivism, on the other hand, asserts that as observation is subject to error; all perceived truth is uncertain and subject to revision.[5]

Interpretivism asserts that truth is not absolute but relative, depending on how people interpret the world from their context.

Advocacy, or participatory, sees research as being embedded in a political context and requires a plan that seeks to improve the lives of its participants.

Pragmatism focuses on employing all available methods to gain a deeper understanding of the problem. Thus, researchers working from this perspective utilise a mixed method approach in their investigation.[6]

A theoretical framework pertains to the theory that a researcher adopts to direct his or her research to gain understanding in order to solve a problem or phenomenon. A theoretical framework is to provide an explanation or provide an understanding of a research problem or particular phenomenon.[7] A theoretical framework provides a structure which supports the methodology of a particular research project.[8] Theories are tools which researchers

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[4] I Hacking *Representing and Intervening. Introductory Topics in the Philosophy of Natural Science* (1983) 34.
[5] JW Creswell *Qualitative Inquiry and Research Design: Choosing Among the Five Approaches* (2013) 45.
[6] K Petersen & C Gencel *Worldviews, Research Methods, and their Relationship to Validity in Empirical Software Engineering Research* (2013) 1.
[7] S Imenda 'Is there a conceptual difference between theoretical and conceptual frameworks?' (2014) 38(2) *Journal of Social Sciences* 189.
[8] RM Berger & MA Patchner *Implementing the Research Plan* (1988) 158-159.

use to express their thought processes.[9] The choice of a theoretical framework guides every decision that the researcher makes during the course of the research.[10]

This study used John Dewey's philosophical model as its theoretical framework. Dewey's model is based on the view that the quantifiable world pertains to an existential reality.[11] His main postulation is that the measurable world is experiential which contains different features that can be objective or subjective in nature or even a mixture of both elements.[12] Dewey's theory supports the pragmatism worldview which adopts the mixed methods approach to research. Contemporary writers such as Creswell and Plano Clark have espoused the pragmatic worldview as this philosophy postulates that the world exists in both single and multiple realities which allows for empirical inquisition in order to resolve practical issues in the real world.[13]

The researcher employed Dewey's model as this model has been supported by contemporary writers and moreover it has been applied to specific disciplines for resolving problems in the world.[14] This model which espouses a mixed method approach, posits that an objective and subjective investigation endeavours to procure knowledge that correlates or is representative of the reality of the situation.[15] This study adopts Dewey's theory which is based on the pragmatist worldview that adopts a mixed methods approach of both quantitative and qualitative research methods.

This worldview was chosen as it enabled the researcher to apply quantitative and qualitative methods to provide a deeper and broader understanding of the research problem.

2.3. RESEARCH DESIGN

A research design is a detailed plan for the process of conducting a research study.[16] It outlines the states of collecting, analysing, and interpreting data and presenting the findings of the research that will ultimately answer the research questions of the study.[17] Scholars categorise research designs as either exploratory or conclusive.[18] Exploratory research design focuses

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[9] J Stokes *How to do Media and Cultural Studies* 2nd ed (2013) 64.
[10] Ibid.
[11] J Dewey J *Experience and Nature* (1925) 40.
[12] Ibid.
[13] JW Creswell & VL Plano Clark *Designing and Conducting Mixed Methods Research* (2007) 22.
[14] CA McKim 'The value of mixed methods research: A mixed methods study' (2017) 11(2) *Journal of Mixed Methods Research* 203.
[15] R Rorty *Philosophy and Social Hope* (1999) 66.
[16] Ibid.
[17] B Jackson *Business Research Methods* (2019) 55.
[18] D Waller & MJ Polonsky *Designing and Managing a Research Project: A Business Student's Guide* (2005) 84.

primarily on qualitative data, whereas conclusive research design focuses more on quantitative data.[19] Conclusive research design can be further divided into descriptive and causal designs. In light of the purpose of this research and the use of a mixed-method approach, the present study adopted both exploratory and descriptive elements in its research design.

2.3.1. EXPLORATORY RESEARCH DESIGN

An exploratory research design can employ three elements: the examination of literature on the research topic (also termed 'secondary data'), a survey conducted through structured questionnaires (also termed 'quantitative data') and interviews with participants from the sample population (also termed 'qualitative data').[20] Thus, exploratory research design intends to provide new information on the research area on which further developments can be made.[21] This present research includes exploratory elements as the empirical part of the study was based on the examination of the existing literature of child labour legislation and policies in South Africa, Uganda, and the USA. The secondary data was collected to answer Research Questions One, Two, Three, Four and Six of the present study as set out below (see Chapter One of this thesis):

Q1- How is a child defined and how does this impact on the definition of child labour within the South African context?

Q2- How does the protection of children's basic human rights and the best interests of children form the basis for their protection against child labour in terms of the Constitution?

Q3- What is the nature of the South African legal framework that protects children from child labour and how are these laws effected?

Q4- What are the relevant laws enacted in Uganda and the USA prohibiting child labour and how do they compare with South Africa legislation?

Q6- What recommendations can be made with regard to South Africa's existing child labour laws to improve its implementation and ensure the protection of children?

Additionally, the secondary data of the present study was necessary to answer Objectives One, Two, Three and Four of the present study (see Chapter One):

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[19] PN Reddy & GVRK Acharyulu *Marketing Research: Exploratory Research Design* (2009) 37.
[20] Z Awang *Research Methodology and Data Analysis* 2nd ed (2013) 35.
[21] Ibid.

Objective 1- To critically examine the concept of the child and what constitutes child labour within South Africa, in terms of the literature.

Objective 2- To critically examine the basic human rights of children and the principle of the best interests of the child in the South African Constitution in relation to the protection of children from child labour.

Objective 3- To critically examine South Africa's legal framework and its implementation with regard to the protection of children from child labour.

Objective 4- To conduct a comparative analysis of the legal frameworks of South Africa, Uganda and the USA with regard to child labour legislation in order to identify weaknesses in South Africa's legislation that may limit the effective implementation of child labour prohibitions.

These research questions are answered in Chapters Three, Four, Five, Six and Seven of this thesis.

Primary data was also collected using a questionnaire. The questionnaire included closed-ended and open-ended questions that incorporated both quantitative and qualitative research methods. The resulting findings answer Research Questions Five and Six and Objectives Five and Six of the present study (see Chapter One):

Objective 5- To conduct an empirical analysis to identify the extent of child labour in Pietermaritzburg and impediments to the enforcement of child labour prohibitions.

Objective 6- To evaluate the literature and the findings from the empirical study to make recommendations to improve the regulation and implementation of child labour legislation in South Africa.

These research questions are answered in Chapters Seven and Eight of this thesis.

The integration of primary and secondary data ultimately enabled the researcher to answer the main research question: Does South Africa's current labour legislation framework provide for the effective implementation of child labour prohibitions? The answer to this main research led to the answer to Research Question Six: What recommendations can be made with regard to South Africa's existing child labour law to improve its implementation and ensure the protection of children? The response to Research Question Six is presented in Chapter Ten of this thesis.

2.3.2. DESCRIPTIVE RESEARCH DESIGN

Descriptive research seeks to present information in the form of numerical data by using graphs and tables.[22] It provides a reflection of the context or the background in which the research area exists. It thus provides greater understanding of the surrounding elements that would influence the factors that give rise to the research issue under investigation.[23] A descriptive research design therefore focuses on quantitative data.[24] This study used a descriptive research design in the empirical research is to generate numerical data that could be represented in graphs and tables. This enabled the researcher to make observations and evaluations based on the trends and patterns observed. The descriptive research is presented in Chapter Nine of the thesis.

2.4. RESEARCH APPROACH

Research approaches are broadly divided into quantitative, qualitative, and mixed-method approaches. Quantitative approaches obtain numerical data that describe objective realities, while qualitative approaches elicit non-numerical data that describe subjective realities.[25]

Quantitative research was first developed within the field of natural sciences to study phenomena in the natural world that could be tested through statistical assessments.[26] It is thus concerned with the objective evaluation of statistical validity that can be verified logically.[27] Quantitative research highlights the pertinence of using a generalisation to determine whether the relationship between variables can be applied to the sample population.[28] This type of research approach can be obtained through surveys.[29]

A qualitative approach employs a holistic approach to data collection which incorporates data collection from both primary and sometimes secondary data sources in the form of literature.[30] A qualitative approach uses inductive reasoning to achieve a

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[22] S Oflazoglu *Qaulitative Versus Quantitative Research* (2017) 10.
[23] K Gupta & N Singh *Consumption Behaviour and Social Responsibility* (2020) 151.
[24] A Singh 'A review on research designs and its important parameters' (2014) 3(7) *International Journal of Advance Research in Science & Engineering* 321.
[25] E Babbie *The Basics of Social Research* (2017) 24.
[26] JW Creswell *Educational Research: Planning, Conducting and Evaluation Quantitative and Qualitative Research* 4th ed (2012) 30, MJ Goertzen *Applying Quantitative Methods to E-book Collections* (2017) 12.
[27] J Mouton *How to Succeed in your Master's and Doctoral Studies: A South African Guide and Resource Book* (2001) 71.
[28] A Delice 'The sampling issues in quantitative research' (2002) 10(4) *Educational Sciences: Theory & Practice* 2001-2018.
[29] N Denzin and Y Lincoln 'Introduction: the discipline and practice of qualitative Research' in N Denzin and Y Lincoln (eds) *The Landscape of Qualitative Research: Theories and Issues* 1-45.
[30] A Wilson *Marketing Research: An Integrated Approach* 3rd ed (2012) 103.

comprehensive and in-depth understanding of the phenomenon.[31] Qualitative research seeks to understand and explain human behaviour. It therefore assimilates the attitudes, motives, and beliefs of individual participants in the evaluation process.[32] Qualitative research focuses on answering why a particular phenomenon occurs and in some instances give researchers insight to develop solutions to the research problem.[33] Scholars have described mixed-method research as the collection and analysis of qualitative and quantitative data that permits the integration of the two types of data to answer the research questions, prioritising either one or both forms of data and creating a framework for the study within the parameters of a particular philosophy that would guide the research.[34] Mixed-method research is thus the integration of quantitative data (an objective enquiry) and qualitative data (a subjective enquiry) into one study.[35] The integration of quantitative and qualitative data allows a researcher to obtain comprehensive knowledge and in-depth insight into a research phenomenon that a quantitative or qualitative research method would not have provided if conducted singularly.[36]

A mixed-method research approach was selected for this study as both objective and subjective approaches were required to gain an in-depth understanding of the problem. An objective enquiry was necessary to answer research objective five and research question six of the present study (see Chapter One of the thesis), which aimed to determine the incidence of child labour in Pietermaritzburg and explore the effectiveness of labour legislation in South Africa in preventing child labour. The objective enquiry endorses the quantitative research approach which seeks to determine the measure of the problem by answering the question of 'how many'.[37] A subjective enquiry was necessary to answer research question six of the present study (see Chapter One of this thesis), which investigates the factors driving child labour and how effective the current child labour legislation is in preventing child labour. The subjective enquiry endorses the qualitative research approach which seeks to provide comprehensive understanding on the problem by determining why the given problem exists.[38]

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[31] K Khalid & D Kumar 'Get along with quantitative research process' (2012) 2(2) *International Journal of Research in Management* 16.
[32] H Nassaji 'Qualitative and descriptive research' (2015) 9(2) *Language Teaching Research* 129-130.
[33] A Wilson *Marketing Research: An Integrated Approach* 3rd ed (2012) 103, VS Mbuyazi *The Use of New Communication Strategies to Enhance Marketing of Fast-Moving Customer Goods (FMCG)* (Unpublished Master's thesis, University of Zululand, 2012) 127.
[34] Creswell & Clark (note 13 above; 5).
[35] JW Creswell *A Concise Introduction to Mixed Methods Research* (2015) 34.
[36] Ibid.
[37] RB Johnson & AJ Onwuegbuzie 'Mixed methods research: a research paradigm whose time has come' (2004) 33(7) *Educational Researcher* 17.
[38] Ibid.

The subjective enquiry was able to identify reasons for the existence of the problem from the personal experience that participants in the empirical study have within the area of child labour. The responses from the subjective enquiry assisted the researcher in answering research question six of this study regarding the recommendations that can be made to improve the implementation of child labour laws. This was essential as recommendations for improving the implementation of child labour laws can only be developed if the reasons for the ineffectiveness of child labour laws have been thoroughly examined through the responses from participants.

Scholars have posited that there are four main types of mixed-method approaches: convergent, exploratory, explanatory, and embedded.[39] The most compatible of these to the present study is the embedded mixed-method design. An embedded mixed-method approach merges quantitative and qualitative data in the collection and analysis of the research. The collection and analysis of secondary data can take place either before, after or during the collection and analysis of primary data.[40]

A researcher can integrate the mixed-method approach at any or all points of the research – in the research design, data collection process, interpretation of data, or reporting on the findings.[41] The present study identified mixed-method research at several points of the study. Employing the embedded mixed-method approached enabled quantitative and qualitative data to be collected together using a questionnaire. The secondary data informed the conceptual framework of the study and was collected before the primary data.

2.5. DESKTOP STUDY OF CHILD LABOUR LAW IN THREE COUNTRIES

Law is not developed in a vacuum. Rather, it draws on the law of other jurisdictions. In South Africa, the Constitution encourages the development of domestic law with reference to the international legal context. Section 39 of the Constitution provides that the legislature may draw on models found in foreign jurisdictions in their development of South African legislation.[42] A comparison of the differences and similarities between the legislation of

[39] X Yu & D Khazanchi 'Using embedded mixed methods in studying IS phenomena: Risks and practical remedies with an illustration' (2017) 34 *Information Systems and Quantitative Analysis Faculty Publications* 558.
[40] Creswell & Clark (note 13 above; 90-93).
[41] E Moseholm & M Fetters 'Conceptual models to guide integration during analysis in convergent mixed methods studies' (2017) 10(2) *Methodological Innovations* 1.
[42] The Constitution; s 39.

different countries can provide a deeper understanding of the underlying factors that drive the promulgation of legislation and its effectiveness.[43]

In this study, comparative analysis of child labour legislation in Uganda, the USA, and South Africa was used to identify weaknesses in South African legislation designed to protect children. This section presents the rationale for the selection of Uganda, the USA, and South Africa as cases for this study.

2.5.1. SOUTH AFRICA

This research involved a critical examination of South African legislation and policies pertaining to child labour. The Survey of Activities of Young People's (SAYP) most recent study was conducted in 2019 (embargoed until 31 March 2021). The survey indicated that there were 571 000 children of the total 11,4 million children surveyed between from the ages 7-17 years old engaged in child labour.[44] The study further revealed that 33,5% of children who were legally permitted to engage in work were working under conditions that exposed them to at least one hazard.[45] However, it must be noted that much of the work undertaken by children is undocumented and thus the actual incidence must be assumed to be higher.[46]

While South Africa's legal framework regarding the rights of children may be considered to be progressive,[47] the evidence of child labour in South Africa demonstrates that the rights of all children are not being protected. This research intended to examine South Africa's current legislation in its regulation and management of child labour. The study examined South Africa's current labour legislation to identify possible loopholes that could contribute to the difficulty in implementing labour legislation that would prevent child labour. The purpose of this study was to submit recommendations to our current legal framework that would improve the implementation of labour laws concerning child labour in an effort to protect children living in South Africa.

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[43] EJ Eberle 'The method and role of comparative law' (2009) 8(3) *Washington University Global Studies Law Rev*iew 452; HJ Ault & MA Glendon 'The importance of comparative law in legal education: United States goals and methods of legal comparison' (1976) 27(4) *Journal of Legal Education* 600.
[44] StatsSA 'Survey of Activities of Young People, 2019' (2021) 7, available at *www.statssa.gov.za/publications P02122019.pdf (statssa.gov.za)*, accessed on 25 September 2024.
[45] Ibid.
[46] Veeran (note 42 above; 83).
[47] Robinson & Prinsloo (note 43 above; 1670).

2.5.2. UGANDA

Uganda was selected as comparator primarily because of its similarities to South Africa. Uganda is also a developing African country. The majority of Ugandans and South Africans share similar cultural perceptions about children and the role of children in society, including views around children engaging in work.[48] This is significant because the culture of a country guides the enactment of legislation to address issues that are perceived as important.[49]

Another reason for choosing Uganda is that South Africa is working to reverse the entrenchment of Western ideologies that were forced on the country through colonisation. By choosing Uganda, the study would be able to evaluate and make recommendations to align South African legislation with the African values and culture of the people within the African continent. This would allow South Africa to have a more African-centred approach to addressing issues that are intrinsic to African people within Africa.

The United Nations Convention on the Rights of a Child and the ILO Conventions have been criticised as being modelled on Western perceptions about children and ideals about childhood as a time that children should be free to play and unburdened with adult responsibilities.[50] This Western perception has been argued to have moulded children's rights frameworks globally[51] without due consideration for the harsh realities that African children endure due to socio-economic inequalities, and the cultural traditions that are important to Africans, which involve children undertaking adult responsibilities.[52] This study attempts to correct this distortion by including Uganda, a country with similar African traditions and challenges to those found in South Africa, as a basis of comparison. The selection of Uganda

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[48] L Guarcello … et al 'Understanding children's work in Uganda' (2009) 13.

[49] ILO 'Combating and preventing HIV/AIDS induced child labour in Sub-Saharan Africa: Pilot action in Uganda and Zambia' (2008).

[50] EA Faulkner & C Nyamutata 'The decolonisation of children's rights and the colonial contours of the Convention on the Rights of the Child' (2020) 28 *International Journal of Children's Rights* 66-88, A Quennerstedt, C Robinson & J I'Anson 'The UNCRC: The voice of global consensus on children's rights?' (2018) 36(1) *Nordic Journal of Human Rights* 39, F Adebisi 'Decolonising education in Africa: Implementing the right to education by re-appropriating culture and indigeneity' (2016) 67(4) *Northern Ireland Legal Quarterly* 435.

[51] ATD Imoh 'Terminating childhood: dissonance and synergy between global children's rights norms and local discourses about the transition from childhood to adulthood in Ghana' (2020) 41(1) *Human Rights Quarterly* 160–182, LR De Castro 'Why global? Children and childhood from a decolonial perspective' (2020) 27(1) *Childhood* 48–62, M Deche et al 'What might a decolonial perspective on child protection look like? Lessons from Kenya' (2022) 29(3) *Childhood* 242.

[52] T Abebe 'Reconceptualising children's agency as continuum and interdependence' (2019) 8(81) *Social Science* 1–26, F Fay 'Decolonizing the child protection apparatus: revisiting child rights governance in Zanzibar' (2019) 26(1) *Childhood* 1–16, ATD Imoh 'From the singular to the plural: exploring diversities in contemporary childhoods in sub-Saharan Africa' (2016) 23(3) *Childhood* 455–468.

as a case was thus a deliberate attempt to endorse decolonisation and Africanisation of children's rights and concepts of child labour in South Africa.

Uganda and South Africa also share similarities in terms of their child labour legislation. Uganda, like South Africa, has constitutionalised the protection of children from child labour[53] and has endorsed the protection of children in additional legislation, such as the Children's Act 59 of 2006. Also, the Employment Equity Act 6 of 2006 sets the minimum age of employment and regulates when children are lawfully permitted to undertake work,[54] as well as entrenching prohibitions against child labour and the worst forms of child labour.[55]

Uganda and South Africa also share the same viewpoint on the significance of education for children. The Ugandan government, much like South Africa, views education as being an integral aspect of a child's development and sees compulsory primary education for all children as a policy that contributes to the eradication of child labour.[56]

These similarities enable a comparison of the child labour legislation of the two countries to evaluate their strengths and weaknesses.

In addition to its similarities to South Africa, Uganda was selected because of the policies and mechanisms it has instituted to eliminate child labour; these were anticipated to provide models that could be useful for the South African context. For example, the council instituted by Uganda's National Council for Children Act of 1996 channels issues and problems experienced by children to government and other decision-making bodies.[57] The council plays a crucial function in representing the viewpoints of children regarding child labour and the hardships experienced by children as a result of child labour.[58] The council is further mandated to ensure that strategic programmes are designed and implemented to protect children and to monitor the progress of these programmes.[59]

Uganda has developed several policies to eradicate child labour, some of which have seen success.[60] These policies demonstrate how child labour laws and policies can be implemented practically in a third world country that experiences obstacles in the

[53] Constitution of the Republic of Uganda, 199; Article 34.
[54] The Employment Equity Act; s 32(2).
[55] The Employment Equity Act; s 8.
[56] Uganda Education Act 13 of 2008.
[57] The National Council; s 3.
[58] The National Council; s 146.
[59] The National Council; s 3.
[60] Stop Child Labour 'Running for child labour free zones in Uganda' (28 January 2014), available at *http://www.stopchildlabour.org/Stop-ChildLabour/News-items/Running-for-Child-Labour-Free-Zones-in-Uganda*, accessed 23 May 2018.'

implementation of child labour prohibitions. Further, it highlights that child labour cannot be eradicated solely through legislation but needs to be supplemented with strategic socio-economic programmes.

Among these is the Support of the National Action Plan (SNAP) project that was implemented with some success for three years with the support of the International Labour Organisation (ILO) and the International Programme on the Elimination of Child Labour (IPEC). The project was implemented at macro, meso, and micro levels and resulted in the development of the National Action Plan for the Elimination of the Worst Forms of Child Labour (NAP).[61] The programme resulted in 8733 children being removed from exploitative child labour and integrated into the education system.[62] The project involved several initiatives by government ministries, civil society groups, communities, and children which that targeted areas with a high prevalence of child labour.[63] These initiatives led to the formulation of regulations focusing on child protection, with special emphasis on the prohibition of child labour by members of the community and the paramountcy of children completing their education.[64] In 2008/2009, 93.2% of children of primary school age were enrolled in school; by 2014/2015 this had increased to 96.4%.[65]

Another project, titled 'Combating and preventing HIV/AIDS induced child labour in Sub-Saharan Africa: Pilot action in Uganda and Zambia' was implemented during the period of 2005 and 2008 under IPEC.[66] This project assisted families and child-headed households where children were engaging in child labour because they were orphans or had to care for ill parents or siblings as a result of the HIV/AIDS epidemic.[67] The project concentrated on the improvement of the social circumstances of these families through Income Generating Activities (IGA). The implementation of this initiative achieved great success and was able to

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[61] Ministry of Gender, Labour and Social Development *National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2012/3-2016/7* (2013).
[62] Global March Against Child Labour 'Ending Child Labour and Ensuring Education in Uganda: A National Overview for Taking Action' (2017) 19-20.
[63] Ministry of Gender, Labour and Social Development *National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2012/3-2016/7* (2013), available at *http://www.ilo.org/ipecinfo/ product/ download/do?type-=document&id=20675*, accessed 23 May 2018.
[64] Stop Child Labour 'Running for child labour free zones in Uganda' (28 January 2014), available at *http://www.stopchildlabour.org/Stop-ChildLabour/News-items/Running-for-Child-Labour-Free-Zones-in-Uganda,* accessed 23 May 2018.
[65] Global March Against Child Labour 'Ending Child Labour and Ensuring Education in Uganda: A National Overview for Taking Action' (2017) 9.
[66] Ministry of Gender, Labour and Social Development *National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2012/3-2016/7* (2013).
[67] Ibid.

decrease poverty which is a major contributor to child labour.[68] Under the project poverty declined by 17%.[69] In addition, access to antiretroviral drugs increased from 44% in 2003 to 83% in 2014, resulting in reduced mortality with HIV/AIDS and decreasing the pressure experienced by children to work to sustain their families.[70]

2.5.3. THE UNITED STATES OF AMERICA (USA)

The USA was selected as a comparator in this study because, as a developed country, it provides contrasts with developing countries such as South Africa and Uganda. This does not imply that the legal framework of the USA is perceived as an ideal that South Africa should aspire to, but rather that as a model developed in a different context it could yield different kinds of lessons that could be instructive in the South African context.

Another reason for selection the USA is that it is similar to South Africa in that the country encourages children to work. South Africa encourages children to work from a cultural and social context. The USA encourages children to work as an opportunity to acquire responsibility and independence. In this regard, child work within lawful boundaries is encouraged.[71] The USA attempts to protect children while they work, rather than prevent them from working. This viewpoint is crucial to the recommendations of this study as it offers a possible short-term method of addressing the situation in South Africa where children are compelled to work without any alternatives. Weaknesses found in child labour law in the USA could also provide insights into South Africa could avoid the same weaknesses.

The USA Fair Labour Standards Act of 1938 (hereafter referred to as 'the FLSA') regulates and controls lawful child work and seeks to identify and eradicate hazards and dangerous conditions of work so that children may lawfully perform work in environments that are safe and conducive to their growth and well-being.[72] This study investigates mechanisms on how the FLSA has been implemented. The Department of Labour (DOL) in the USA is the government department responsible for enforcing child labour laws.[73]

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[68] Ibid.
[69] Ibid.
[70] Global March Against Child Labour 'Ending Child Labour and Ensuring Education in Uganda: A National Overview for Taking Action' (2017) 8.
[71] M Bourdillon et al 'A place for work in children's lives*?*' (2010) 11.
[72] S Donovan & J Shimabukuro 'The Fair Labor Standards Act (FLSA) Child Labor Provisions' (2016) *Congressional Research Service, CRS Report* 1-20.
[73] US GOA (Government Accountability Office) *Working Children Federal Injury Data and Compliance Strategies Could Be Strengthened* (2018) 14.

DOL investigators have indicated that child labour violations are given priority, and an investigator attends to a child labour complaint within two hours of receiving the information.[74] Labour inspectors look for potential child labour violations in all investigations related to the FLSA. This has proven successful as the USA has extensive legislation regulating the monitoring of child work to identify child labour violations.[75]

Additionally, subsequent regulations have been drafted that specify how the FLSA should be implemented. An investigation of the American legal framework, which supports working children, thus has relevance to South Africa, where children are compelled to work. The USA recognises that children can engage in work that would help develop their cognitive and emotional growth.[76] Thus, the USA encourages legislators to draft legislation that would provide for the protection of children while they work.[77] This includes endorsing flexible school hours to be compatible for work hours so that children are not disadvantaged academically.[78] This provides insight into how South Africa could accommodate working children in the country.

Many challenges have arisen in the implementation of the FLSA over the years. This has given rise to a considerable body of case law that has critically evaluated the implementation and practicality of the FLSA. This offers further insights that could yield lessons for the implementation child labour legislation in South Africa.

2.5.4. DATA COLLECTION

Data collection for the desktop study addressed research questions 1 to 4. A range of published literature was examined that reflects research into the contested definitions of a child, child work and labour and causes of child labour within the different social, cultural and economic contexts of the three countries selected as cases. The secondary data sources used for this study included, books, journal articles, dissertations, conference papers, government reports, international and regional policies and regulations, legislation, case law, internet articles and newspaper articles. Research Questions Three and Four, particularly, relate to the law of the

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[74] Ibid.
[75] R Barajas-Gonzalez et al 'Weakening U.S. child labor protections stands to harm youth health and education outcomes' (2024) *SRCD Latinx Caucus, Society for Research in Child Development* 1-9.
[76] R Paternoster et al 'The effect of teenage employment on delinquency and problem behaviors' (2003) 82 *Social Forces* 297–335.
[77] JM Davis & SB Heller 'Rethinking the benefits of youth employment programs: The heterogeneous effects of summer jobs' (2020) 102(4) *The Review of Economics and Statistics* 664–677.
[78] SA Quandt 'Hired Latino child farmworkers in North Carolina: Educational status and experience through a social justice lens' (2021) 30(4) *New Solutions: A Journal of Environmental and Occupational Health Policy* 282–293.

three jurisdictions of Uganda, South Africa, and the USA, published in legislation and case law.

The secondary data used in this study was freely available and accessible to the researcher via libraries and the internet. There was no data that required permission to be obtained from public records.

2.6. EMPIRICAL STUDY OF CHILD LABOUR IN ONE SOUTH AFRICAN CITY

After completing a desktop study of the three country cases, an empirical study was done of child labour in a selected city in South Africa. The empirical study describes how primary data using a questionnaire was used to obtain participants' experiences in addressing child labour in the City of Pietermaritzburg.

2.6.1. SITE SELECTION

The national laws and policies of South Africa govern the implementation of child labour law across all of South Africa's nine provinces. Thus, any amendment to the current child labour legislation will impact children on the local level.

The reason for choosing Pietermaritzburg as the focus of this study is that Stats SA indicated in their latest research conducted in 2019 that children in KZN were more likely than those in other provinces to be involved in child labour at 8,8% in 2019.[79] A further reason for choosing KZN as the focus of this study is that Stats SA has indicated that in KZN, one in ten children in the province are involved in child labour.[80] The study revealed that 10,0% of children are child labourers which is the highest in the country when compared to the other provinces.[81] Stats SA has also identified that 85,6% of children in KZN are most likely to undertake household chores.[82] While this alone is not an indicator that children are engaged in pernicious activities that constitute child labour, KwaZulu-Natal has also been found to have the highest prevalence of HIV/AIDS in the country, with the highest incidence in the province recorded in the City of Pietermaritzburg.[83] HIV has been found to be a factor in the growing

[79] StatsSA 'Survey of Activities of Young People, 2019' (2021) 7-8, available at *www.statssa.gov.za/publications P02122019.pdf (statssa.gov.za),* accessed on 25 September 2024.
[80] Ibid.
[81] Ibid.
[82] Ibid.
[83] 'HIV/AIDS and Child Labour in SA: A Rapid Assessment: The Case Study of KZN' (2003), available at *www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrau/@ilo_aids/documents/publication/wcms_119161.pdf*, accessed 25 May 2018.

prevalence of child labour in KwaZulu-Natal due to the disabling effects and mortality associated with the disease.[84]

Even though the empirical research is only based in Pietermaritzburg, the findings of the empirical research will give the researcher an indication as to the reality of the existence of child labour when compared to the statistics of South Africa as a whole.

The factors that contribute to the prevalence of child labour that are indicated above, which include poverty, social-economic inequality, lack of government support through social assistance, lack of access to schooling, and the incidence of orphans and child-headed households resulting from the HIV/AIDS crisis can be expected to affect children across all parts of South Africa, to varying degrees.[85]

Thus, it is argued that if these causes of child labour are present in one region they would also be present in other regions even if it is at varying degrees. Therefore, if causes of child labour are identified in one region as being the same causes identified in South Africa as a whole, then any suggestions and recommendations to address these causes that are identified in one region can be applied to the whole of South Africa.

It must be highlighted that this study does not evaluate provincial or municipal laws but rather national legislation that governs South Africa as a whole. The national legislation pertaining to the regulation of child labour is enforceable in every province and is not limited to any particular province. All personnel in South Africa who enforce child labour laws, either as social workers or labour inspectors, are confined to the national laws discussed in this study. Thus, if there are challenges in regard to enforcing national child labour laws in one region then it would indicate that there are challenges in enforcing national child labour laws in the country as a whole. Therefore, any challenges experienced by the participants in the study in Pietermaritzburg would provide valuable insight into the effectiveness of child labour laws that govern South Africa as a whole.

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[84] Ibid.

[85] A Visser 'Child labour is a matter of national concern: What is the curriculum doing about it?' (2021) 85 *Journal of Education* 32, S Bessel 'Education, school, and learning: Dominant perspectives' in T Abebe & J Waters (eds) *Laboring and learning* 91–100, V Chidziva & PJH Heeralal 'Circumstances leading to the establishment of child-headed households' (2016) 4(10) *International Journal for Innovation Education and Research* 91-92, KZN Human Settlements *Research On Child-Headed Households* (2010) 6-7, N De Wet & Jude Ewemade '"We are small, but we have jobs": A profile of the labour activities of children and youth in South Africa' (2018) 49(3-4) *South African Review of Sociology* 96-114, S Pillay 'Implications of socio-economic issues on the practice of co-creation and governance in South Africa' (2019) 27(4) *Administratio Publica* 91-93, Z Mbandlwa 'Cause of the economic decline in South Africa. What to expect in the next 10 years from now?' (2023) 10(2S) *Journal of Survey in Fisheries Sciences* 1397.

In addition to these factors, the City of Pietermaritzburg was selected as the site for this study as the researcher resides in Pietermaritzburg and has been sensitised to the particular plight and challenges faced by children in this city.

2.6.2. TARGET POPULATION

A population can be defined as the total membership of a particular class or group of people, objects, associations or events.[86] It is the entire group from which a researcher can draw out a sample to be used for a study.[87] The target population identified for this study was those entities that work directly with the enforcement of child laws and the protection of children in the city of Pietermaritzburg, and confined to this city. The population was identified by the researcher to consist of the Department of Labour, the Department of Social Development, the Child Protection Unit - South African Police Services and the 23 Non-Governmental Organisations (NGOs) operating in Pietermaritzburg that deal with children. The South African Police Service does not deal with child related matters but rather refers any child related matters to the Child Protection Unit. Thus, SAPS was determined to not be part of the target population. The target population is shown in Table 1.

Table 1 Target population for the empirical study: entities working with children in Pietermaritzburg, South Africa

Governmental institutions
Department of Labour
Department of Social Development
Child Protection Unit – South African Police Services
Non-governmental organisations (NGOs)
1. Cindi-Children in Distress Network
2. Gezubuso Projects
3. Thandanani Children's Foundation
4. Pietermaritzburg Children's Home
5. SOS Children's Villages Association
6. The South African Veterinary Foundation (SAVF)
7. The Salvation Army
8. Tabitha Ministries (Hope Centre)
9. Ekujabuleni Children's Home

[86] Z O'Leary *The Essential Guide to Doing Your Research* (2010).
[87] JR Fraenkel, NE Wallen & HH Hyun *How to Design and Evaluate Research in Education* 8th ed (2012) 92.

10. Project Gateway
11. Association for Rural Development
12. Child Welfare Place of safety
13. Msunduzi Innovation & Development Institute (MIDI)
14. Siyanabonga Helping Hands
15. Youth for Christ
16. Ester House
17. Nkuthula
18. Family & Marriage Society of South Africa (FAMSA)
19. Lifeline
20. Mama Ntombi Community Projects
21. Dlalanathi Organisation
22. Community Care Projects
23. The Child & Family Welfare Society

This entire target population was too large to be included as a whole in the study. In addition, some of these entities did not interact with child labour or the enforcement of child labour laws. As a result, sampling was used to select institutions with direct contact with children engaged in child labour or with the responsibility for the enforcement of child labour laws.

2.6.3. SELECTION OF SAMPLE AND PARTICIPANTS

A sample is a part of the population that has been chosen for observation and inquiry.[88] The sampling framework is constructed prior to the actual research being conducted.[89] The use of purposive sampling was necessary because, although many NGOs in Pietermaritzburg address issues pertaining to children, not all deal specifically with child labour and thus are not relevant to this study. The Department of Labour and the Department of Social Development were automatically included in the sample as both of the government departments deal directly with child labour issues.

The following criteria were used for inclusion of NGOs in the sample.

[88] Ibid.
[89] Ibid.

- The organisation was a registered NGO
- The organisation had been in operation for at least 5 years
- The organisation dealt with child labour, or issues related to child labour
- The organisation was willing to participate in the study.

The following organizations declined to be part of the study on the basis that child labour is not an issue that falls within their scope, or they are only regarded as a point of first contact with children. The Child Protection Unit- South African Police Service indicated that they do not deal with the prosecution or investigation of child labour but rather are focused on cases of neglect and abuse. The Department of Labour and Employment and the Department of Social Development provided permission letters indicating their willingness to participate in the research.

The researcher personally visited all the organisations listed under the discussion on population and confirmed whether or not they were willing to participate in the present research.

The following 19 NGOs indicated that they do not deal with child labour or issues relating to child labour:

1. Cindi-Children in Distress Network
2. Pietermaritzburg Children's Home
3. Tabitha Ministries (Hope Centre)
4. Association for Rural Development
5. Ester House
6. Nkuthula
7. FAMSA
8. Lifeline
9. SAVF
10. The Salvation Army
11. Child Welfare Place of Safety
12. Dlalanathi Organisation

13. Community Care Projects

14. Project Gateway

15. SOS Children's Villages Association

16. Youth For Christ

17. Siyanabonga Helping Hands

18. MIDI

19. The Child & Family Welfare Society

Two governmental entities and four NGOs were identified as meeting the criteria for the sample. The researcher visited each of these institutions to determine their potential suitability for participation in the study. The researcher spoke to the director of each organisation, who identified staff that worked with communities and had knowledge of children engaged in child labour. The names of the organisations are shown in Table 2 with the number of directors and social workers on staff. The number of directors and social workers that are represented below as the sample are the total number of directors and social workers that work within these organisations. Therefore, all of the directors and social workers in each organisation have been chosen to consist of the sample for the study.

Table 2 Organisations that comprised the sample of the empirical study

NAME OF ORGANISATION	NUMBER OF DIRECTORS	NUMBER OF SOCIAL WORKERS/ LABOUR INSPECTORS
1. The Department of Labour (Pietermaritzburg)	1 director	6 (Labour inspectors)
2. The Department of Social Development (Pietermaritzburg)	1 director	10
3. Gezubuso Projects	1 director	0 (No social workers)
4. Thandanani Children's Foundations	1 director	2 social workers
5. Ekujabuleni Children's Home	1 director	1 social worker
6. Mama Ntombi's Community Projects	1 director	1 field worker (Performs functions of a social worker)
TOTAL	6	20
TOTAL NUMBER OF INDIVIDUALS IN THE SAMPLE		26

Of the 26 individuals identified in the sample, 16 agreed to participate in the study.

The researcher provided each organisation with a formal letter requesting permission to conduct research at the organisation as well as a covering letter explaining the nature of the research and an informed consent form for each participant to complete. Assurance of confidentiality, anonymity and option to withdraw from the research at any stage will be included in the informed consent form. A copy of these letters can be found in Appendix 2.

2.6.4. DATA COLLECTION INSTRUMENT

A questionnaire was developed for collection of data from the participants. A questionnaire is intended to obtain information about a particular issue or gain insight into a particular phenomenon.[90] Questionnaires can contain open-ended questions, closed-ended questions, or both.[91] Open-ended questions provide richer data and are thus used in qualitative research. Closed-ended questions limit the respondents' responses to a predetermined set of answers that provide the researcher with numerical data and are thus used in quantitative research. The benefit of closed-ended questions is that they require less time to complete, and they can be analysed with simple numerical calculations.[92] The drawback of open-ended questions is that they may incorrectly identify problems as participants are limited to selecting from a pre-determined set of responses. Open-ended questions allow participants to provide their own responses in their own words. Open-ended questions are useful when seeking opinions and a more complete knowledge and understanding from participants.[93]

The advantages of survey research are that it provides accuracy of information as participants are anonymous and can liberally express their opinions on sensitive topics. Data generated from surveys is easy to analyse using software such as SPSS. Survey data can be stored and retrieved easily.[94] Questionnaires allow researchers to collect data in a manner that is time efficient and cost effective.[95] Using both open-ended and closed-ended questions allows a researcher to obtain qualitative and quantitative data from participants.[96]

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[90] R Kumar *Research Methodology: A Step by Step Guide for Beginners* (2005) 93.
[91] JR Fraenkel, NE Wallen & HH Hyun *How to Design and Evaluate Research in Education* 8th ed (2012) 394.
[92] D Albudaiw 'Surveys, advantages and disadvantages of' in *The SAGE Encyclopedia of Communication Research Methods* (2018) 2.
[93] JW Creswell *Educational Research: Planning, Conducting and Evaluation Quantitative and Qualitative Research* 4th ed (2012) 376.
[94] Ibid.
[95] C Bless & C Higson-Smith *Fundamentals of Social Research Methods: An African Perspective* 2nd ed (1995) 111.
[96] R Swisher & CR McClure *Research for Decision Making: Methods for Librarians* (1984) 80.

The disadvantage of questionnaires is often that the validity and accuracy of survey depends largely on the response rate from respondents as researchers do not have any control over the number of responses that is obtained.[97] Additionally questionnaires can hinder the responses that participants give as their responses largely depend on their ability to read and understand what the questions require.[98] The challenge that arises with questionnaires that contain open-ended questions is that these type of questions can lead to unpredictable responses from participants. Participants may respond with irrelevant information which could hinder the purpose of the research.[99]

For this study, a questionnaire was designed with twenty questions: twelve closed-ended questions and eight open-ended questions. The questionnaire is divided into three sections. The first section is concerned with biographical information about the respondents that could have bearing on their experience and perception of child labour. The second section pertains to information about the organisation. This information was relevant as it assisted the researcher in determining the entity's interaction and effectiveness in dealing with child labour cases. The third section pertains to the respondent's personal experience and knowledge of child labour in Pietermaritzburg. These questions were designed to provided deep insight into the research area. A copy of the questionnaire is available in Appendix Two.

To obtain credible and consistent results, research instruments must be valid and reliable.[100] Validity refers to the extent to which an instrument measures what it is intended to measure. Reliability refers to the extent to which a test generates the same results when applied in the equivalent circumstances.[101] Thus reliability pertains to the consistency of the measurement of the same value.[102]

A 'pre-test' measure is useful to determine the validity and reliability of the research instruments and address issues of clarity. In this study, a pre-test was conducted by administering the questionnaire to three individuals: One from the Department of Labour, one from the Department of Social Development and one from an NGO. The results of the pre-test were used to reassess, and reword the questions if inconsistencies were identified. The results

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[97] TL Jones, MAJ Baxter & V Khanduja 'A quick guide to survey research' (2013) 95 *Annals of the Royal College of Surgeons in England* 7.
[98] Bless & Higson-Smith (note 95 above; 112).
[99] Albudaiw (note 92 above; 4).
[100] OA Bolarinwa 'Principles and methods of validity and reliability testing of questionnaires used in social and health science researches' (2015) 22 *Nigeria Postgraduate Medical Journal* 191.
[101] Ibid.
[102] R Newell 'Questionnaires' in N Gilbert (ed) *Researching Social Life* (1993) 106-107.

of the pre-test indicated that the individuals did not have difficulties understanding the questions. Thus, no changes were made to the questionnaire attached at the end of the study.

The researcher conducted the empirical research by physically visiting each NGO and government departments to administer the questionnaires. The questionnaires were handed to the participants to complete while the researcher waited in the reception area. Once participants had finished answering the questionnaire, they were submitted to the receptionist. The researcher collected all questionnaires then handed them over to be processed.

2.7. DATA CODING AND ANALYSIS

Coding refers to conferring a label that will be attached or linked to a section of text from qualitative data.[103] Coding can be conducted inductively or deductively. In terms of quantitative research, deductive coding can occur by constructing codes based on preconceived concepts deduced from theory. The purpose of quantitative research is to provide frequencies or numerical patterns of defined categories or perceptions.[104] In the present study, quantitative data was obtained through the use of survey questionnaires. The present study made use of the Statistical Package for the Social Sciences (SPSS) for data coding and analysis.

In terms of qualitative research, inductive coding requires researchers to engage iteratively with data obtained in textual form.[105] It is a process of collecting data and then breaking it into parts in order to obtain meaning from the data.[106] Scholars have posited various types of coding that can be employed for qualitative data.[107] The present study adopted focused coding. Focused coding refers to data that is coded according to themes or thoughts.[108] The present study made use of automated coding of qualitative data. Thematic analysis uses artificial intelligence (AI), natural language processing (NLP) as well as machine learning to code qualitative data by breaking the text into themes.[109]

Quantitative and qualitative data were first analysed independently. Later, the results of qualitative data were used to develop deeper insights into the results of quantitative data. Both qualitative and quantitative data were presented in numerical form in tables in

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[103] J Saldaña *The Coding Manual for Qualitative Researchers* 3rd ed (2016) 56.
[104] Y Sun '"Coding of data' *The SAGE Encyclopedia of Communication Research Methods* (2018) 2.
[105] MS Linneberg & S Korsgaard 'Coding qualitative data: a synthesis to guide the novice' (2019) 19(3) *Qualitative Research Journal* 3.
[106] J Gehman et al 'Finding theory–method fit: A comparison of three qualitative approaches to theory building' (2018) 27(3) *Journal of Management Inquiry* 5.
[107] Ibid.
[108] J Saldaña *The Coding Manual for Qualitative Researchers* (2015) 64.
[109] E Graebner, MA Jeffrey & RT Philip 'Qualitative data: Cooking without a recipe' (2012) 10(3) *Strategic Organization doi: 10.1177/1476127012452821*.

Chapter 9 which conveyed the results of the overall empirical research statistically. Statistics can be described as the collection, analysis, presentation and interpretation of data that is in numerical form.[110] This can be done by using histograms, tables and graphs to describe the ordinal and interval variables.[111] Descriptive data describes or arranges data in a visual way that allows a researcher to identify patterns and trends.[112] In the current study, graphs and charts were essential in summarising the raw data generated and presenting the results as statistics from which descriptive and inferential analysis could be conducted.

2.8. ETHICAL CLEARANCE

This research study was guided by the regulations on research endorsed by the University of Kwazulu-Natal's Ethics Policy and the Human Social Sciences Research Ethics Committee. Ethical clearance was granted from the University of KwaZulu-Natal prior to the collection of data. Written consent from the participating organisational directors was obtained before individual participants were contacted. All participants were informed of the objectives of the research and their consent was sought prior to administering the questionnaires. All participants were informed that they could view the results of the research at the conclusion of the study. The participants were advised that their participation in the study was voluntary and that no adverse consequences would arise should they decide to withdraw from the study at any stage of the research. They were also guaranteed anonymity during the research process as well as after the results of the research are finalised. Data will be securely stored at all times for a period of five years, thereafter the data will be destroyed.

2.9. LIMITATIONS IDENTIFIED IN THE STUDY

One of the main limitations was the small sample size in the empirical study. The population comprised of 23 NGOs in Pietermaritzburg, however, only four of these NGOs indicated that they dealt with child labour issues. Thus, the study was limited to only 26 participants from the four NGOs, the Department of Labour and the Department of Social Development. This limitation is discussed in detail in correlation with the findings in Chapter Nine.

A second limitation was the unavailability of current statistics on child labour in South Africa. The last survey conducted by Stats SA was carried out in 2019 and released in 2021. Much has transpired since 2019; for example, the coronavirus (COVID-19) pandemic

[110] S Gupta *Research Methodology and Statistical Techniques* (2007) 46.
[111] Ibid.
[112] EG Guba & YS Lincoln 'Competing paradigms in qualitative research' in NK Denzin and YS Lincoln (eds) *Handbook of Qualitative Research* (1994) 163-194.

may have increased the incidence of child labour. Thus, the 2019 data may not accurately reflect the current situation with regard to child labour. This highlights the need for studies to be conducted to address this gap in knowledge. This limitation is discussed further in Chapter Nine.

Another limitation that was identified was the lack of accessible literature discussing child labour legislation in the USA, in contrast to what was available for South Africa and Uganda. This limited the analysis of some areas of child labour laws in the USA. Further limitations, such as questions in the questionnaire which did not meet the score of 7 in the reliability test had to be removed. The reliability test and its implications are discussed in detail in correlation with the findings in Chapter Nine.

2.10. CONCLUSION

This chapter has presented the theoretical framework that guided this study and the methodology used to carry out the study. The theoretical framework provided a controlled and defined parameter for the researcher to undertake the fieldwork and gather the data required. The study was designed with two parts: A desktop study and an empirical study. The desktop study sought to provide a comprehensive understanding regarding the concept of child labour and the challenges in its eradiation. The empirical study sought to establish that the causes and challenges of child labour that can be found in the City of Pietermaritzburg is experienced in South Africa as a whole. The correlation between the desktop study and the empirical study is presented in Chapter Nine.

Chapter Three will discuss the literature on the concept of child labour and provide a bedrock for understanding child labour from the African context.

CHAPTER THREE: LITERATURE REVIEW

3.1. INTRODUCTION

3.2. CHILD LABOUR

3.2.1. WHO IS A CHILD?

3.2.2. WHAT IS CHILDHOOD?

3.2.3. WHAT IS CHILD LABOUR?

3.2.4 WHAT IS THE INFORMAL ECONOMY?

3.2.5. WHAT IS CHILD WORK?

3.3. CAUSES OF CHILD LABOUR

3.3.1. POVERTY

3.3.2. HIV/AIDS AND CHILD-HEADED HOUSEHOLDS

3.3.3. EDUCATION

3.3.4. FAMILY SIZE AND BIRTH ORDER

3.3.5. URBAN MIGRATION

3.3.6. WAR AND POLITICAL UNREST

3.3.7. GLOBALISATION

3.3.8. LACK OF REGULATION AND INCONSISTENCIES WITHIN THE LAW

3.3.9. CULTURE AND TRADITION

3.4. CONCLUSION

3.1. INTRODUCTION

This chapter explores the distinction between child work, which is lawful, and child labour, which is not, by reviewing previous research in this area. Section 3.2 explores literature on previous research on child labour and the various viewpoints and factors surrounding the concept of child labour. As an understanding of child labour and its underlying causes must be grounded in a concept of a child, childhood and child work, these are discussed in this section. Section 3.4 examines the problem of child labour by discussing the causes of child labour and so establish the rationale of this study. The discussion in this chapter addresses child labour from an international perspective which incorporates literature on child labour from different international instruments and countries globally, and does not focus on any individual country; it does, however, consider the African context.

3.2. CHILD LABOUR

3.2.1. WHO IS A CHILD?

The discourse on child labour highlights three elements that are pivotal to the definition of child labour: establishing who qualifies as a child, what qualifies as labour, and what constitutes lawful and unlawful child work?[113] The definition of the term 'child' is subject to a number of factors such as race, physical structure of the child, religious and cultural ideologies.[114] However, the universal term 'child' connotes the chronological age of the child who undertakes work.[115]

In the international legal context, the United Nations Convention on the Rights of the Child (1989) (CRC) regards children as being "[e]very human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier."[116] This definition does not take into consideration that culture and society often dictate when a child reaches majority and becomes an adult.[117] Hence, age may not be an appropriate criterion for classifying an individual as a child as socio-cultural norms may postulate different demarcations for the end of childhood and the beginning of adulthood.[118] Thus in order for one to fully comprehend the definition of a child, one must understand the concept of childhood.[119] South Africa has brought its legislation in line with international regulations as discussed in Chapter Four, as section 1 of the Children's Act defines a child as a human being under the age of eighteen years old.[120] However, this study argues that the alignment with international regulations that define who a child is, does not correlate with the African cultural definitions of a child.

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[113] C Hedges, E Ingleby & M Martin 'Children's rights and child labour' (2023) 5(2) *PRISM Journal* 33-46, J Tobin 'Justifying children's rights' (2013) 21(3) *International Journal of Children's Rights* 395-441, WE Myers 'The right rights? Child labor in a globalizing world' (2001) 575(1) *Annals of the American Academy of Political and Social Science* 38-55.

[114] G Lansdown & Z Vaghri 'Article 1: Definition of a child' in Z Vaghri et al (eds) *Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research* vol 25 (2022) 2-5, J Qvortrup 'Are children human beings or human becomings? A critical assessment of outcome thinking' 2009 *Rivista Internazionale di Scienze Sociali.* 631-654, K Bacon & Z O'Riordan 'Who do you think you are? Children's definitions of being a 'child'' (2023) 37 *Children & Society* 1136 – 1138, J Britton 'Young people as moral beings: Childhood, morality and inter-generational relationships' (2015) 29 *Children & Society* 495–507.

[115] I Séguy et al 'Chronological age, social age and biological age' (2019) 1-5, L Tisdall 'State of the field: The modern history of childhood' (2022) 107(378) *History* 952-953.

[116] The CRC; Article 1.

[117] IC Isidienu 'The impact of culture on the development of a child' (2017) *UJAH Special Edition* 165-166, L Aguayo et al 'Cultural socialization' in childhood: Analysis of parent-child conversations with a direct observation measure' (2021) 35(2) *Journal of Family Psychology* 2-4, JK Cowan, M Dembour & R Wilson *Culture and Rights: Anthropological Perspective* (2001) 84.

[118] AS Carter, MJ Briggs-Gowan & NO Davis 'Assessment of young children's social-emotional development and psychopathology: Recent advances and recommendations for practice' (2004) 45(1) *Journal of Child Psychology and Psychiatry* 109–134.

[119] H Penn *Understanding Early Childhood- Issues and Controversies* 3rd ed (2004) 131-132.

[120] The Children's Act; s 1.

3.2.2. WHAT IS CHILDHOOD?

What is understood by the term 'childhood' depends on a number of factors, such as cultural context, time period and socioeconomic conditions.[121] Characteristics such as gender, race, ethnicity, social class and rural or urban context are also factors that play a role in determining whether or not a child is expected to work, and the type of work the child is expected to perform, according to a particular social order.[122] Childhood is acknowledged by academics as a transitory period in every individual's life which begins with complete dependence in infancy and arrives at independence in adulthood.[123] At the time of the drafting of the CRC and Convention 138, western culture viewed childhood as an unperturbed period of play, leisure and schooling, free from the demands of work. This created the perception that children were incapable of undertaking adult roles such as work and decision-making. Children were viewed as being dependent on their parents and were not considered as autonomous beings capable of making decisions regarding their own lives.[124] Previously, in the western societies of the developed world there was an underlying individualistic value that prioritied the development of children that was independent from the broader socio-economic and cultural conditions of society.[125]

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[121] X Chen, M Liu & Q Bian 'Culture and children's social development' in PK Smith & CH Hart (eds) *The Wiley-Blackwell Handbook of Childhood Social Development* 3rd ed (2022) 241–259, X Chen 'Culture and early socio emotional development' *Encyclopaedia on Early Childhood Development* (2023) 5, LS Bashatah 'Cultural politics and the role of rights in childhood' (2018) 6(3) *Journal of Research in Humanities and Social Science* 23-24, G Van Bueren *The International Law on the Rights of the Child* (1998) 33.

[122] M Ilias & R Akter 'Social history of childhood and children: A note on the cultural and historical differences in child care' (2017) 22(7) *IOSR Journal of Humanities and Social Science* 55, T Shayan 'The culture of childhood in (and) spaces of resistance' (2022) 23(2) *Contemporary Issues in Early Childhood* 122-138, EH Rad, H Gholampoor & E Jaafaripooyan 'Child labor and the influencing factors: Evidence from less developed provinces of Iran' (2015) 44(9) *Iran Journal of Public Health* 1249.

[123] GH Graf, P Biroli & DW Belsky 'Critical periods in child development and the transition to adulthood' (2021) 4(1) *JAMA Network Open* 2-3, X Zhang & AM Hammersmith 'Children's transitions to adulthood and midlife parents' depressive symptoms and activities of daily living conditions in the United States' (2023) 20 *International Journal of Environmental Research in Public Health* 2, M Bourdillon 'Child labour and education: A case study from South-Eastern Zimbabwe' (2000) 15(2) *Journal of Social Development in Africa* 6.

[124] KD Whitworth 'Western depictions of children and the new imperialism' (2010) *E-International Relations* 1-8, E Schraube & U Osterkamp 'The colonization of childhood: Psychological and psychoanalytical explanations of human development' in E Schraube & U Osterkamp (eds) *Psychology from the Standpoint of the Subject* (2003) 210–230, L Cano-López et al 'How does the family influence the process of transition to adulthood? A comparative study of young people with and without family ties in Spain' (2021) 13 *Sustainability* 2-4, L Richter et al 'Early childhood development: an imperative for action and measurement at scale' (2019) 4 *BMJ Global Health* i154–i160, E Stapley et al 'A scoping review of the factors that influence families' ability or capacity to provide young people with emotional support over the transition to adulthood' (2021) 12 *Frontiers in Psychology* 1-3.

[125] W Yang, M Tesar & H Li 'Childhood, curriculum, and culture in diverse contexts' (2022) 5(2) *ECNU Review of Education* 209-210, AJ Pumariega & SV Joshi 'Culture and development in children and youth' (2010) 19 *Child Adolescent Psychiatric Clinics of North America* 661-662, M Sironi *The Transition to Adulthood in the Developed Western World: a Focus on the Achievement of Economic Independence and on the Role of Family Background* (Unpublished PhD dissertation, University of Pennsylvania, 2013) 17-20, FF Furstenberg Jr

It is imperative to note that the CRC and the ILO Conventions were aligned with these Western constructions of childhood.[126] This approach did not recognise that different cultures construct childhood differently and that children grow up in conditions with different constraints.[127] The CRC thus normalised a model that assumed that children in all countries experienced the same needs and that these needs could be met with a standardised response.[128] The western perceptions of childhood have evolved over the years to consider children as rights-based holders who have autonomy and the maturity to make their own decisions. This essentially means that children today are considered capable of making choices regarding their own lives. They are no longer considered solely dependent on their parents. They are regarded as possessing the ability to undertake adult roles such as work or caring for younger siblings when the situation requires. Thus, the concept of work is now considered in a positive light as it teaches children responsibilities that equip them to be mature adults.[129]

The first factor that informs a society's conception of childhood is the cultural context of the child.[130] In the African cultural context, work is not seen as incompatible with childhood.[131] It is pertinent that a comprehensive understanding regarding African cultural norms is established in this study as South Africa is a predominantly African country and the

'Transitions to adulthood: What we can learn from the West' (2013) 646 *The Annals of the American Academy of Political and Social Science* 31-32, S Wise & S Sanson 'Child care in cultural context: Issues for new research' (2002) 22 *Australian Institute of Family Studies* 3.

[126] EA Faulkner & C Nyamutata 'The decolonisation of children's rights and the colonial contours of the Convention on the Rights of the Child' (2020) 28(1) *The International Journal of Children's Rights* 167-169, E Van Daalen & K Hanson 'The ILO's shifts in child labour policy: regulation and abolition' (2019) 11(11) *International Development Policy* 133–150, S Canagarajah & SH Nielsen 'Child labor in Africa: A comparative study' (2001) 575(1) *The ANNALS of the American Academy of Political and Social Science* 71–91, G Nesi, L Nogler & M Pertile (eds) *Child Labour in a Globalized World* (2008) 30.

[127] J Adu-Gyamfi & F Keating 'Convergence and divergence between the UN Convention on the Rights of the Children and the African Charter on the Rights and Welfare of the Child' (2013) 3(1) *Sacha Journal of Human Rights* 47-49, A Naz et al 'Social and cultural determinants of child labor in Pakistan' (2019) 10(2) *Clinical Social Work and Health Intervention* 80–92, H Wondimu 'A cultural syndicate of society and NGOs challenges to deter child labor manipulation in Addis Ababa' (2022) 25(4) *Journal of Mother and Child* 986–1004.

[128] A Quennerstedt, C Robinson & J I'Anson 'The UNCRC: The voice of global consensus on children's rights?' (2018) 36(1) *Nordic Journal of Human Rights* 40-45, O Nieuwenhuys 'Theorizing childhood(s): Why we need postcolonial perspectives' (2013)20(1) *Childhood* 3–8, N Titi 'Decolonising theorising on children: Moving towards African-centred childhood studies pedagogy of sexual violence and trauma' (2023) 37(3) *South African Journal of Higher Education* 229, V Pupavac 'The infantilisation of the South and the UN Convention on the Rights of the Child' (1998) 3 *Human Rights Law Review* 3.

[129] Ilias & Akter (note 122 above; 54-59).

[130] Chen (note 121 above;1-5), IC Isidienu 'The impact of culture on the development of a child' (2017) *UJAH Special Edition* 163-166.

[131] A Abdullah et al 'Social norms and family child labor: A systematic literature review' (2022) 19 *International Journal of Environmental Research Public Health* 2-4, U Haring, R Sorin & NJ Caltabiano 'Reflecting on childhood and child agency in history' (2019) 52 *Palgrave Commun* 2-3, S Oppong 'A critique of early childhood development research and practice in Africa' (2015) 45(1) *Journal of Development Studies* 28-30, B Rogoff et al 'Children's development of cultural repertoires through participation in everyday routines and practices' In JE Grusec & PD Hastings (Eds.) *Handbook of socialization* (2005) 490–515.

majority of working children are found in rural areas where African culture is a dominant influence in the upbringing of a child.[132]

African society is embodied by three main values: A continued family line, the survival of the family and the extended community.[133] African children are regarded as having a responsibility or duty to engage in work primarily for the survival of their families.[134] The African child is expected to engage in work as a method of extending their intellectual and physical capabilities for the furtherance of the community to ultimately conserve and maintain the cultural values entrenched in their societies.[135] The concept of childhood in the African culture focuses on the role of the child in the community in determining whether children should work.[136] African society considers childhood to be a time for gaining knowledge, developing character, and developing practical and social abilities that are deemed indispensable to undertake future responsibilities as an adult. Thus, work is regarded as intrinsic to the development of the child.[137]

Work, in African cultures, is understood as an important means of transferring the knowledge that is essential for the livelihood of the child when he or she becomes an

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[132] LR de Castro 'Why global? Children and childhood from a decolonial perspective' (2020) 27(1) *Childhood* 50-53, R Maconachie, N Howard & R Bock *Theorising 'Harm' in Relation to Children's Work* ACHA Working Paper 4 (2020) *Brighton: Action on Children's Harmful Work in African Agriculture, Institute of Development Studies* 1-5, J Sumberg & R Sabates-Wheeler 'Children's work in African agriculture: Time for a rethink' (2020) 49(2) *Outlook on Agriculture* 100-101.

[133] The African Children's Charter; Article 31, GE Idang 'African culture and values' (2015) 16(2) *Phronimon* 97-100.

[134] J Sloth-Nielsen & BD Mezmur 'A dutiful child: The Implications of Article 31 of the African Children's Charter' (2008) 52(2) *Journal of African Law* 183, ATD Imoh 'Reciprocity, respect and responsibility: The 3Rs underlying parent-child relationships in Ghana and the implications for children's rights' (2009) 17(3) *International Journal of Children's Rights* 415-432, A Gatsinzi & G Hilson ''Age is just a number': Articulating the cultural dimension of child labour in Africa's small-scale mining sector' (2022) 78 *Resources Policy* 1-32, M Bonnet 'Child labour in Africa' (1993) 132(3) *International Labour Review* 375.

[135] W Mucherah & T Mbogori 'Examining child development from an African cultural context' (2019) 1(1) *Global Journal of Transformative Education* 12, C Agulanna 'Community and human well-being in an African culture' (2010) 14(64/59) *TRAMES* 284, R Maconachie & G Hilson 'Re-thinking the child labor "problem" in rural sub-Saharan Africa: The case of Sierra Leone's "half shovels"' (2015) 78 *World Develoment Report* 136-147.

[136] A Strohwald 'An analysis of the role of African values, traditions and morals in the interpretation of children's rights' (2023) (26) *PER* 11, T Abebe & Y Ofosu-Kusi 'Beyond pluralizing African childhoods: Introduction' (2016) 23(3) *Childhood* 23(3) 304, AP Ndofirepi & A Shumba 'Conceptions of "child" among traditional Africans: A philosophical purview' (2014) 45(3) *Journal of Human Ecology* 233-242.

[137] AN Tshugulu 'The influence of culture on child rights violations in Zimbabwe: A case study' (2023) 9(3) *Social Work* 245-247, O Demkowicz et al '"We want it to be a culture": children and young people's perceptions of what underpins and undermines education-based wellbeing provision' (2023) 23:1305 *BMC Public Health* 2, W Mucherah & T Mbogori 'Examining child development from an African cultural context' (2019) 1(1) *Global Journal of Transformative Education* 11-12, O Agbu *Child Labour in Contemporary Africa – Issues and Challenges* (2009) 11.

adult.[138] Thus, it is seen as appropriate for children to work in an array of areas such as building, agriculture, art, cooking, and child rearing and traditional medicine.[139] The type of work that is required of a child depends largely on the child's gender.[140] Girls are usually expected to engage in domestic activities such as cooking, cleaning the family home, washing clothes, collecting firewood and water, and caring for younger siblings. These types of activities are deemed necessary to train a girl for her future role as a mother and wife. Boys are expected to cultivate crops and herd cattle.[141]

The second factor that informs a society's concept of childhood is the point of demarcation between childhood and adulthood.[142] This demarcation is usually endorsed through the customs and traditions of the specific culture. In many African cultures, it is customary for children to marry before they are 18 years of age; by marrying, they gain the status of adults.[143] Furthermore, in most African societies a girl is recognised as an adult upon

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[138] AP Ndofirepi 'Philosophy for children: The quest for an African perspective' (2011) 31 *South African Journal of Education* 245-247, TI Waziri 'The impact of cultural norms on influencing child labour practices in Tanzania: The case study of small -scale mining in Morogoro District, Tanzania' (2019) 7(4) *The International Journal of Humanities & Social Studies* 145-146.

[139] M Nyarota et al 'Indigenous culinary claims and cultural heritage preservation: A viewpoint' (2022) 3(1) *Journal of African Cultural Heritage Studies* 138-139, L Cindi *Incorporating African Indigenous Knowledge Systems into the Basic Education curriculum: Experiences from Two Schools in the Gauteng and KwaZulu-Natal Provinces, South Africa* (Unpublished Master's thesis, University of the Free State, 2021) 17-24, ME Mothibe & M Sibanda 'African traditional medicine: South African perspective' in C Mordeniz (ed) *Traditional and Complementary Medicine* (2019) 1-2, A Breidlid 'Culture, indigenous knowledge systems and sustainable development: A critical view of education in an African context' (2009) 29 *International Journal of Educational Development* 140 – 148, CT Eyong 'Indigenous knowledge and sustainable development in Africa. Case study on Central Africa' in EK Boon & L Hens (eds) *Indigenous Knowledge Systems and Sustainable Development: Relevance to Africa* (2007) 121 – 139.

[140] DL Putnick & MH Bornstein 'Girls' and boys' labor and household chores in low and middle-income countries' (2016) 81(1) *Monographs in Social Research in Child Development* 2-3, HP Khosa-Nkatini, W Buqa & N Machimana 'Gender role changes in African households: A challenge to theology and psychology' (2023) 57(1) *In die Skriflig* 2-4, R Bray 'Who does the housework? An examination of South African children's working roles' (2003) 29 *Social Dynamics* 95-131.

[141] FT Ogunyemi & E Henning 'From traditional learning to modern education: Understanding the value of play in Africa's childhood development' (2020) 40(2) *South African Journal of Education* 2, A Akkari 'Early childhood education in Africa: Between overambitious global objectives, the need to reflect local interests, and educational choices' (2022) 52 *Prospects* 13-14, J Chikovore et al 'Children's learning in the diverse socio-cultural context of South Africa' (2012) 88(5) *Child Education* 304-308.

[142] E Schroeder et al 'The impact of adolescent initiation rites in East and Southern Africa: Implications for policies and practices' (2022) 27(1) *International Journal of Adolescence and Youth* 181-182, RT Lebese et al 'Rite of passage: An African indigenous knowledge perspective' in FM Mulaudzi & RT Lebese (eds) *Working with Indigenous Knowledge: Strategies for Health Professionals* (2022) 51-68, M Bourdillon & G Spittler *African Children at Work* (2012) 2.

[143] T Siweya, T Sodi & M Douglas 'The notion of manhood embedment in the practice of traditional male circumcision in Ngove Village, Limpopo, South Africa' (2018) 12(5) *American Journal of Men's Health* 1567–1574, Ghana Statistical Service 'About 80,000 girls in Ghana aged 12 to 17 years already married or living with a man' *Monthly Press Release* 1 October 2022, T Muzingili & R Taruvinga 'Culturally-inflicted child rights violation: A case of khomba practice of Shangaan people in Zimbabwe Mgbakoigba' (2017) 17(1) *Journal of African Studies* 35, R Levine 'Ethnographic studies of childhood: A historical overview' (2007) 109(2) *American Anthropologist* 250.

puberty or when she has her first child, and a boy is recognised as a man when he performs initiation rites.[144] Therefore, a child in an African society may be regarded as an adult before they reach the age of 18 years, and would be expected to undertake work and perform any domestic or economic activity necessary for the sustenance of the family.[145]

The third factor contributing to a society's concept of childhood pertains to the intellectual competence of a child.[146] This element relates to whether a child, due to his or her intellectual competence, should be held accountable for his or her actions. More pertinent is whether children who are deemed to possess adult understanding or reason should be permitted to contribute to, or actively engage in, the operation of the economy in society.[147] This element however fails to acknowledge that children are obtaining their independence and autonomy at a younger age whether it pertains to decisions regarding their employment or in a personal dimension.[148] Therefore, it is crucial that greater protection is afforded to children during this time of childhood.[149]

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[144] T Nomngcoyiya & SM Kang'ethe 'The impact of traditional male circumcision challenges on newly initiated men's advancement in education: Implications for human rights and social work in South Africa' (2021) 6 *Journal of Human Rights Social Work* 204–206, J Johnson 'Feminine futures: Female initiation and aspiration in matrilineal Malawi' (2018) 24(4) *The Journal of the Royal Anthropological Institute* 786–803, M Douglas et al 'Opinions and perceptions regarding traditional male circumcision with related deaths and complications' (2017) 12(2) *American Journal of Men's Health* 453-462, CN Nwadiokwu 'Rites of passage African traditional regions' (2016) 4(9) *International Journal of Education and Research* 45-46, L Malisha, P Maharaj & M Rogan 'Rites of passage to adulthood: Traditional initiation schools in the context of HIV/AIDS in the Limpopo Province, South Africa' (2008) 10(6) *Health, Risk & Society* 585–598.

[145] AO Lapushkina 'Transformations of traditional culture: The role of rites of passage among the Avatime people in the modern era' (2020) 19(1) *Social Evolution & History* 74-76, I Sociologist et al 'Social change and development: connecting modernization and family institution on qualitative grounds' (2020) 8(6) *Humanities & Social Sciences Reviews* 82-84, M Banwari 'Dangerous to mix: Culture and politics in a traditional circumcision in South Africa' (2015) 15(1) *African Health Sciences* 283–287.

[146] S Siphai, S Siphai & J Sakulku 'The development of early childhood intellectual capacities in the child development centers of the local administrative organizations, Chaiyaphum' (2023) 3(5) *International Journal of Sociologies and Anthropologies Science Reviews (IJSASR)* 9-10, L Valoviˇcová 'Stimulation and development of intellectual abilities in preschool-age children' (2020) 10(43) *Education Science* 2-3, N Wahiddin 'Analysis of children's intellectual development: A study at Mawar Kindergarten' (2019) 337 *Advances in Social Science, Education and Humanities Research* 213.

[147] K Murris 'Children's development, capability approaches and post developmental child: The birth to four curriculum in South Africa' (2019) 9 *Global Studies of Children* 56–71, TM Collins 'A child's right to participate: Implications for international child protection' (2016) 21(1) *The International Journal of Human Rights* 1-33, M Ruiz-Casares et al 'Children's rights to participation and protection in international development and humanitarian interventions: Nurturing a dialogue' (2017) 21(1) *The International Journal of Human Rights* 1-2.

[148] T Ke 'The development of children's autonomy and reasonable paternalistic intervention' (2023) 10(874) *Humanities & Social Science Communications* 2-3, A Cerino 'The importance of recognising and promoting independence in young children: The role of the environment and the Danish forest school approach' (2021) 51(4) *Education* 691, M Saleh et al 'A case study of culturing children's independence attitude through parent's role and teacher's role' (2022) 9(1) *JPPM* (Jurnal Pendidikan dan Pemberdayaan Masyarakat) 38-40.

[149] S Eija, M Mustola & M Alasuutari 'Dilemmas related to young children's participation and rights: A discourse analysis study of present and future professionals working with children' (2024) 13 (27) *Social Sciences* 1-5.

It is thus imperative that, when defining the term 'child', in addition to the chronological age of a child, factors such as culture, race, maturity, competence and the physical structure of a child are taken into consideration, as these factors provide a holistic understanding of who the child is within the particular context in which they live.[150] Even though there are different viewpoints on childhood that have presented different understandings on child labour, it is held that childhood is a pivotal period of human development.[151]

3.2.3. WHAT IS CHILD LABOUR?

Child labour has not been defined in international legislation.[152] South Africa defines child labour as any form of work undertaken by children under 15 years of age.[153] In other countries, the term may take on different meanings.[154] Child labour is often characterised as work that denies children a normal childhood, causes harm to their mental and physical growth, violates their dignity and limits their potential to become productive adults.[155]

The ILO regards work as any economic activity which makes a contribution to a country's Gross Domestic Product (GDP) in accordance with the requirements entrenched by the International System of National Accounts (ISNA).[156] However, when defining child labour, the ILO does not focus its attention on the economic perception of work but rather

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[150] L Emerson & K Lloyd 'Measuring children's experience of their right to participate in school and community: A rights-based approach' (2017) 31(2) *Children and Society* 120-133, M Mitchell, L Lundy & L Hill 'Children's human rights to 'participation' and 'protection': Rethinking the relationship using Barnahus as a case example' (2024) 32(6) *Child Abuse Review* 1-3, H Kruger 'The protection of children's right to self-determination in South African law with specific reference to medical treatment and operations' (2018) 21(1) *PE LJ* 6-7, M Oliver, O Dupper & A Govindjee *The Role of Standards in Labour and Social Security Law* (2013) 144.

[151] L Richter et al 'Early childhood development: an imperative for action and measurement at scale' (2019) 4 *BMJ Global Health* i154–i160.

[152] HC Fors 'Child labour background, challenges, and the role of research in achieving Sustainable Development Goal 8.7' (2023) *Working Paper in Economics No. 840*, Department of Economics, University of Gothenburg 2-3, M Hoque 'Reviewing child labour and its worst forms: Contemporary theoretical and policy agenda' (2021) 6(4) *Journal of Modern Slavery, child labour Special Edition* 34-36, A Krauss 'Understanding child labour beyond the standard economic assumption of monetary poverty' (2016) *Cambridge Journal of Economics* 4-5, A Tifow *Modelling the Key Determinants of Child Labour in Somalia* (Unpublished Master's thesis, University of Nairobi, 2014) 2.

[153] The BCEA; s 43.

[154] Abdullah et al (note 131 above; 2-3), A Dammert et al 'Effects of public policy on child labor: Current knowledge, gaps, and implications for program design' (2018) 110 *World Development* 104-106.

[155] R Maconachie, N Howard & R Bock 'Re-thinking 'harm' in relation to children's work: A 'situated,'multi-disciplinary perspective' (2022) 50(3) *Oxford Development Studies* 259-260, K Roelen et al 'Understanding children's harmful work: A review of the methodological landscape' (2020) *ACHA Working Paper 3*. Brighton: Action on Children's Harmful Work in African Agriculture, IDS 52-53, D Shendell et al 'Exposures resulting in safetyand health concerns for child laborers in less developed countries' (2016) 1 *Journal of Environmental and Public Health* 6-7, GK Lieten 'What happened to the worst forms?' (2006) 41(2) *Economic and Political Weekly* 104.

[156] ILO 'Conceptual framework for statistics on the informal economy' 21st International Conference of Labour Statisticians Geneva, 11-20 October 2023 24-47, ILO *World Employment and Social Outlook Trends* 2022 (2022)18.

emphasises the type of work undertaken and the possible harm it may cause to the child worker.[157]

It is imperative to note that not all instances of children performing work is considered by academics in a negative light as some make a distinction between 'work' and 'labour.'[158] Child labour focuses on children working illegally, where they are prone to exploitation and abuse. Children who engage in child labour are frequently confronted with working conditions that put them at risk; for example, health risks due to contact with poisonous substances; exposure to intense climate conditions, where they work under extremely hot or cold conditions; lack of protection from natural disasters such as floods and fires; working with dangerous or heavy machinery or the haulage of heavy consignments, potential attacks by wild animals or reptiles within the agricultural sector; falls from unsecure heights; and psychological trauma as a result of verbal abuse by employers.[159]

Child labour can be categorised under three broad headings: work that children perform at home for their family; work that children perform for their family but that takes place away from the family home; and work that is performed for someone other than the child's family.[160]

Work that children perform for their family is usually unpaid; this includes any domestic activity or farming undertaken for the survival of the family.[161] While this low-skilled work is performed for the family, it may entail excessively long hours , denying children full

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[157] A Ibrahim et al 'Child labor and health: A systematic literature review of the impacts of child labor on child's health in low- and middle-income countries' (2018) 41(1) *Journal of Public Health* 19.

[158] D Aufseeser et al 'Children's work and children's well-being: Implications for policy' (2018) 36 *Development Policy Review* 242, SK Jha & V Malviya 'Employment and working conditions of child labour' (2020) 8(1) *Journal of Politics & Governance* 41-42, MJ Hossain 'Child labor in the harmful work and concerned issues: Bangladesh perspective' (2011) 3(4) *European Journal of Business and Management* 214.

[159] BL Batomen Kuimi et al 'Child labour and health: A systematic review' (2018) 63 *International Journal of Public Health* 663–672, Ibrahim et al (note 157 above; 18–26), ML Sámano-Ríos et al 'Occupational safety and health interventions to protect young workers from hazardous work—A scoping review' (2019) 113 *Safety Science* 389–403, IPEC *Rapid Assessment of Child Labour in the Agricultural Sector in Central and North East Districts of Botswana*' (2011) 10.

[160] Abdullah et al (note 131 above; 4082), R Musizvingoza, J Blagbrough & NS Pocock 'Are child domestic workers worse off than their peers? Comparing children in domestic work, child marriage, and kinship care with biological children of household heads: Evidence from Zimbabwe' (2022) 19 *International Journal Environmental Research Public Health* 4-5, J Blagbrough 'Child domestic work: Summary framing paper' (2021) 4-10, N Ramanan et al "The mother I was born to or the one I worked for?": An exploratory study on family separation in live-in child domestic workers in Karnataka, India' (2021) 117 *Child Abuse & Neglect* 105081.

[161] Y Dinku, Yonatan, D Fielding & M Genc 'Counting the uncounted: The consequences of children's domestic chores for health and education in Ethiopia' (2019) 23(3) *Review of Development Economics* 1260-1281, DL Putnick & MH Bornstein 'Girls' and boys' labor and household chores in low and middle-income countries' (2016) 81(1) *Monographs in Social Research in Child Development* 2-3, E Webbink, J Smits & E de Jong 'Hidden child labour: Determinants of housework and family business work of children in 16 developing countries' (2010) *NiCE Working Paper 10-110* 2-4.

access to education or the adequate free time to do homework for school outside of school hours.[162] This type of child labour usually occurs in rural areas where farming is a primary source of sustenance. Aspects of agricultural work may endanger the health of children; for example, through exposure to pesticides and other harmful substances.[163] This type of child labour is pernicious as it usually traps children in a perennial cycle of poverty and exploitation which is not easily escapable.[164] UNICEF categorises children as engaging in child labour if they perform domestic chores at home for 28 hours per week or more.[165]

The second category of child labour relates to children working with extended family outside of their own home. Due to the hidden manner in which work is performed within the private homes of extended family, exploitation of children may go unnoticed.[166] Child labour in this category usually takes place in one of the following sectors: domestic services, farming, self-employment, or informal employment.[167] Children engaged in work within this category are compelled to leave school or combine working and schooling in order to work for the survival of their family.[168] It has been noted that children who leave school temporarily to

[162] ILO & IPEC 'Making progress against child labour: Global estimates and trends 2000-2012' (2013) 7.
[163] NB Scott & NS Pocock 'The health impacts of hazardous chemical exposures among child labourers in low- and middle-income countries' (2021) 18(10) *International Journal of Environmental Research Public Health* 1-35, ILO 'Towards the Urgent Elimination of Hazardous Child Labour (2018) 1-5, TN Hanvold et al 'Occupational Safety and Health Among Young Workers in the Nordic Countries: A Systematic Literature Review' (2019) 10 *Safety Health Work* 3–20.
[164] MP Lambon-Quayefio & NS Owoo 'Investigating the long-term effects of child labor on household poverty and food insecurity in Ghana' (2021) 87 *Journal of Demographic Economics* 562-563, JC Andvig, S Canagarajah & A Kielland 'Child labor in Africa: Issues and challenges' (2001) 5, U De Villard 'Breaking the rural poverty cycle: Getting girls and boys out of work and into school' (2010) [2].
[165] ILO and United Nations Children's Fund *Child Labour: Global Estimates 2020, Trends and the Road Forward* (2021) 2021 28-47, J Kane 'What the economic crisis means for child labour' (2009) *Global Social Policy* 9 (Supp) 180.
[166] Z Trodd et al 'Beyond the walls: Patterns of child labour, forced labour, and exploitation in a new domestic workers dataset' (2024) 14(5) *Societies* 1-2, FT Progga et al 'A deep learning based approach to child labour detection' *Paper presented at 6th Information Technology International Seminar (ITIS) Surabaya, Indonesia, October 14–16* 24–29, DL Tepper, TJ Howell & PC Bennett 'Executive functions and household chores: Does engagement in chores predict children's cognition?' (2022) 69(5) *Australian Occupational Therapy Journal* 587, U De Villard 'Breaking the rural poverty cycle: Getting girls and boys out of work and into school' (2010) [2].
[167] A Ilyas, MS Shahid & RA Hassan 'Evaluating the motives of child labourers in the informal economy' (2020) 3/4 *IJSSP* 410-411, G Latif, EI Ilori & FW Salisu 'A critical analysis of the factors influencing child labour in onion farming in Garu Tempane District in the Upper East region of Ghana' (2022)12(2) *African Journal of Social Work* 1-5, C Muntaner et al 'Unemployment, informal work, precarious employment, child labor, slavery, and health inequalities: Pathways and mechanisms' (2010) 40(2) *International Journal of Health Services* 281-295.
[168] EK Ambetsa 'Children\s perspectives on involvement in housework and its effect on academic performance in early childhood at city primary schools, Nairobi, Kenya' (2016) 3(11) *Advances in Social Sciences Research Journal* 223-233, M Bourdillon 'Child labour and education: A case study from South-Eastern Zimbabwe' (2000) 15(2) *Journal of Social Development in Africa* 8-9.

meet the needs of the family or to earn money to send their siblings to school often do not re-enter school and are subsequently denied a proper education.[169]

When children engage in work within the domestic sphere or for the family external to the home, they provide a direct benefit to the family. This benefit can take the form of money earned for sustaining the needs of the family or by freeing adult members of the family from these domestic tasks so that they can enter the labour market.[170]

The third category of child labour is the employment of children in industrial, agricultural or commercial enterprises.[171] In these sectors, children engaged in child labour may be vulnerable to abuse and exploitation, and may be coerced into dangerous or harmful activities acts such as child prostitution and pornography, military operations and mining.[172]

The ILO has defined when work is considered child labour based on the age of the child, the kind of work undertaken, the number of hours worked and the circumstances under which work is conducted.[173] The concept of work can subsume any activity from

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[169] AN Amedu & OV Ossai 'Influence of child labour on primary school pupil's enrolment and dropout: A scoping review' (2023) 4(3) *Journal of Education and Teaching* 397, J Bai & Y Wang 'Returns to work, child labor and schooling: The income vs. price effects' (2020) 145 *Journal of Development Economics* 102466 1-2, T Xayavong & P Pholphirul 'Child labour and school dropout in least developed countries: Empirical evidence from Lao PDR' (2018) 9(1) *International Journal of Education Economics and Development* 1–23, Y Shanan 'The effect of compulsory schooling laws and child labor restrictions on fertility: Evidence from the early twentieth century' (2023) 36(1) *Journal of Population Economics* 321–358, R Islam & MM Hoque 'Trade-off between schooling and labor for children: Understanding the determinative factors among rural households in Bangladesh' (2022) 7:839231 *Frontiers in Sociology* 1-3, A De Janvry et al 'Can conditional cash transfer programs serve as safety nets in keeping children at school and from working when exposed to shocks?' (2006) 79 *Journal of Development Economics* 350.

[170] II Abdullahi et al 'Does poverty influence prevalence of child labor in developing countries?' (2016) 6(1) *International Journal of Economics and Financial Issues* 7-8, MP Lambon-Quayefio & NS Owoo 'Investigating the long-term effects of child labor on household poverty and food insecurity in Ghana' (2021) 87(4) *Journal of Demographic Economics* 561-563, E Webbink, J Smits & E De Jong 'Hidden child labour: Determinants of housework and family business work of children in 16 developing countries' (2012) 40(3) *World Development* 631.

[171] MA Ahad et al 'Urban child labor in Bangladesh: Determinants and its possible impacts on health and education' (2021) 10(3) *Social Sciences* 1-2, I Alam et al 'Occupational choices of working children in Banglades' (2015) 47 *Applied Economics* 4982–4995, M Fafchamps & J Wahba 'Child labor, urban proximity, and household composition' (2006) 79 *Journal of Development Economics* 379.

[172] GK Batano, M Doevenspeck & NMM Biningo 'Small-scale mining and child labour in Kolwezi, Democratic Republic of Congo' (2023) 15(4) *Journal of African Studies and Development* 71, M Ali 'The forbidden terrain of the worst forms of child labour: A critical look at the implications of legal tools and definitions used by national surveys in Bangladesh' (2021) *UNICEF* 1-5, J Greenbaum et al 'AAP Council on Child Abuse and Neglect, AAP Council on Immigrant Child and Family Health. Exploitation, labor and sex trafficking of children and adolescents: Health care needs of patients' (2023) 151(1) *Pediatrics* 1-3.

[173] Convention 138; Article 2(3) has defined child labour as work that is: "mentally, physically, socially and morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school, or by obliging them to leave school permanently, or by requiring them to attempt to combine school attendance with excessively long and heavy work."

domestic chores, work that occurs in the family business or farm, work for a wage or even trading and heavy physical work.[174]

The ILO's definition of child labour highlights four salient features which are necessary in ascertaining whether a particular activity constitutes child labour: the type of work performed, and its effect on the child;[175] whether the activity impedes the child's attendance of school and thus obstructs their education; whether the work involves long hours; and whether the work is too intense for a child.[176] Child labour is regarded as a type of work that is tantamount to abuse and exploitation.[177] The primary reason for this assertion is that in most instances child labourers are compelled to engage in arduous labour that not only endangers them physically and psychologically but also denies them a normal childhood and the right to obtain an education.[178]

The ILO does not only consider the type of work undertaken by children to determine whether or not such an activity constitutes child labour, but also whether the effect of such work would be detrimental to the child's mental, physical, or psychological development.[179] Child labourers experience greater psychological strain when working due to their emotional immaturity and are more vulnerable to the negative physical and psychological

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[174] EV Edmonds & C Theoharides *Child Labor and Economic Development* (2020) 3-5.

[175] Aufseeser et al (note 158 above;241–261), International Labour Organization (ILO) *Towards the Urgent Elimination of Hazardous Child Labour* (2018) 25-34, K Hanson and A Vandaele 'Working children and international labour law: A critical analysis' (2003) 11 *International Journal of Children's Rights* 116.

[176] C Pellenq, S Gunn & L Lima 'The psychological health and well-being of children working in the brick industry: A comparative study' (2021) 140 *Safety Science* 1-3, Understanding the health impact of children's work - Results from national child labour surveys / International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) (2018) 9-11, T Chanda 'Effects of Child Labour on Education: A Case of Selected Primary Schools in Lusaka District, Zambia' (2023) 4 *International Journal of Research Publication and Reviews* 1704-1710.

[177] H Wondimu 'Factors leading to child labor exploitation and the involvement of non-governmental organizations (NGOs) in Addis Ababa, Ethiopia' (2022) 8 *Cogent Social Sciences* 2-3, NA Mahmod et al 'A study on child labour as a form of child abuse in Malaysia' (2016) 6(7) *International Journal of Social Science and Humanity* 525-524, SJ Moayad et al 'Child labor in Tehran, Iran: Abuses experienced in work environments' (2021) 117 *Child Abuse & Neglect* 105054.

[178] A Ahad et al 'Urban child labor in Bangladesh: Determinants and its possible impacts on health and education' (2021) 10(107) *Social Sciences* 11-14, HS Kayen 'The impact of child labor on children's development: A Case study of Afghanistan' (2023) 10(2) *Bhineka Tunggal Ika* 326-327, J Huisman & J Smits 'Keeping children in school: Effects on household and context characteristics on school dropout in 363 districts of 30 developing countries' (2015) 5 *SAGE Open* 1–16.

[179] K Navpreet 'Child labour and its depressing psychological effects' (2022) 139 *Bengal, Past & Present: Journal of the Calcutta Historical Society* 151-156, FM Mohammed et al 'Effect of child labor on physical and psychological health among technical secondary schools students at Assiut City' (2019) 7(4) *American Journal of Nursing Research* 471-472, AM Thi, C Zimmerman & M Ranganathan 'hazardous child labour, psychosocial functioning, and school dropouts among children in Bangladesh: A cross-sectional analysis of UNICEF's multiple indicator cluster surveys (MICS)' (2023) 10 *Children* 1021 1-4, *Eliminating the Worst Forms of Child Labour. A Practical Guide to ILO Convention No. 182 - Handbook for Parliamentarians, No. 3-2002*' (2012) 15.

effects of labour than adults.[180] By taking into account the effect of a particular activity on a child, the scope for classifying an activity as child labour is broadened to include the possibility that a particular activity, even though not arduous by nature, may be categorised as child labour because it has adverse consequences for the child.[181] In this way, the ILO stresses the significance of the development of children, as it seeks to ensure that children are prevented from undertaking work that would impede their ordinary and healthy growth.[182]

In terms of the second element of the ILO's definition of child labour, work undertaken by children is considered to be harmful and impermissible when it prevents children from attending school.[183] When children are denied their basic right to education this ultimately causes severe economic loss to the country and society at large, as it hampers any potential for future growth of the country.[184] The National Child Labour Programme of Action for South Africa (CLPA) has also determined that domestic chores that require excessive hours to complete and deprive children of the opportunity to attend school, or even have time to do homework, are considered to be child labour.[185]

The fundamental reason for considering education as a key factor in the definition of child labour is that the educational environment is the primary domain for the

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[180] P Roggero et al 'The health impact of child labor in developing countries: Evidence from cross-country data' (2007) 97 *American Journal of Public Health* 271–275, O O'Donnell, E Van Doorslaer & C Rosatif 'Child labour and health: Evidence and research issues' (2002).

[181] S Ahmed & R Ranjan 'Health consequences of child labor in Bangladesh' (2014) 30 *Demographic Research* 111–150.

[182] D Ahuja 'Child labour: Psychological and behavioural challenges' in S Chhabra (ed) *Handbook of Research on Civic Engagement and Social Change in Contemporary Society* (2018) 238-240, A Foua & W Diriwari 'The ILO's endeavour to eliminate child labour worldwide: A discourse on legitimacy and standards fit for purpose' (2019) 10 *Beijing Law Review* 1262-1281.

[183] M Kozhaya & FM Flores 'School attendance and child labor: Evidence from Mexico's full-time school program' (2022) 90 *Economics of Education Review* 102294, T Li & S Sekhri 'The spillovers of employment guarantee programs on child labor and education' (2020) 34(1) *The World Bank Economic Review* 164-178, IM Mihigo, V Guillaume & DB Munguakonkwa 'Child labour, school attendance and orphaned children in the Democratic Republic of the Congo' (2024) 2(8) *Discover Global Society* 2-3.

[184] T Xayavong & P Pholphirul 'Child labour and school dropout in least-developed countries: empirical evidence from Lao PDR' (2018) 9(1) *International Journal of Education Economics and Development* 1-5, R Desai et al 'Understanding why youth drop out of school in South Africa' (2024) 14(1) *Sage Journals* 1-10, ILO *Child Labour: Targeting the Intolerable* (*Report submitted to the 86th Session (1998) of the International Labour Conference (1996)*.

[185] CW Maina 'Impact of child labour on school attendance and academic performance of pre-primary and lower primary school pupils in Murang'a County, Kenya' (2024) 5(1) *Reviewed Journal of Education Practice* 61-66, D Sekiwu, F Ssempala & N Frances 'Investigating the relationship between school attendance and academic performance in universal primary education: The case of Uganda' (2020) 8(2) *African Educational Research Journal* 151-154, S Hallaq 'School performance and child labor: Evidence from West Bank schools' (2022) *Working Paper No. 1007 The Levy Economics Institute Working Paper Collection* 2-5, 'The National Child Labour Programme of Action for South Africa' Phase 2: 2008 to 2012 Draft 4.1.

development and socialisation of children.[186] Childhood and adolescence is regarded as a crucial period of psychological development that moulds the vital components of a child's personality and builds their self-esteem; undertaking long hours of work, on the other hand, has severe negative impacts on the physical and emotional make-up of a child.[187] Children in exploitative working conditions are frequently expected to endure verbal abuse from superiors, live in constant fear of having their employment terminated, develop low self-esteem, lose the capacity for imagination, and lack a sense of direction regarding their future.[188] Even if exposed to the same conditions, dangerous work situations have a greater impact on children than on adults.[189] Children are thus more inclined to experience severe psychological effects from working under conditions of oppression and are more susceptible to the effects of psychological, physical and sexual abuse.[190]

In respect of the third element of child labour, it must be noted that children are compelled to undertake work in environments that pose serious risks to their physical development.[191] Some child labourers are obliged to perform work which they are physically unprepared to undertake such as carrying heavy workloads or being required to work in physical positions that are cramped or awkward can cause damage to the developing skeletal structure of a child.[192] When children work frequently in a bent position under a heavy load, or

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[186] V Terziev & S Vasileva 'The role of education in socialization of an individual' (2022) 8(22) *IJAEDU-International E-Journal of Advances in Education* 70-71, LM Rashkova 'The role of socialization, upbringing and education for personlity development' (2017) 39 *SocioBrain: International Scientific Refereed Online Journal with IMPACT Factor* 225 – 229, S Erasmus, R Van Eeden & I Ferns 'Classroom factors that contribute to emotional intelligence in the case of primary school learners' (2022) 12(1) *South African Journal of Childhood Education* a1072.

[187] Isidienu (note 117 above; 2-4), M Tatlow-Golden & H Montgomery 'Childhood studies and child psychology: Disciplines in dialogue?' (2020) *Children & Society* 1-3, L Richter et al 'Early childhood development: An imperative for action and measurement at scale' (2019) 4 *BMJ Global Health* i154–i160, R Rena 'The child labour in developing countries - A challenge to millennium developmental goals' (2009) 3(1) *Indus Journal of Management & Social Sciences* 5.

[188] Trodd et al (note 166 above; 17-28), TA Trinh 'Mental health impacts of child labour: Evidence from Vietnam and India' (2020) 56(12) *Journal of Development Studies* 2251-65, D Togunde & A Carter A 'In their own words: Consequences of child labour in urban Nigeria' (2008) 16(2) *Journal of the Social Sciences* 174.

[189] L Eldring 'Child labour in the tea sector in Malawi' (2003) 21.

[190] H Kaur et al 'Recognising and healing emotional wounds of child labourers: Call to action based on the evidence and stakeholder views from India and Nepal' (2022) 19(2) *BJPSYCH International* 47-50, EV Hoffmann et al 'Mental health of children who work on the streets in Brazil after enrollment in a psychosocial program' (2017) 52 *Social Psychiatry Psychiatric Epidemiology* 55–63, BK Kosalram et al 'Child labour: Psychological effects among the growth of children in the slums of Delhi' (2020) 8(5) *International Journal of Creative Research Thoughts (IJCRT)* 192-1927, M Jankanish *International Children's Rights Monitor: A New ILO Convention to Eliminate the Worst Forms of Child Labour* (1999) 16.

[191] LE Colihan 'Child's play: The case against the Department of Labor for its failure to protect children working on America's tobacco farms' (2015) 64(3) *American University Law Review* 652.

[192] AM Fouad et al 'Work-related injuries among 5 – 17 years-old working children in Egypt: Findings from a national child labor survey' (2022) 22:1303 *BMC Public Health* 1-5, NB Scott & NS Pocock 'The health impacts of hazardous chemical exposures among child labourers in low- and middle-income countries' (2021) 18 *International Journal of Environmental Research Public Health* 1-5, M Junaid, RN Malik & D-S Pei 'Health

are compelled to remain in positions which are unnatural for long periods of time, there is greater likelihood of deformation to the pelvis, spinal column, or thorax.[193]

3.2.4 WHAT IS THE INFORMAL ECONOMY?

As has been discussed, much child labour takes place in the informal economy. Hence, it is necessary to explore key concepts related to informal work. This discussion does not address all forms of child labour in the informal sector, as its scope is limited to domestic work.

The ILO's Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) (hereafter referred to as 'ILO Recommendation 204') was adopted by the International Labour Conference (ILC) in June 2015. It is the first international instrument dealing specifically with the informal economy. ILO Recommendation 204 incorporates the statistical definition of informal employment endorsed by the 17th International Conference of Labour Statisticians in 2003 (hereafter referred to as 'the ICLS 2003').[194]

The informal economy comprises all economic activities undertaken by workers, including economic units[195], which is inadequately covered or not covered by formal arrangements either in legislation or in practice. The informal economy excludes illicit activities.[196] The informal economy can be divided into employment in the informal sector and informal employment. Employment in the informal sector is characterised as being an enterprise-based model that is defined according to the factors of the workplace. The informal employment or job is characterised by a worker-based definition which refers to workers that are inadequately or not covered at all by formal arrangements.[197]

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hazards of child labor in the leather products and surgical instrument manufacturing industries of Sialkot, Pakistan' (2017) 226 *Environmental Pollution* 198–211.

[193] FW Schwartz, S Lee & TH Darrah 'A review of health issues related to child labor and violence within artisanal and small-scale mining' (2021) 5 *Geo Health* 1-5, AS Ahmed, RA Hamed & SS Sheta 'Physical, psychosocial health and quality of life among working children in small industrial shops' (2022) 4(3) *Egyptian Journal of Occupational Medicine* 110-112, Ibrahim et al (note 157 above;18–26).

[194] OECD/International Labour Organization 'Definitions of informal economy, informal sector and informal employment' in *Tackling Vulnerability in the Informal Economy* (2019) 155.

[195] ILO Recommendation 204, paragraph 3, An economic unit is defined as: "a) units that employ hired labour; b) units that are owned by individuals working on their own account, either alone or with the help of contributing family workers; and c) cooperatives and social and solidarity economy units".

[196] ILO 'Revision of the 15th ICLS resolution concerning statistics of employment in the informal sector and the 17th ICLS guidelines regarding the statistical definition of informal employment' *20th International Conference of Labour Statisticians Geneva, 1-19 October 2018* 9.

[197] ILO Recommendation 204, paragraph 4: "a) those in the informal economy who own and operate economic units, including: i. own-account workers; ii. employers; and iii.members of cooperatives and of social and solidarity economy units; b) contributing family workers, irrespective of whether they work in economic units in the formal or informal economy; c) employees holding informal jobs in or for formal enterprises, or in or for

The informal sector comprises of economic units that are involved in producing goods or services whose aim is to produce an income through employment. The informal sector further consists of unregistered or unincorporated enterprises that are not regarded as separate legal entities. These are also owned by individual members of a household or different household. They function on a small scale with little organisation or distinction between labour and capital in terms of production.[198] These include street vendors and waste pickers, as discussed below.

Informal employment or jobs includes employers, own account workers, paid domestic workers, volunteers, trainees, and unremunerated family workers assisting in the household business. In terms of own-account workers and employers, the informal job status is contingent on the informal nature of the enterprise.[199] Employers who employs workers and own-account workers who do not employ hired workers are regarded as informal when their economic unit forms part of the informal sector. These businesses are unregulated by legislation or practice. These types of employees do not have employment rights or benefits nor are they required to pay income tax, as the requirement to pay tax is not automatic irrespective of whether they are employed in formal or informal enterprises or in the household.[200]

Informal types of trade include activities that provide goods and services such as street vending, spaza shops or hawking,[201] waste picking, begging, street vending, family – based work and work in unregistered small businesses.[202] Other forms of informal sector work include carriers or trolley boys in market areas, car guards, bus conductors and apprentices in

economic units in the informal economy, including but not limited to those in subcontracting and in supply chains, or as paid domestic workers employed by households; and d) workers in unrecognized or unregulated employment relationships".

[198] ILO Recommendation 204, paragraph 4, OECD/International Labour Organization 'Definitions of informal economy, informal sector and informal employment' in OECD *Tackling Vulnerability in the Informal Economy* (2019) 155.

[199] ILO 'Revision of the 15th ICLS resolution concerning statistics of employment in the informal sector and the 17th ICLS guidelines regarding the statistical definition of informal employment' *20th International Conference of Labour Statisticians Geneva, 1-19 October 2018* 24-28.

[200] ILO Recommendation 204, paragraph 4, OECD/International Labour Organization 'Definitions of informal economy, informal sector and informal employment' in *Tackling Vulnerability in the Informal Economy* (2019) 156.

[201] SA Al-Jundi et al 'Driving forces of the pervasiveness of street vending: A data article' (2022) 13 *Frontiers in Psychology* 1-2, BJ Omotosho & MY Ola 'Negotiating work risks and challenges of street vending among female youths in southwest Nigeria' (2021) 10(1) *Multidisciplinary Journal of Gender Studies* 47, MN Mlambo *Informal Foreign Small Business Enterprises: Contribution and Experiences* (Unpublished Master's thesis, University of KwaZulu Natal, 2020) 3-4.

[202] G Bhan et al 'Informal work and maternal and child health: A blind spot in public health and research' (2020) 98 *Bulletin of the World Health Organization* 219.

workshops.[203] Informal trade also refers to providing various low-skilled services such as shoe shining, hairdressing, clothing repairs including 'day labourers' who provide casual services such as painting, building and tiling, or and other casual jobs.[204]

The goods and services offered in the informal sector are not regulated by contracts of employment, in some instances they may be exempt from paying tax and not receive benefits such as medical aid or pension funds.[205] The informal sector is not protected under legislation which makes this sector a viable option for child labourers who are compelled to work for their survival due to poverty, family conditions, socio-economic factors, disease and lack of government and social assistance or urban migration.[206] Due to the lack of protection in the informal sector, there is greater possibility of child exploitation.[207]

The informal economy provides an attractive option for children to undertake work especially if they are under the lawful age of employment and cannot be registered as an employee.[208] Child labour in the informal economy illustrates a deficit within government to provide the basic necessities required for the survival of families which oblige children to work for their survival and that of their families.[209]

In Nigeria, studies conducted among child street vendors illustrated that children work primarily for the sustenance of their families.[210] Children are often expected hawk on the street corners or sell their goods at taxi and bus terminals. This often requires these children to

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[203] JN Ozoh & UM Chinecherem 'Child labour and its determinants in informal sector of Onitsha, Anambra State, Nigeria' (2017) 7(20) *Research on Humanities and Social Sciences* 104.
[204] C Schenck & D Blaauw '"Half a loaf is better than nothing": The risks and resilience of day labourers in Cape Town' (2019) 55(3) *Social Work* 311.
[205] R Winlock *Location and Classification of Informal Traders in Drakenstein Municipality* (Unpublished Master's thesis, Stellenbosch University, 2018) 2.
[206] I Abdullahi et al 'Does poverty influence prevalence of child labour in developing countries?' (2016) 6(1) *International Journal of Economics and Financial Issues* 7-12, MR Sevinç 'Poverty, child labor, and hope: The relationship between hope and perceived social support in children working in street markets in TRC2 Region of Turkey' (2020) 7(78) *Children https://doi.org/10.3390/children7070078*, J Sasmal & J Guillen 'Poverty, educational failure and the child-labour trap: The Indian experience' (2015) 16(2) *Global Business Review* 270-280.
[207] C Gunhidzirai 'The quest for survival: Street children and the informal sector in Zimbabwe' (2023) 35(1) *Southern African Journal of Social Work and Social Development* 3, TJ Magavude 'Social factors contributing to harmful child vending practice among children in Zimbabwe. The case of Epworth' (2023) 8(3) *People centred – The Journal of Development Administration*, J Arias 'Informal vendors in Johannesburg, South Africa' (2019) 2.
[208] E Webbink, J Smits & E De Jong 'Household and context determinants of child labor in 221 districts of 18 developing countries' (2013) 110(2) *Social Indicators Research* 819-836.
[209] BE Ndem, M Baghebo & CA Otu 'Child labour in Nigeria and its economic implications-A case study of Calabar Municipality' (2012) 2(9) *Research on Humanities and Social Sciences* 149-159.
[210] BJ Omotosho & MY Ola 'Negotiating work risks and challenges of street vending among female youths in southwest Nigeria' (2021) 10(1) *Multidisciplinary Journal of Gender Studies* 45-69, EF Ugochukwu 'Socio-demographic characteristics of child street vendors in Nnewi, Nigeria' (2012) 39(4) *Nigerian Journal of Paediatrics* 174-178.

start their trade early in the morning till late in the evening to supply goods to those going to work.[211] In Democratic Republic of Congo and Ghana, children can be found to be picking or reclaiming waste such as plastic, metal and other valuables to be sold or exchanged for money to contribute to their household income.[212] It is not uncommon for these children to carry heavy and dangerous items for distances in order to sell their items.[213]

The risks involved in child labour in the informal economy:

This type of hidden child labour often occurs in family work where children undertake work in agriculture on family-owned farms or in informal agriculture that is unregulated by legislation. The risks involved in this type of work is mainly the exploitation of children because of the hidden manner in which child labour takes place within the family home or among family members.[214] Child exploitation in this field is usually masked as 'help' in the family household, where children engage in arduous hours of work that hinder their schooling.[215] Children encounter physical and psychological health hazards as they come into contact with harmful pesticides and chemicals used for cultivating and harvesting crops.[216] Children on family-owned farms are not always provided with protective clothing to carry out their work and may be more susceptible to diseases.[217] Many children who are exploited do not even know their rights as children or that their work equates to exploitation.[218] Therefore,

[211] D Togunde & A Carter 'Socio-economic causes of child labor in urban Nigeria' (2008) 12(1) *Journal of Children & Poverty* 89-105, JN Ozoh & UM Chinecherem 'Child labour and its determinants in informal sector of Onitsha, Anambra State, Nigeria' (2017) 7(20) *Research on Humanities and Social Sciences* 104-117.
[212] D Simatele & CL Etambakonga 'Scavenging for solid waste in Kinshasa: A livelihood strategy for the urban poor in the Democratic Republic of Congo' (2015) 49(1) *Habitat International* 266-274, GN Rockson 'Activities of scavengers and itinerant buyers in Greater Accra, Ghana' (2013) 39(1) *Habitat International* 148-155.
[213] AO Taiwo et al 'Socio-economic, health and environmental aspects of child waste picking activity at Africa's largest dumpsite' (2022) 18(3) *American Journal of Environmental Sciences* 69-80.
[214] SO Adeoye et al 'Analysis of child labour dimensions and causes in rural farm households of Ogun state, Nigeria' (2017) 17(1) *African Journal of Food, Agriculture, Nutrition and Development* 12198-12213.
[215] S Bhalotra & C Heady 'Child farm labour: The wealth Paradox' (2003) 17(2) *World Bank Economic Review* 197-227, JC Nwaru, I Egbulefu & LE Odoemelam 'Determinants of child labour among Urban and rural farm households in Abia state, Nigeria' (2011) 23(2) *European Journal of Social Science* 311-317.
[216] L Iannacci-Manasia 'Unprotected youth workers in US agriculture' (2023) 11 *Frontiers in Public Health* 1-4, LA McCauley 'Studying health outcomes in farmworker populations exposed to pesticides' (2006) 114 *Environmental Health Perspectives* 953–960.
[217] BWeichelt et al 'Agricultural youth injuries: A review of 2015-2017 cases from U.S. news media reports' (2019) 24(3) *Journal of Agromedicine* 298-308, P Hurst 'Health and child labor in agriculture' (2007) 28(2) *Food and Nutrition Bulletin* S368, LA McCauley et al 'Pesticide knowledge and risk perception among adolescent Latino farmworkers' (2002) 8 *Journal of Agricultural Safety and Health* 397–409.
[218] MA Ahad et al 'Key informant views of the determinants of child labour maltreatment' (2024) 11 *Children* 708. *https://doi.org/10.3390/ children11060708*, Abdullah et al (note 131 above;4082).

because of the lack of knowledge on the part of children, this type of exploitation is not easily identified and cannot be addressed by child protection agencies.[219]

Another category in the informal economy where there are greater risks involved for children is in street vending.[220] Men are often reported to lure young female street vendors by purchasing their merchandise in exchange for sexual favours.[221] Female street vendors are often sexually abused and infected with sexually transmitted diseases or are kidnapped and recruited in child trafficking.[222] Thus, this type of informal child labour goes undetected because of the societal disdain of sexual behaviour by girls.[223] Children are often expected to engage in street vending as a form of survival to assist the family household.[224] Thus, even if some parents are aware of the sexual exploitation and abuse that their female children encounter as street vendors, they turn a blind eye.[225] Adult street vendors also view child vendors as a threat to their business and often accuse child vendors of engaging in crime, loitering and creating litter on the streets which leads to adults verbally and physically abusing children who conduct their trade near them.[226]

Child domestic work that is unregulated often carries great risks which range from the manner in which children are recruited, the work that they undertake and the conditions under which they perform the work.[227] Children are sometimes forced into domestic

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[219] R Hennessy 'Exploring the role of social protection interventions in preventing child labour: Reinforcing the case for a human rights-based model of intervention' (2023) 15(1) *Journal of Human Rights Practice* 262–283.
[220] MB Sekgabo & K Maripe 'Street vending and child care: Impending disaster?' (2019) 1 *Current Research in Education and Social Studies* 47-54.
[221] OI Fawole et al 'Prevalence and nature of violence among young female hawkers in motro parks in South Western Nigeria' (2002) 102(5) *Health Education* 203–235.
[222] BJ Omotosho & MY Ola 'Negotiating work risks and challenges of street vending among female youths in southwest Nigeria' (2021) 10(1) *Multidisciplinary Journal of Gender Studies* 45-69.
[223] JI Ikechebelu et al 'Sexual abuse among juvenile female street hawkers in Anambra State, Nigeria' (2008) 12(2) *African Journal of Reproductive Health* 11-19, AK Wutoh 'HIV knowledge and sexual behaviours of street children in Takoradi Ghana' (2006) 30(4) *AIDS and Behavior* 209–215, ES Eruikar 'The experience of sexual coercion among young people in Kenya' (2004) 30(4) *International Family Planning Perspectives and Digest* 182 -189.
[224] RRJ Akarro & NA Mtweve 'Poverty and its association with child labour in Njombe District in Tanzania: The case of Igima ward' (2006) 3(3) *Current Research Journal of Social Sciences* 199-206, B Temkin 'Informal self-employment in developing countries: Entrepreneurship or survivalist strategy? Some implications for public policy' (2009) 9(1) *Analyses of Social Issues and Public Policy* 135-156.
[225] JL Oyefara 'Family background, sexual behaviour and HIV/AIDS vulnerability of female street hawkers in Lagos metropolis, Nigeria' (2005) 57(186) *International Social Science Journal* 687-698, A Furman & M Laleli 'Semi-occupational exposure to lead: A case study of child and adolescent street vendors in Istanbul' (2000) 83(1) *Environomental Research* 41-45, SA Al-Jundi et al 'The effect of poverty on street vending through sequential mediations of education, immigration, and unemployment' (2020) 62 *Sustainable Cities and Society https://doi.org/10.1016/j.scs.2020.102316*.
[226] F Gamieldien & L van Niekerk 'Street vending in South Africa: An entrepreneurial occupation' (2017) 47(1) *South African Journal of Occupational Therapy* 24-29.
[227] E Omoike '"Child domestic labour: Fostering in transition?" in C Gary (ed) *Child Slavery now: A Contemporary Reader* (2010) 203–214.

work and may be required to live in the homes of their employers either with the consent of their parents or in some cases against their will when they are trafficked and confined to their employer's home.[228] This can be considered slavery and bonded child labour in some instances.[229] In this type of informal work, the worst forms of child labour as mentioned earlier in the chapter are prevalent.[230] This opens the door for a plethora of exploitation such as sexual, verbal and physical abuse.[231] Children are paid a low wage and can work for long hours. This type of child labour usually goes undetected by authorities as it takes place in the confines of private homes where labour inspectors do not have access. Thus, the potential for harm to children is significant.[232]

These are some forms of child labour in the informal economy:

Waste picking. Urbanisation and rapid population growth results in the accumulation of solid waste in cities. This has opened the door for children to obtain an income through waste picking[233], which requires little to no skill.[234] Waste picking essentially refers to the activity of collecting and sorting reusable and recyclable items which can be found along roadsides, and in dustbins, dumpsites, drains and gutters, markets, medical centers, waste heaps, and residential areas. The purpose of collecting these items is to sell them to junkyards, shops, and other middlemen for an income.[235] The items of waste may be plastic, glass, metal, paper, or even hazardous materials and toxic forms of waste made from dangerous chemicals.

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[228] J Boyden & N Howard 'Why does child trafficking policy need to be reformed? The moral economy of children's movement in Benin and Ethiopia' (2003) 11(3) *Children's Geographies* 354–368.
[229] P Olayiwola "'Killing the tree by cutting the foliage instead of uprooting it?' Rethinking awareness campaigns as a response to trafficking in South-West Nigeria' (2019) 13 *Anti-Trafficking Review* 50–65, OO Oluwaniyi 'Internal child trafficking in Nigeria: Transcending legal borders' in A Osita (ed) *Children and Youth in the Labour Process in Africa* (2004) 81–110.
[230] N Klocker 'Struggling with child domestic work: What can a postcolonial perspective offer?' (2014) 12(4) *Children's Geographies* 464–478.
[231] AM Thi et al 'Child domestic work, violence, and health outcomes: A rapid systematic review' (2022) 19 *International Journal of Environmental Research & Public Health* 1-33, DS DeGraff, AR Ferro & D Levison 'In harm's way: Children's work in risky occupations in Brazil' (2016) 28 *Journal of International Development* 447–472.
[232] M Jha 'Child workers in India: Context and complexities' (2009) 10 *Human Rights Review* 205–218.
[233] N Mlotshwa 'Working with waste: Hazards and mitigation strategies used by waste pickers in the inner city of Durban' (2022)19 *International Journal of Environmental Research Public Health* 3, SE Uhunamure, JN Edokpayi & K Shale 'Occupational health risk of waste pickers: A case study of northern region of South Africa' (2021) *Journal of Environmental and Public Health* 1, M Nawaz et al 'Sustainability of recycling waste picker sustainopreneurs for prevention and mitigation of municipal solid waste in Swat' (2021) 13 *Sustainability* 2.
[234] AO Taiwo et al 'Effects of open space characteristics on the spatial distribution of street children: Experience from Ibadan, Nigeria' (2022) 00(0) *Journal of Asian and African Studies* 3, SPDI *Rapid Assessment of Scavengers (Waste-pickers) Lahore, Karachi, Quetta, Peshawar and Islamabad Pakistan* (2004) 3.
[235] OT Dada et al 'Waste pickers' perception of occupational hazards and wellbeing in a Nigerian megacity' (2023) 80(4) *International Journal of Environmental Studies* 933-934, SI Haider, M Ali & M Bilal 'Garbage collection and rag picking: An issue of child labor in Rawalpindi (An anthropological approach)' (2016) 1(1) *Global Regional Review* 194.

Children living on the street, as well as children living in households, engage in waste picking primarily due to poverty, neglect, abuse, or family problems; other factors may play a role depending on the individual challenges of a particular country.[236] This type of work poses a great risk to the health and safety of children[237] and is considered a visible form of hazardous child labour.[238] Children involved in waste picking may be exposed to dangers involving traffic and waste vehicles and may be injured by sharp waste items. They may not be fully enough developed mentally and physically to deal with the health dangers that are associated with waste picking.[239] Even though child waste picking is classified as a hazardous form of child labour, most countries do not include child waste pickers in their child support programmes and interventions. It has been asserted that states should at least provide protective clothing to child waste pickers.[240]

Begging. As with waste picking, both children living on the streets and in households may engage in begging.[241] The causes of child begging often range from, but are not limited to, severe poverty, urbanisation, lack of support structures for children, peer pressure, and displacement due to family disfunction.[242] In most societies, people view child begging with disdain and contempt as it is associated with child exploitation, delinquency, laziness, and manipulation by children to draw sympathy from society.[243]

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[236] M Vameghi et al 'Street children in Iran: What are their living and working conditions? Findings from a survey in six major cities' (2023) 20 *International Journal of Environmental Research Public Health* 1-2, AO Taiwo et al 'Socio-economic, health and environmental aspects of child waste picking activity at Africa's largest dumpsite' (2022) 18(3) *American Journal of Environmental Sciences* 70.

[237] A Bhatia et al 'The epidemiology of young people's work and experiences of violence in nine countries: Evidence from the Violence against Children Surveys' (2022) 19 *International Journal of Environmental Research Public Health* 2, WHO *Children and Digital Dumpsites: E-Waste Exposure and Child Health* (2021) xvi, PO Njoku, JN Edokpayi & JO Odiyo 'Health and environmental risks of residents living close to a landfill: A case study of Thohoyandou Landfill, Limpopo Province, South Africa' (2019) 16 *International Journal of Environmental Research Public Health* 27.

[238] Scott & Pocock (note 163 above; 2).

[239] HH Sara, AR Bayazid & Z Quayyum 'Occupational health sufferings of child waste workers in South Asia: A scoping review' (2022) 19 *International Journal of Environmental Research Public Health* 2.

[240] N Pocock & A Fassa 'Research brief: Child labour, working children & health' (2023) March *International Journal of Environmental Research Public Health* 5. DOI: 10.13140/RG.2.2.21240.93447

[241] S Al Haliim 'Law enforcement of child exploitation as street children in Semarang City during the Pandemic period' (2022) 5(11) *International Journal of Social Science Research and Review* 354, ILO/IPEC-SIMPOC *Towards an Internationally Accepted Statistical Definition of Child Labour: Children's Activities and their Definitions* (2018) 25.

[242] T Manomano, R Nyanhoto & NM Mushonga 'Ensuring social inclusivity and healthy development for children who assist their visually impaired parents to beg on the streets in Zimbabwe' (2020) 10(1) Special issue on Ubuntu Social Work *AJSW* 79, E Owusu-Sekyere, E Jengre & E Alhassan 'Begging in the city: Complexities, degree of organization, and embedded risks' (2018) *Child Development Research* 1.

[243] T Fuseini & M Daniel 'Child begging, as a manifestation of child labour in Dagbon of Northern Ghana, the perspectives of mallams and parents' (2020) 111 *Children and Youth Services Review* 3, MK Islam et al 'Unraveling the effects of a rehabilitation program on the socioeconomic wellbeing of beggars and begging

Forced labour refers to work that a person has not voluntarily offered to provide and is exacted upon a person through threats.[244] Forced child begging encompasses work that is involuntary, menial, or offers no wage; it may involve excessive hours of work, working and living conditions that are hazardous, and present a barrier to education.[245] Forced begging may include children being trafficked to cities for the purpose of begging and instances where children accompany adults who are begging.[246] Forced child begging thus constitutes a human rights abuse and is considered a modern day form of slavery, which is considered one of the worst forms of child labour.[247]

Street vending. Street vending can take the form of selling goods or services to people in exchange for money. Some children work as street vendors by setting up a stall on the side of the street or by carrying their merchandise with them and selling it to passers-by.[248] Street vending is considered a better alternative to formal employment, theft, prostitution and begging.[249] Although street vending is sometimes looked at in a negative light, it does have some benefits. These include: the stimulation of small and micro production of goods and services which contributes to the Gross Domestic Product of a country, and it provides the opportunity for the development of entrepreneurial skills which teaches children to become sustainable.[250]

Family-based work. Majority of the work that is undertaken by children within the family is unpaid and is often considered as help in the home or the homes of extended family members.[251] Parents often encourage children to participate in work on the basis that

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motivation: evidence from an urban area of Bangladesh' (2023) 10(697) *Humanities and Social Sciences Communications* 2.

[244] N Drydakis 'Forced labor and health-related outcomes. The case of beggar children' (2023) 146 *Child Abuse & Neglect* 4-6.

[245] T Sarker et al 'Education and health status of child beggars in Sylhet City' (2016) 4(5) *American Journal of Social Sciences* 58-66.

[246] USAID United States Agency for International Development *Senegal Monitoring and Evaluation Project Countering Forced Child Begging in Senegal Assessment* (2020) 12.

[247] Drydakis (note 244 above; 2).

[248] RCB Okoli & VE Cree 'Children's work: Experiences of street-vending children and young people in Enugu, Nigeria' (2012) 42(1) *The British Journal of Social Work* 66.

[249] D Neves & A du Toit 'Money and sociality in South Africa's informal economy' (2012) 82(1) *Africa* 131-149, R Haines & G Wood 'Unemployment, marginalisation and survival in Greater East London' (2002) 19(4) *Development Southern Africa* 573-581.

[250] JM Ignasio 'Negotiated economic opportunity and power: Perspectives and perceptions of street vending in urban Malawi' (2005) 30(4) *Africa Development* 35-51, I Valodia et al 'Informal Economy Formal-informal Economy Linkages: Some Conceptual and Empirical Issues' (2006) *School of Development Studies University of KwaZulu-Natal: Human Sciences Research Council* 7-9, I Valodia & R Devey 'The informal economy in South Africa: Debates, issues and policies' (2012) 6(2) *Margin: The Journal of Applied Economic Research* 133-157.

[251] AR Oryoie, J Alwang & N Tideman 'Child labor and household land holding: Theory and empirical evidence from Zimbabwe' (2017) 100 *World Development* 45–58, P Yokyinga & MS Floro 'Parents' labour force

culture considers work within the family home as a form of socialization that teaches children life skills as previously discussed earlier in the chapter.[252] Work in this category usually takes the form of, but is not limited to, help on the family farm for household sustenance or commercial gain, taking care of younger siblings, assisting in making goods for sale in the family business or assisting in the family business.[253] Participation in work by children in the family home is encouraged to give parents and other family members the opportunity to seek employment for the sustenance of the home. If children take care of household tasks, then parents can seek paid employment.[254]

Unregistered small enterprises. Work within this category takes place in unincorporated businesses that are unregulated by legislation.[255] Activities in these businesses can include: assistance with making food, waiting on tables, serving customers, packing shelves, cleaning the business establishment, making products for sale such as handicrafts, weaving baskets and sewing clothes.[256] The benefits of working in these enterprises is that child workers do not have deductions on their wages, thus they take home their entire wage. Their hours are also unregulated, so it allows more flexibility especially if children incorporate their work with school. This form of work allows child workers to gain work experience and allows them to gain understanding on how businesses operate. These can be used as building blocks for entrepreneurial ideas that children could develop.[257] The negatives of working in these enterprises is that employers have greater opportunity to exploit children as their work is

participation and children's involvement in work activities: evidence from Thailand' (2020) 48(3) *Oxford Development Studies* 287–303.

[252] M Akilova 'Pathways to child work in Tajikistan: Narratives of child workers and their parents' (2017) 36 *Central Asian Survey* 231–246, R Bray 'Who does the housework? An examination of South African children's working roles' (2003) 29 *Social Dynamics* 95–131.

[253] Abdullah et al (note 131 above; 1-21).

[254] ZB Susanli, O Inanc-Tuncer & S Kologlugil 'Child domestic labour and mothers' employment in Turkey' (2016) 29(1) *Economic Research-Ekonomska Istraživanja* 967–97, DS DeGraff & D Levison 'Children's work and mothers' work—what is the connection?' (2006) 37(9) *World Development* 1569–1587, P Yokying 'Work-life balance and time use: Lessons from Thailand' (2016) 31(1) *Asia-Pacific Population Journal* 87–107.

[255] M Musara & C Nieuwenhuizen 'Informal sector entrepreneurship, individual entrepreneurial orientation and the emergence of entrepreneurial leadership' (2020) 6(3) *Africa Journal of Management* 194–213, C Williams 'Small business and the informal economy: Evidence from the UK' (2007) 13(6) *International Journal of Entrepreneurial Behaviour & Research* 349-366.

[256] P Koshy 'Integration into formal enterprise space: Challenges and opportunities for informal sector entrepreneurs' (2019) *MPRA Paper No. 95346* 7-9, A Ligthelm 'Informal retailing through home-based micro-enterprises: The role of spaza shops' (2005) 22(2) *Development Southern Africa* 199–214.

[257] M Von Broembsen 'Informal business and poverty in South Africa: Re-thinking the paradigm' (2010) 14 *Law, Democracy & Development* 256-287, MC Tshuma & B Jari 'The informal sector as a source of household income: The case of Alice town in the Eastern Cape Province of South Africa' (2013) 5(8) *Journal of African Studies and Development* 250-260, MA Roy & D Wheeler 'A survey of micro-enterprise in urban West Africa: drivers shaping the sector' (2006) 16(5) *Development in Practice* 452-464.

unregulated by legislation.[258] They are not obliged to pay a minimum wage, benefits or participate in trade unions. Thus, they have no legal right to recourse should their employment rights be violated.[259]

The regulation of the informal economy is still an issue that is highly contentious. Moreover, recommendations to regulate the informal economy is beyond the scope of this study. However, there are possible suggestions that individual countries could adopt to improve the protection of children who engage in work in the informal economy. These can include prohibiting children from undertaking work during school hours. Children should be prevented from working in small, unregistered enterprises, hawking, or performing services during school hours. This may be possible for children who attend school or live with families; however, the challenge is that street children do not attend school and may be unwilling to conform to any regulation.

Another suggestion is to implement community-based interventions focused on educating families about the risks of child labour in the informal economy and the importance of schooling. These can take the form of awareness campaigns coordinated by social services and labour inspectors where communities can be informed on activities that children perform that may constitute child labour and that it is a criminal offense. Schools, libraries, faith-based organisations and Non-Government Organisations can offer support to children by coordinating vocational training and skills training for children as a better alternative to working in the informal economy to gain skills.

In most situations, especially in developing countries, it is futile to suggest more social assistance provided to families to buffer against economic hardship as funds are not easily available. Thus, it is necessary that families learn to sustain themselves through garden projects that would be able to feed their families. Skills training should also be offered to parents so that they can develop ways in which they could create income for the household without having to rely on their children for an income.

3.2.5. WHAT IS CHILD WORK?

[258] M Rogan & C Skinner 'The nature of the South African informal sector as reflected in the quarterly labour-force survey, 2008-2014' (2017) *REDI3x3 Working paper 28* 3-10.
[259] MA Chen, R Jhabvala & F Lund 'Supporting workers in the informal economy: A policy framework' (2001) *Ilo Task Force on the Informal Economy* 12-15, K Newaj 'Defining fairness in dismissals of unauthorised foreign nationals' (2020) 23 *PELJ* 25p DOI http://dx.doi.org/10.17159/1727- 3781/2020/v23i0a7586,

Given the diverse perceptions of childhood that exist in the world, as discussed earlier in this chapter, it is necessary to stress that the concept of child work, much like child labour, derives largely from social perceptions about what constitutes acceptable child work.[260] Child labour has been described above as activities performed by a child under the age of 15 that are detrimental to the child's "physical, mental, social or moral well-being".[261] Child work however, is work that is within the limits of what is not harmful to a child. It must comply with three conditions. First, children from the ages of 13 to 15 years may perform light work and children from the ages of 15 to 18 years may perform any work on the condition that it is not hazardous.[262] Second, the work may not impede a child's right to education.[263] Third, the work may not involve exploitation or abuse.[264]

While the international instruments do not define 'exploitation', a plethora of academic writings have asserted that the distinction between child labour, which constitutes those activities that are illegal, and child work, which is permissible, should be made on the basis of the type of work undertaken and its effect on the child.[265] The lack of clarity regarding working children is not that children undertake work but rather what type of work that they undertake and the conditions under which they perform this work.[266] Child work is regarded as work that can contribute positively to a child's development and is appropriate to the child's level of physical and psychological development.[267] Hence, it is important that legislators do

[260] O Adonteng-Kissi 'Causes of child labour: Perceptions of rural and urban parents in Ghana' (2018) 91 *Children and Youth Services Review* 55-65, A Naz et al 'Social and cultural determinants of child labor in Pakistan' (2019) 10(2) *Clinical Social Work and Health Intervention* 80–90, LE Bass *Child Labor in Sub-Saharan Africa* (2004) 73.
[261] Convention 182; Article 4.
[262] International Labour Organisation & United Nations Children's Fund. 'Strategies for eliminating child labour: Prevention, removal and rehabilitation-synthesis document' (1997).
[263] Y Tafere & A Pankhurst 'Children combining school and work in Ethiopian communities.' in A Pankhurst, M Bourdillon & G Crivello (eds) *Children's Work and Labour in East Africa: Social Context and Implications for Policy* (2015) 111–130.
[264] Convention 182; Article 4.
[265] MA Weldeyesus & BA Alemu 'Profiles of child labour: Prevalence, activities, contexts, and children's harm extent in Raya-Kobo and Angot Districts, Ethiopia' (2024) 18(4) *International Journal of Child Care and Education Policy* 1-2, O Adonteng-Kissi 'Cultural responsiveness in child protection: Stakeholders and parental perceptions of working children and culture-appropriate assessment in Ghana' (2023) 53 *British Journal of Social Work* 118-119, YJ Amuda 'Working conditions and consequences of child labour in Nigeria' (2010) 1(7) *OIDA International Journal of Sustainable Development* 3–72, AK Basu & NH Chau 'Exploitation of child labor and the dynamics of debt bondage' (2004) 9 *Journal of Economic Growth* 209–238, O Adonteng-Kissi 'Parental perceptions of child labour and human rights: A comparative study of rural and urban Ghana' (2020) 84 *Child Abuse & Neglect* 34–44.
[266] Trodd et al (note 166 above; 1-5), Maconachie & Hilson (note 137 above;142), M Bourdillon 'Children's work' in A Ben-Arieh et al (eds) *Handbook of Child Well-Being* (2014) 821-828, A Bhukuth 'Defining child labour: A controversial debate' (2008) 18(3) *Development in Practice* 385-394.
[267] M Houshmand et al 'Beneficial "child labor": The impact of adolescent work on future professional outcomes' (2014) 25 *Research in the Sociology of Work* 191-220.

not assume that all work would obstruct the development and education of a child.[268] Child work is legally endorsed by the ILO, which states that children have a right to work under safe conditions.[269]

At the epicentre of the discourse on child work is the undeniable reality that many children are compelled to work, and if a complete ban on all work was implemented this would not stop children from working but would force children to work illegally under unregulated and unmonitored conditions.[270] Child workers can be found in the formal and informal economic sectors. Children working in the informal economy are more prone to exploitation for the same reasons: there are often inadequate monitoring systems and poor implementation of regulations.[271]

There are three primary reasons that compel children to undertake child work. The first is their own survival and that of their families. The poorer a family is, the more likely it is that a child would be expected to engage in some form of work to supplement the family's income.[272] Children are used as a buffer against the economic hardships that plague poor families.[273] Furthermore, it must be noted that the African Charter encourages children to assist their families with household work; therefore, child work, in this regard, is acknowledged as acceptable.[274]

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[268] Dammert et al (note 154 above; 104-123), M Bourdillon, B White & W Myers 'Reassessing working children and minimum-age standards' (2009) 29(3/4) *International Journal of Sociology and Social Policy* 106–117, MW Muoki 'The role of child participation in influencing policies to protect children from harmful work: A Kenyan case' in A Pankhurst, M Bourdillon & G Crivello (eds) *Children's Work and Labour in East Africa: Social Context and Implications for Policy* (2015) 163–170.

[269] ILO *Rooting out Child Labour from Cocoa Farms: (Paper 1) A Synthesis Report of Five Rapid Assessments* (2007) 28.

[270] MA Ali, MV Ali & F Abbas 'Hidden hazardous child labor as a complex human rights phenomenon: A case study of child labor in Pakistan's brick-making industry' (2017) 3 1369486 *Cogent Social Sciences* 1-3, H Bhullar, A Singh & N Sabharwal 'The hidden workforce: A study on child labour in the garment industry in Delhi' (2015) *Save the Children* 2-4, M Bourdillon 'Children's work and stopping 'child labour'' (2014) *Conference: Workshop on Supporting Working Children Called by Consortium for Street Children, CHETNA, Hope for Children, and Comic Relief* 1-5, Webbink, Smits & De Jong (note 161 above; 631-642.

[271] R Musizvingoza, J Blagbrough & NS Pocock 'Are child domestic workers worse off than their peers? Comparing children in domestic work, child marriage, and kinship care with biological children of household heads: Evidence from Zimbabwe' (2022) 19(12) *International Journal of Environmental Research and Public Health* 1-18.

[272] D Milan & SK Moin 'The role of family behind child labour' (2022) 1(2) *The DNC Journal* 11-15, Abdullahi (note 170 above; 7-12), Z Naeem, F Shaukat & Z Ahmed 'Child labor in relation to poverty' (2011) 5(2) *International Journal of Health Sciences (Qassim)* 48-49.

[273] E Mulugeta 'Children sustaining families: Insights into the lives of working children in Addis Ababa' in A Pankhurst, M Bourdillon & G Crivello (eds) *Children's Work and Labour in East Africa: Social Context and Implications for Policy* (2015) 83–110, T Abebe 'Reframing children's contributions to household livelihoods in Ethiopia through a political-economy perspective' in A Pankhurst, M Bourdillon & G Crivello (eds) *Children's Work and Labour in East Africa: Social Context and Implications for Policy* (2015) 19–40.

[274] The African Charter; Article 31.

As society continuously evolves and the socio-economic factors that compel children to work change, it is imperative that our laws also adapt to accommodate the increasing number of working children, rather than viewing all work that children perform with contempt.[275] While it is necessary to identify and eliminate exploitation in the form of child labour, it has been postulated that children should not be denied the opportunity to work in environments that are safe and contribute to their survival.[276] In cases where children are compelled to engage in work for survival, their plight should receive more attention as the legislature should consider means of assisting the working child to attend school and work.[277]

The second reason that compels children to engage in work is that child work can be used as an educational tool for developing the mental and psychological qualities of a child.[278] The CRC has countenanced that child work has the potential to positively contribute to "the child's personality, talents and mental and physical abilities to their fullest potential".[279] It is not uncommon for young children to assist their family with chores around the home or on the farm. This kind of contribution can build a child's self-esteem, as it gives them a sense of purpose.[280] The undertaking of domestic chores also contributes to a child's maturation as it prepares the child for adulthood.[281]

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[275] Dammert et al (note 154 above; 104–23), O Adonteng-Kissi 'Potential tension between children's engagement in work and the rights of the child: Resolving the conflict using margin of appreciation doctrine' (2021) 26(6) *International Journal of Human Rights* 978–1003, M Bourdillion 'Children and work: A review of current literature and debates' (2006) 37(6) *Development and Change* 1201–26.

[276] M Liebel & A Invernizzi 'The movements of working children and the International Labour Organization. A lesson on enforced silence' (2019) 33 *Children & Society* 150, S Bessell 'Influencing international child labour policy: The potential and limits of children centred research' (2011) 33 *Children and Youth Services Review* 564–568, M Liebel 'Child labour, child work and the International Labour Organisation (ILO): What is good for working children?' in M Liebel, B Overwien & A Recknagel (eds) *Working Children's Protagonism: Social Movements and Empowerment in Latin America, Africa and India* 87–101, D Aufsessar … et al 'Indicators for the effects of children's work' *5th ISCI Conference*, Cape Town, 2-4 September 2015.

[277] M Dunne, S Humphreys & C Szyp 'Education and work: Children's lives in rural Sub-Saharan Africa' in J Sumberg & R Sabates-Wheeler *Children's Work in African Agriculture* (2023) 84-86, Dr DL Putnick & MH Bornstein 'Is child labor a barrier to school enrollment in low- and middle-income countries?' (2016) 1(41) *International Journal of Educational Development* 3-4 (112–120), EV Edmonds & M Shrestha 'You get what you pay for: Schooling incentives and child labor' (2014) 111 *Journal of Development Economics* 196–211, Y Tafere & A Pankhurst 'Can children in Ethiopian communities combine schooling with work?' (2015) *Working Paper 141: Young Lives* 6-7.

[278] Aufseeser et al (note 158 above; 241–261), M Woodhead 'Psychosocial impacts of child work: A framework for research, monitoring and intervention' (2004) *Understanding Children's Work (UCW) Proje*ct 5-10 249, C Krafft 'Is school the best route to skills? Returns to vocational school and vocational skills in Egypt' (2013) *Department of Applied Economics University of Minnesota: Working Paper No. 2013-09* 1-2,

[279] The CRC; Article 29, 1a.

[280] AK Basu & R Dimova 'Household preferences and child labor in rural Ethiopia' (2021) *IZA Discussion Papers, No. 14062, Institute of Labor Economics (IZA), Bonn* 1-2.

[281] CL Loderup et al 'How do parents teach their children about work? A qualitative exploration of household chores, employment, and entrepreneurial experiences' (2020) *42 Journal of Family and Economic Issues* 87.

However it is imperative that a clear distinction must be made between household tasks, which are intended to teach children values and responsibility; and domestic activities that are exploitative and abusive.[282] Work performed for the family is not necessarily harmful, although if such work is beyond the physical and psychological capabilities of the child then it does amount to child labour.[283] This is especially common in rural contexts, where children are required to perform agricultural work that may be detrimental to their wellbeing, as they are required to work long hours and often without essential protective clothing and equipment.[284]

The learning process offered by child work is beneficial to children irrespective of whether they come from high income or low income families, as it is posited that children learn better through participating rather than through passive instruction.[285] Irrespective of whether this takes place in a commercial or family context, including or excluding remuneration, children learn by observing adults and replicating their actions.[286] This allows them to progressively acquire competence and to build on what they have learnt gradually with more multifarious tasks.[287] In developing countries, where there is a paucity of formal employment, this is pivotal as practical experience is often more important for obtaining employment than possessing a formal education.[288]

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[282] S Okyere et al 'Policies and politics around children's work in Ghana' (2021) *ACHA Working Paper 8* 14-16, R Rende 'Chores: Why they still matter and how to engage youth' (2021) 37(6) *The Brown University: Child and Adolescent Behavior Letters* 1–4, M Keane, S Krutikova & T Neal 'Child work and cognitive development: Results from four low to middle income countries' (2022) 13 *Quantitative Economics* 460, 'Child labour in South Africa- multiple vulnerabilities' *South African Catholic Bishop's Conference* Briefing Paper 165, (2006) [3].

[283] EM White, MD DeBoer & RJ Scharf 'Associations between household chores and childhood self-competency' (2019) 40(3) *Journal of Developmental & Behavioral Pediatrics* 176– 182 , E Edrissi 'The occupational benefits of children farming' (2015) 1(1) article 2 *OCCUPATION: A Medium of Inquiry for Students, Faculty & Other Practitioners Advocating for Health through Occupational Studies* 6-8, A Fyfe *Child Labour* (1989) 14.

[284] SP John & KR Murugan 'The cause and impact of child labour on a child's short and long-term health' (2021) 13(4) *World Journal of Research and Review* 7–13, Ibrahim et al (note 157 above; 18–26), OS Adeoye et al 'Analysis of child labour dimentions and causes in rural farm households of Ogun State, Nigeria' (2017) 17(3) *African Journal of Food, Agriculture, Nutrition, and Development* 12198–12213, I McCartney *Children in Our Midst: Voices of Farm Workers' Children* (2000) 75.

[285] DL Tepper, TJ Howell & PC Bennett 'Executive functions and household chores: Does engagement in chores predict children's cognition?' (2022) 69 *Australian Occupational Therapy Journal* 586, Krauss (note 152 above; 548), M Bourdillon …et al 'Indicators for the effects of children's work' *5th ISCI Conference, Cape Town*, 2–4 September, 2015 10.

[286] S Balton, K Uys & E Alant 'Family-based activity settings of children in a low-income African context' (2019) 8 *African Journal of Disability* 1-2.

[287] V Morrow & J Boyden 'Social values and child labour' in AG Fassa, DL Parker & TJ Scanlo (eds) *Child Labour: A Public Health Perspective* (2016) 2-3, T ter Bogt, Q Raaijmakers & F van Wel 'Socialization and development of the work ethic among adolescents and young adults' (2005) 66(3) *Journal of Vocational Behavior* 420–437, Maconachie & Hilson (note 135 above; 6-8).

[288] DK Evans & AM Acosta 'Education in Africa: What are we learning?' (2021) 30(1) *Journal of African Economies* 15, Webbink, Smits & De Jong (note 161 above; 631-632).

The third reason in favour of child work is that it is intrinsic to a child's socialisation process, in which adults in society pass on their norms to their children.[289] The term 'socialisation' refers to the process whereby a child "gradually becomes a self-aware, knowledgeable person, skilled in the ways of the culture".[290] Work is also postulated as being beneficial in building the character of children as it teaches qualities such as punctuality and discipline, which are essential to a child's integration into society.[291] Work experiences may stimulate a child's imagination and ability to manage difficult situations, interact with people, and relate the knowledge acquired at work to everyday life.[292] A democratic society is founded on the well-being and competence of its children; therefore, the qualities it ingrains in a child should help to develop the child into well-rounded, mature citizen and facilitate their integration into society.[293]

3.3. CAUSES OF CHILD LABOUR

3.3.1. POVERTY

Poverty has always been considered a cause of child labour, as children in poverty have are often compelled to find ways to sustain themselves and their families.[294] Poverty arises from a the interaction of a complex range of factors, including a county's GDP and consumption, social factors, and an individual's vulnerability to risk factors and access to socio-political rights.[295] Poverty, in the simplest of terms, has been defined as the inability to obtain the basic

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[289] B Lee & Dr E Porfeli 'Youths' socialization to work and school within the family' (2015) 15(2) *International Journal of Education Vocational Guidance* 1-2, EJ Porfeli, C Wang & PJ Hartung 'Family transmission of work affectivity and experiences to children' (2008) 73 *Journal of Vocational Behavior* 278–286, NM Putney & VL Bengtson 'Socialization and the family revisited' (2002) 7 *Advances in Life Course Research* 165–194.

[290] A Coppens et al 'Children's contributions in family work: Two cultural paradigms' in S Punch & RM Vanderbeck (eds) *Families, Intergenerationality, and Peer Group Relations: Geographies of Children and Young People* (2016) 1–27, AH Qamar 'Social value of the child in the global south: A multifaceted concept' (2022) 20(4) *Journal of Early Childhood Research* 611, A Abdullah et al 'Towards a normative change approach in child labour: A theoretical analysis and empirical exploration of the constituted and constitutive procedural social norms' (2023) 70 *New Ideas in Psychology* 101032.

[291] JM Graves et al 'Quality of life among working and non-working adolescents' (2017) 26(1) *Quality of Life Research* 107–120, L dEntremont et al 'Developmental milestones for productivity occupations in children and youth: An integrative review' (2017) 56(1) *Work* 76, S Norozi & T Moen 'Childhood as social construction' (2016) 6 *Journal of Educational and Social Research* 75–81.

[292] L Dunn, LC Magalhaes & MC Mancini 'Internal structure of the children helping Out: Responsibilities, expectations, and supports (CHORES) measure' (2014) 68(3) *The American Journal of Occupational Therapy* 1-2, ET Sackey & BO Johannesen 'Earning identity and respect through work: A study of children involved in fishing and farming practices in Cape Coast, Ghana' (2015) 22 *Childhood* 447–459.

[293] EM White, MD DeBoer & RJ Scharf 'Associations between household chores and childhood self-competency' (2019) 40(3) *Journal of Developmental and Behavioral Pediatrics* 176–182.

[294] Lambon-Quayefio & Owoo (note 170 above; 561-587), Sevinç (note 206 above; 1-3), Abdullahi et al (note 170 above; 7-8), Naeem, Shaukat & Ahmed (note 272 above; 48-9), C Dumas 'Why do parents make their children work? A test of the poverty hypothesis in rural areas of Burkina Faso' (2007) 52(7) *Oxford Economic Papers* 302.

[295] B Gweshengwe & NH Hassan 'Defining the characteristics of poverty and their implications for poverty analysis' (2020) 6 *Cogent Social Sciences* 1-2, G Koehler 'The 2030 agenda and eradicating poverty: New

necessities of life.[296] However, this narrow definition does not adequately portray the complexities that children in developing countries experience. Poverty goes further than the inability to appropriate socio-economic necessities. Poverty can be articulated as a lack of resources that entrenches the segregation of people and groups of people in society. It makes people vulnerable and helpless against political and socio-economic discrimination, which ultimately prevents them from participating in sustainable livelihoods.[297] Poverty thus becomes a form of oppression for people that belong to a particular class and gender that makes them more susceptible to exploitation.[298] Poverty deepens the social barriers between the poor and rest of society, thereby confining children to a cycle of impoverishment.[299]

When children are forced to seek any form of livelihood for their survival, they are vulnerable and become easy targets for exploitation.[300] The desperation of children to earn money, accompanied by the low status that children already hold in society, results in children engaging in the worst forms of child labour, as outlined in International Labour Organisation (ILO) Convention 182.[301] Child labour is thus more prevalent in low income countries where socio-economic resources are scarce and there are inadequate social welfare programmes to

horizons for global social policy?' (2017) 17(2) *Global Social Policy* 210–216, D Raywat 'Defining poverty: A summary of competing models' (2019) 2(1) *Journal of Social and Political Sciences* 17-21

[296] E Durojaye & G Mirugi-Mukundi 'General introduction to poverty and human rights in Africa' in E Durojaye & G Mirugi-Mukundi (eds) *Exploring the Link between Poverty and Human Rights in Africa* (2020) 1-13, H Weber & A Abbasi 'Poverty is not 'another culture': Against a right of children to work to live' (2022) 49(3) *Review of International Studies* 1-3.

[297] S Liebenberg & B Slade 'Applying a human rights lens to poverty and economic inequality: The experience of the South African Human Rights Commission' (2023) 51(3) *Federal Law Review* 296-298, JC Mubangizi & BC Mubangizi 'Poverty, human rights law and socio-economic realities in South Africa' (2005) 22(2) *Development Southern Africa* 277-290, M Adato, MR Carter & J May 'Exploring poverty traps and social exclusion in South Africa using qualitative and quantitative data' (2006) 42(2) *The Journal of Development Studies* 226-247.

[298] D Ngui, N Ndung'u & A Shimeles 'Poverty, inequality and social protection programs in Africa: Lessons from the COVID-19 Pandemic' (2023) 32 *Journal of African Economies* ii3, GC Skinner et al 'A review of the relationship between poverty and child abuse and neglect: Insights from scoping reviews, systematic reviews and meta-analyses' (2022) *Child Abuse Review* 1-3, Edmonds & Theoharides (note 174 above; 2-3).

[299] GE Halkos & AC Panagiotis-Stavros 'Causes and measures of poverty, inequality, and social exclusion: A review' (2023) 11(110) *Economies* 1-5, D Francis & E Webster 'Poverty and inequality in South Africa: Critical reflections' (2019) 36(6) *Development Southern Africa* 788-789, L Yang 'The relationship between poverty and inequality: Concepts and measurement' (2017) *CASEpaper 205/LIPpaper 2* 3-15.

[300] J Herring 'Vulnerability and children's rights' (2023) 36 *International Journal of Semiotics & Law* 1512, G Schweiger 'Ethics, poverty and children's vulnerability' (2019) 13(3) *Ethics and Social Welfare* 288-289, G Schweiger & G Gunter 'Ethics and the dynamic vulnerability of children' (2017) 12(2-3) *The Ethics Forum* 243–261, B Rau 'Intersecting risks: HIV/AIDS and child labour' (2003) 17.

[301] R Makaudze, E Tofa & T Mushonga 'Beyond poverty: Why are some children more vulnerable to commercial sexual exploitation than others?' (2023) 48 (3) *Africa Development* 116-118, ILO *Vulnerabilities to Child Labour* (2022) 16-21, K Brown 'Vulnerability and child sexual exploitation: Towards an approach grounded in life experiences' (2019) *Critical Social Policy* 623-626, ILO 'Rapid assessment of child labour in the agricultural sector in Central and North East Districts of Botswana' (2001) 1.

assist and protect the vulnerable.[302] The reality of poverty in these contexts is that if children were prevented from working they and their families would be in a worse condition of deprivation than if they worked.[303]

There are many aspects that compel children to undertake the role of adults, in terms of seeking work. These included child-headed households, child abandonment,[304] family insecurity, parents migrating to towns and cities in search of employment and even war.[305]

3.3.2. HIV/AIDS AND CHILD-HEADED HOUSEHOLDS

In South Africa, empirical studies reveal that HIV/AIDS is the primary cause of child-headed households; this reality shortens the years of a child's childhood, because they are forced to step into the shoes of adults.[306] The increasing growth of HIV/AIDS has been considered by the Human Rights Watch as a complex problem that has devastating ramifications for a country and, most profoundly, for children.[307]

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[302] Edmonds & Theoharides (note 174 above; 1-5), O Bandiera et al 'Labor markets and poverty in village economies' (2017) 132(2) *Quarterly Journal of Economics* 811-870, GB Nkamleu 'Poverty and child farm labor in Africa: Wealth paradox or bad orthodoxy' (2006) 13(1) *African Journal of Economic Policy* 1-5, MRS Mlozi 'Child labour in urban agriculture: The case of Dar es Salaam, Tanzania' (1995) 12(2) *Children's Environments* 199.

[303] M Bourdillon 'Child labour and children's lives' in ATD Imoh, M Bourdillon and M Meishcner (eds) *Global Childhoods Beyond the North-South Divide* (2016) 39.

[304] V Chidziva & PJH Heeralal 'Circumstances leading to the establishment of child-headed households' (2016) 4(10) *International Journal for Innovation Education and Research* 91-92, KZN Human Settlements *Research On Child-Headed Households* (2010) 6-7, J Pillay 'Problematising child-headed households: The need for children's participation in early childhood interventions' (2016) 6(1) *South African Journal of Childhood Education* a359, L Jones 'Childcare in poor urban settlements in Swaziland in an era of HIV/AIDS' (2005) 4(3) *African Journal of AIDS Research* 163.

[305] JP Bhengu *Challenges Experienced by Children in Child Headed Households (CHH) in South Africa* (Unpublished Master's thesis, University of KwaZulu Natal, 2021) 14-15, MC Mothapo *Exploration of the Psychological Experiences of Learners from Childheaded Families in Mankweng area, Limpopo Province.* (Unpublished Master's thesis, University of Limpopo, 2016) 5-11, H Meintjes et al 'Orphans of the AIDS epidemic? The extent, nature and circumstances of child-headed households in South Africa' (2010) 22(1) *AIDS Care* 40–49, C Van der Waal 'Rural children and residential instability in the Northern Province of South Africa' (1996) 22 *Social Dynamics* 32.

[306] B Ntuli, E Sebola & S Madiba 'Responding to maternal loss: A phenomenological study of older orphans in youth-headed households in impoverished areas of South Africa' (2020) 8 *Healthcare* 259-261 (1-3), HY Lim *Legally Recognising Child-Headed Households Through a Rights-Based Approach: The Case of South Africa* (Unpublished Doctoral thesis, University of Pretoria, 2011) 12, T Popoola & G Mchunu 'HIV orphanhood research and the representation of older orphans in Sub-Saharan Africa: A literature review' (2016) 27 *Journal of the Association of Nurses Aids Care* 57–65.

[307] B Ntuli, M Mokgatle & S Madiba 'The psychosocial wellbeing of orphans: The case of early school leavers in socially depressed environment in Mpumalanga Province, South Africa' (2020) 15(2) *PLoS ONE* 2-3, R Van der Mark *Living Experiences of Youth Living in Sibling Headed Households in Facing Challenges Affecting Education* (Unpublished Master's thesis, University of Utrecht and University of Johannesburg, 2015) 2-5, Human Rights Watch World Report 'Children's rights: Defending human rights worldwide' available at *http://www.hrw.org/wr2k2,* accessed 23 February 2020.

Children bear the consequences of HIV/AIDS most severely when they are orphaned or are compelled to leave school to take care of sick family members.[308] The money that is available in the household is usually used to take care of the sick family members and buffer against the shortfall of those who would normally be contributing towards the household income.[309] As young children are unskilled, they find themselves engaging in work that exposes them to risks of psychological, physical, mental and emotional abuse – including sexual abuse, which also may result in exposure to HIV/AIDS.[310] Many orphans are forced to live with relatives and are expected to work on farms to earn their keep.[311] The CRC aims to provide legislative and socio–economic protection to vulnerable children living with HIV/AIDS, as well as those affected by the disease, as a means of safeguarding children from economic exploitation.[312]

3.3.3. EDUCATION

The ILO has emphasised that education, alongside the eradication of poverty, will ultimately bring an end to child labour.[313] However idealistic and well intentioned such statements are,

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[308] AJ Mturi 'Child-headed households in South Africa: What we know and what we don't' (2012) 29(3) *Development Southern Africa* 506-516, M Newlin, S Reynold & MMW Nombutho 'Children from child-headed households: Understanding challenges that affect in their academic pursuits' (2016) 54(3) *Journal of Human Ecology* 158-173, J Pillay 'Experiences of learners from CHH in a vulnerable school that makes a difference: Lessons for school psychologists' (2011) 33(1) *School Psychology International* 3- 21, M Mokgatle-Nthabu 'Education and well-being of orphans living in child and youth headed families in rural North-West Province' (2013) 14 *Child Abuse Research South Africa* 8–18, The World Bank *Mozambique Poverty and Social Impact Analysis: Primary School Enrollment and Retention – The Impact of School Fees* (2005) 2.

[309] KE Chademana & B van Wyk 'Life in a child-headed household: Exploring the quality of life of orphans living in child-headed households in Zimbabwe' (2021) 20(2) *African Journal of AIDS Research* 172–180, NB Mpotshane *Social Rights of the Children in the Context of HIV/AIDS: What is the Reality in the New Democratic South Africa* (Unpublished Master's thesis, University of KwaZulu-Natal, 2008) 8.

[310] KT S'lungile 'Experiences and coping strategies of children from child-headed households in Swaziland' (2018) 6 *Journal of Education, Training Studies* 150–158, J Pillay 'Early education of orphans and vulnerable children: A crucial aspect for social justice and African development' (2018) 83 *Koers* 1–12, JE Ibebuike, C Van Belkum & TMM Maja 'The lived experiences and needs of children in child headed households in resource poor communities in Soshanguve South Africa' (2014) 2(1) *Journal of Good Governance and Sustainable Development in Africa* 61-83

[311] SP Molemane *The Experience and Meaning of Family in Youth-Headed Households from Gauteng, Katlehong Township* (Unpublished Master's thesis, University of Witswatersrand, 2021) 14-18, LF Nziyane & AH Alpaslan 'Practice guidelines for the integration of childheaded households into extended family folds' (2011) 47(3) *Social Work/MaatskaplikeWerk* 301-322, G Foster 'The capacity of the extended family safety net for orphans in Africa' (2002) 5(1) *Psychology Health and Medicine* 55–62.

[312] U Ngconjana, AS Kwizera & I Umejesi 'Livelihoods in child headed households and state intervention: a case study of the orphans and vulnerable children (OVC) in East London, South Africa' (2011) 15(1) *Gender and Behaviour* 8160-8180, ML Dolbin-Macnab et al 'Dumela Mma: An examination of resilience among South African grandmothers raising grandchildren' (2016) 36 *Ageing & Society* 2182-2212, H Kruger 'The legal recognition of child-headed households: is our focus where it should be' (2014) 25(1) *Stellenbosch Law Review* 126-142, GT Numbe *An Analysis of the Democratic Republic of Congo's Obligations to Protect and Promote the Inheritance Rights of Children with and Affected by HIV/AIDS* (Unpublished Master's thesis, University of Pretoria 2004) 23.

[313] Foua & Diriwari (182 above; 1262-1265), E van Daalen & K Hanson 'The ILO's shifts in child labour policy: Regulation and abolition' (2019) 11 *International Development Policy* 133-136, ILO *World Report on Child*

ultimately such reforms are a political challenge that extends far beyond the resources of individual communities.[314] The discourse on education and its correlation to child labour has entrenched perspectives of critics at polarised extremes. At the one extreme, the viewpoint is that education is the solution to end child labour. It is asserted that when children work it prevents them from pursuing an education. Thus, the elimination of child labour will ensure that children are in school.[315] The other viewpoint argues that the elimination of child labour will not automatically guarantee that children will receive an education and attend school.[316] This is primarily because the elimination of child labour does not automatically eliminate the reasons that necessitate that children engage in work. If the expense of sending children to school is too high and the income of the household is too low, then schooling is not a viable option.[317]

The education system in poor countries often cannot capacitate every child nor can parents afford the auxiliary expenditure necessary for schooling.[318] If the direct costs of sending children to school – such as the cost of paying for tuition fees, stationary, uniforms, and transport – is exorbitant and the household income is low, then schooling is not a feasible opportunity for these families.[319] In economic situations where families are dependent on their children to work in order to survive, it is more pragmatic for parents to take their children out of school to work.[320] Therefore, even if child labour was eliminated, the majority of poor parents would still be unable to send their children to school. Hence, sending children to work,

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Labour: Economic Vulnerability, Social Protection and the Fight Against Child Labour (2013) 7-9, A Bhukuth 'Child labour: A controversial debate' (2008) 18(3) *Development in Practice* 389.

[314] C Woolfsen 'Child labour today – the role of multinationals' (1999) 6(3) *International Centre for Trade Union Rights* 5.

[315] H Murray *Is School Education Breaking the Cycle of Poverty for Children? Factors Shaping Education Inequalities in Ethiopia, India, Peru and Vietnam* (2012) 6-8, B Yıldırım, E Beydilib & M Görgülü 'The effects of education system on to the child labour: an evaluation from the social work perspective' (2015)174 *Procedia - Social and Behavioral Sciences* 519.

[316] M Kozhaya & FM Flores 'School attendance and child labor: Evidence from Mexico's full-time school program' (2022) 90 *Economics of Education Review* 24-25.

[317] A Visser 'Child labour is a matter of national concern: What is the curriculum doing about it?' (2021) 85 *Journal of Education* 32, S Bessel 'Education, school, and learning: Dominant perspectives' in T Abebe & J Waters (eds) *Laboring and learning* 91–100, P Jensen & HS Nielsen 'Child labour or school attendance? Evidence from Zambia' (1997) 10(4) *Journal of Population Economics* 413.

[318] Maconachie & Hilson (note 135 above; 11).

[319] R Novella 'Orphanhood, household relationships, school attendance and child labor in Zimbabwe' (2018) 30(5) *Journal of International Development* 725–728, P Jensen & HS Neilson 'Child Labour or school attendance? Evidence from Zambia' (1997) 10(4) *Journal of Population Economics* 413.

[320] M Quattri & K Watkins 'Child labour and education – a survey of slum settlements in Dhaka (Bangladesh)' (2019) 13 *World Development Perspectives* 50– 53, J Qvortrup 'School-work, paid work and the changing obligations of childhood' in P Mizen, C Pole & A Bolton (eds) *Hidden Hands: International Perspectives on Children's Work and Labour* (2001) 91–107, C Grootaert & R Kanbur 'Child labour: An economic perspective' (1995) 134 (2) *International Labour Review* 193.

rather than to school, is considered to be more beneficial.[321] In some instances, children are able to combine both work and school.[322] However this is only possible if the work undertaken is congruent with attending school.[323] Even for those children who are capable of performing work while obtaining an education, strenuous tasks and long hours of work deplete their energy and thus their capacity to mentally apply themselves to their schoolwork.[324] Thus, school is not a practical choice for many children.

3.3.4. FAMILY SIZE AND BIRTH ORDER

Parents in rural areas tend to have more children, as a large family provides more hands to cultivate crops. In this way, children represent, to some extent, commodities for labour.[325] Large households that have many children can seldom afford the costs of sending all their children to school; it is often the older children who go to work to support the family and pay for their younger siblings' schooling.[326] This has a negative effect on the children's education, as research has shown that in larger households there is a decline in the investment in education for all the children.[327] Consequently, there is a greater prospect of child labourers emerging

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[321] Islam & Hoque (note 169 above; 7), ES Hamenoo et al 'Child labour in Ghana: Implications for children's education and health' (2018) 93 *Children and Youth Services Review* 249, DL Putnick & MH Bornstein 'Is child labour a barrier to school enrollment in low – and middle-income countries?' (2015) 41 *International Journal of Educational Development* 112–120, A Admassie 'Child labour and schooling in the context of a subsistence rural economy: Can they be compatible?' (2003) 23 *International Journal of Educational Development* 171.

[322] D Boutin & M Jouvin 'Child labour consequences on education and health: A review of evidence and knowledge gaps' (2022) *Bordeaux Economics Working Papers, BxWP2022-14* 6, CY Kim 'Is combining child labour and school education the right approach? Investigating the Cambodian case' (2009) 29(1) *International Journal of Education & Development* 30–38, H Akabayashi & G Psacharopoulos 'The trade-off between child labour and human capital formation: A Tanzanian case study' (1999) 35(5) *The Journal of Development Studies* 121.

[323] Amedu & Ossai (note 169 above; 398), Anumaka (note 169 above; 56).

[324] W Dibu 'The impact of child labour on children's educational achievement in Ganta Afeshum Woreda, Tigray State, Ethiopia' (2019) 6(4) *International Journal of Multicultural and Multireligious Understanding* 294, D Holgado 'Impact of child labor on academic performance: Evidence from the program Educame Primero Colombia' (2014) 34 *International Journal of Educational Development* 58–66, H Thu Le & R Homel 'The impact of child labor on children's educational performance: Evidence from rural Vietnam' (2015) 36 *Journal of Asian Economics* 1–13.

[325] J Sumberg & R Sabates-Wheeler 'Children's work in African agriculture: Time for a rethink' (2020) 49(2) *Outlook on Agriculture* 99-100, GA Baena 'The role of birth order on children's time-use and parental educational aspirations: evidence from Peru' (2019) 7-9, E Sandra et al 'The more the merrier? The effect of family size and birth order on children's education' (2005) 120(2) *The Quarterly Journal of Economics* 669–700, DO Torimiro 'Children in exploitative in the labour process: Empirical exposition from Ile-Ife, Nigeria' in Agbu, O (ed) *Children and Youth in the Labour Process in Africa* (2009) 63-80.

[326] Q Weng et al 'Family size, birth order and educational attainment: Evidence from China' (2019) 57 *China Economic Review* 101346, R Moshoeshoe 'Birth order effects on educational attainment and child labour: Evidence from Lesotho' (2016) *ERSA Working Paper 621* 1-3, V Ponczek & AP Souza 'The causal effect of family size on child labor and education' (2007) *Escola de Economia de São Paulo da Fundação Getulio Vargas: Textos para Discussão 162* 2-3, MM Rhaman & R Khanam *Child Labour: The Effects of Globalization* (2012) 11.

[327] DD Gonsamo, HHM Lo & KL Chan 'The role of stomach infrastructures on children's work and child labour in Africa: Systematic review' (2021) 18 *International Journal of Environmental Research Public Health* 8563 (2), Y Seid & S Gurmu 'The role of birth order in child labour and schooling' (2015) 47(49) *Applied Economics*

from households where there are many children.[328] The gender of the child usually determines whether a child can go to school. Often only boys in some countries are allowed to obtain an education while girls are required to stay at home to undertake household chores.[329]

3.3.5. URBAN MIGRATION

Urbanisation is the consequence of many rural families seeking a better life in the cities.[330] The influx of people from rural areas into urban areas has resulted in poverty in urban areas; this, in turn, causes a dilution of the country's wealth and resources to capacitate the number of people residing in the cities.[331] Migrant children may be compelled to engage in begging, prostitution, or vending for their own survival as well as that of their families.[332] For those who are employed to work as domestic helpers, exploitation is rife even in these situations as children are compelled to work under conditions that are tantamount to slavery.[333]

3.3.6. WAR AND POLITICAL UNREST

5262–5281, M Haan 'Birth order, family size and educational attainment' (2010) 29 *Economics of Education Review* 576-588, C Buchmann & E Hannum 'Education and stratification in developing countries: A review of theories and research' (2001) *Annual Review of Sociology* 77-102.

[328] Webbink, Smits & de Jong (note 161 above; 87), AM Obimakinde & M Shabir 'The family dynamics of children on the streets of Ibadan, Southwest Nigeria' (2023) 65(1) *South African Family Practice* a5774, EE Okafor 'Child labour dynamics and implications for sustainable development in Nigeria' (2010) 12(5) *Journal of Sustainable Development in Nigeria* 8-21.

[329] G Abebe & S Fikre 'Individual, household, and community level factors of child labor in rural Ethiopia' (2021) 7 *Cogent Social Sciences* 9, E Sorbring & L Kuczynski 'Children's agency in the family, in school and in society: Implications for health and well-being' (2018) 13 (1) *International Journal of Qualitative Studies Health Well-Being* 1634414, GMD Sani 'Undoing gender in housework? Participation in domestic chores by Italian fathers and children of different ages. Sex roles' (2016) 74(9–10) *Sex Roles* 411–421, SSS Angadi & JL Kalyan 'Child labour- A review' (2017) 3(8) *North Asian International Research Journal of Social Science & Humanities* 112.

[330] J Naseem & Dr G Singh 'Child labour and migration: Rural children in urban centres' (2024) 6(4) *International Journal for Multidisciplinary Research* 1-2, G Gebru & F Beyene 'Causes and consequences of out-migration on rural households' livelihood in Gulomekeda district, Tigray, Ethiopia' (2012) 1(1) *Agricultural Research and Reviews* 26-27, L Osment *Child Labour; the Effect on Child, Causes and Remedies to the Revolving Menace* (Unpublished Batchelor's thesis, Lunds University, 2003) 20.

[331] G Genicot 'The impact of migration on child labour: Theory and evidence from Brazil' in M Ajit & R Tridip (eds) *Markets, Governance, and Institutions in the Process of Economic Development* (2017) 233–256, A Abeje 'Causes and effects of rural-urban migration in Ethiopia: A case study from Amhara Region' (2021) 80(1) *African Studies* 77–94, GY Shitole *Urban Poverty Management in India with Special Reference to Micro-finance to Urban Poor in Mumbai* (2005) 129.

[332] BM Zewdie1, AB Berlie & LA Mersha 'Causes of child labor and working conditions in Ethiopia: Evidence from temporary inter-rural child labor migrants from Sekela district' (2024) 12(28) *Comparative Migration Studies* 6-7, AA Alemayehu & IA Fekadu 'Home truths behind closed doors: Reciting the lived experiences of child domestic workers in selected towns of Gedeo Zone, Southern Ethiopia' (2019) 11(5) *International Journal of Sociology and Anthropology* 60, D Braam 'Child labour in the context of migration' (2019) *Policy Paper Prepared for the Alliance 8.7 Migration Action Group* 12, R Boyd 'Child Labour within the globalizing economy' (1994) 27(2) *Labour, Capital and Society* 156.

[333] A Erulkar 'Migration and child domestic work: Evidence from Ethiopia' (2018) brief. *Addis Ababa: Population Council* 1, YT Balcha *Child Domestic Work in Ethiopia: The Experiences of Rural Girls Who Migrate to Take Up Jobs as Domestic Servants in Addis Ababa* (Unpublished Master's thesis, Norwegian University of Science and Technology, 2018) 54-58, AFA Mentis 'Child migration: From social determinants of health to the development agenda and beyond' (2016) 32(3) *Medicine Conflict and Survival* 221–227.

Political instability in a country can contribute to child labour.[334] Children are sometimes recruited to serve their countries during times of war.[335] Between the end of the 20th century and the beginning of the 21st century, there has been an increase in violence and civil unrest which has catapulted children as necessary commodities for war.[336] In some cases, children who have experienced the loss of their parents due to war have been influenced by armed groups to become involved in war.[337] There are twenty countries globally where children are recruited as child soldiers in their civil and political movements. African countries comprise sixteen of these twenty countries that consign child soldiers in both legal and illegal civil rebellions.[338] Internationally, an estimated 300,000 children have been used as child soldiers since 2008 and, of this figure, 120,000 child soldiers have been reported in Africa.[339] Political unrest can pervade all areas of a country and prey on the most vulnerable. Children are more susceptible to this type of exploitation due to their vulnerability, inadequate protection from the state and a lack of regard for the human rights of children within conflict zones.[340]

3.3.7. GLOBALISATION

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[334] JM Kuvuna *Building a Human Rights Culture in the Context of Child Soldiering: A Challenge to the Protestant Church in the Democratic Republic of Congo* (Unpublished Master's thesis, University of KwaZulu-Natal, 2015) 2.

[335] R Haer 'Children and armed conflict: looking at the future and learning from the past' (2019) 40(1) *Third World Quarterly* 74, L Cleave & W Watkins 'Child soldiers and early warning. Allons-y' (2020) 4 *Journal of Children, Peace and Security* 61–72, G Østby et al 'Children at risk of being recruited for armed conflict, 1990–2020' (2022) 37 *Children & Society* 1–5.

[336] G Naufal, M Malcolm & V Diwakar 'Armed conflict and child labor: evidence from Iraq' (2019) 11(2) *Middle East Development Journal* 236–250, JA Robinson 'The right of child victims of armed conflict to reintegration and recovery' (2012) 15(1) *PELJ* 46-47, JV Kuvuna *Building a Human Rights Culture in the Context of Child Soldiering: A Challenge to the Protestant Church in the Democratic Republic of Congo* (Unpublished Master's thesis, University of KwaZulu-Natal, 2015) 2.

[337] AM Ogbonna 'Child soldiering and human development in Africa: Overview of the Democratic Republic of Congo' (2016) 9(1) *African Journal of Politics and Administrative Studies* 113, DE Mazurana 'Girls in fighting forces and groups: Their recruitment, participation, demobilization and reintegration' (2002) 8(2) *Peace and Conflict: Journal of Peace Psychology* 97-123, KT Kamwimbi *Forced Child Labour: A Critical Analysis of the Democratic Republic of Congo's Compliance with International Standards* (Unpublished LLM thesis, University of KwaZulu-Natal, 2013) 35.

[338] R Haer & T Böhmelt 'Girl soldiering in rebel groups, 1989–2013: Introducing a new dataset' (2018) 55(3) *Journal of Peace Research* 395–403, M Mehrl 'The effect of child soldiers on rebel violence against civilians' (2021) 23(3) *Civil Wars* 417–420, V Nakah 'The African church and the child in the midst - A theological reflection' (2012) 11 *International Congregational Journal* 117.

[339] OB Adegbite 'Child soldier recruitment under international law: Examining the accountability of pro-government militias' (2023) 26(2) *Gonzaga Journal of International Law* 104, JV Kuvuna *Building a Human Rights Culture in the Context of Child Soldiering: A Challenge to the Protestant Church in the Democratic Republic of Congo* (Unpublished Master's thesis, University of KwaZulu-Natal, 2015) 2.

[340] C Kofol and T Ciarli 'Child labor and conflict: Evidence from Afghanistan' (2017) ZEF-*Discussion Papers on Development Policy No. 240* 1-5.

The discourse on globalisation as a cause of child labour has burgeoned based on the argument that trade between countries compels them to seek an advantage against their competitors.[341] Considering that developing countries are rich in low-skilled labour, such countries can gain an advantage over their global competitors by utilising child labour as a means of cutting costs.[342] Employers have argued that children are indispensable to the growth of an economy largely because of their 'nimble fingers' as well as the labour-cost savings that come with employing low-skilled labour.[343] However, this argument is flawed, as is has been asserted that these labour-cost savings are low and employers could easily absorb the costs of production through its customers or employ low-skilled adults.[344] These arguments have camouflaged the fact that children are more disposable and easier to control than adults.[345] They seldom complain when exploited as they may be ignorant of their rights; because their labour is illegal, if they are aware of their rights, they are less likely to complain for fear of being fired and losing their earnings.[346]

3.3.8. LACK OF REGULATION AND INCONSISTENCIES WITHIN THE LAW

Most legislation that has been enacted by countries to regulate child labour addresses the formal economy and neglects the informal and agricultural sectors where child labour is most prevalent.[347] Typically, it focusses on industry and overlooks the rural economies of countries where children are often most exploited.[348] Additionally, countries promulgate laws that are

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[341] M Hindawi *How Globalization Impacts Child Labour? Child labour, a Lost Childhood Perpetuated by Poverty and Insecurity* (Unpublished Bachelor's thesis, Malmo University, 2022) 8-11, Xu Jintong *Globalisation and Child Labour* (Unpublished Master's thesis, Nigmegen School of Economics, 2017) 9.

[342] EV Edmonds 'Globalization and the persistence of forced labor and child labor' in K Elliott (ed) *Handbook on Globalisation and Labour Standards* (2022) 36–63, O Dagdemir & H Acaroglu 'The effects of globalization on child labor in developing countries' (2010) 2(2) *Business and Economic Horizons* 37-38,

[343] M Bhattacharya 'Globalisation and child labour: Evidence from India' (2007) *Department of Economics Issn 1441-5429 Discussion Paper 09/07* 8-9, J Humphries 'Childhood and child labour in the British industrial revolution' (2013) 66(2) *Economic History Review* 400.

[344] K Hopewell 'Trump & trade: The crisis in the multilateral trading system' (2021) 26(2) *New Political Economy* 271-282, EG Polakoff 'Globalization and child labor: Review of the issues' (2007) 23(1-2) *Journal of Developing Societies* 259-283, ILO *Eliminating the Worst Forms of Child Labour: A Practical Guide to ILO Convention No. 182 Handbook for parliamentarians' No. 3 2002* (2012) 27.

[345] C Hedges, E Ingleby & M Martin 'Children's rights and child labour' (2023) 5(2) *PRISM* 36-37,

[346] TR Makhdoom 'Utilizing child labor in business: Is it exploitation or employment?' (2017) 6(1) *European Journal of Business and Social Sciences* 155, S Dillon 'Child labour and the global economy: Abolition or acceptance' (2015) 84(2) *Nordic Journal of International Law* 297-322.

[347] RB Bernard 'The regional regulation of child labour laws through harmonisation within COMESA, the EAC and SADC' (2023) 23 *African Human Rights Law Journal* 55, HB Harjono, AIR Hunga & DD Kameo 'The reality of child labor in industry based on "putting-out" system from sustainable development perspective' (2020) *Conference Paper · January 2020* 1, B White 'Generational dynamics in agriculture: Reflections on rural youth and farming futures' (2015) 24(6) *Cahiers Agric* 330–334, F Siddiqi & HA Patrinos 'Child labour: Issues, causes and interventions' (1995) 2.

[348] Ilyas, Shahid & Hassan (note 167 above; 410-411), C Gunhidzirai 'The quest for survival: Street children and the informal sector in Zimbabwe' (2023) 35(1) *Southern African Journal of Social Work and Social*

inconsistent or lack clarity, which hinders their implementation. In Ghana, for example, the Ghana Labour Decree of 1967 banned children under 15 years old from being employed while also allowing children under 15 years old to undertake light work which legislation and regulations do not define.[349] Legislation alone will not address child labour.[350]

In some cases, when legislation is enacted, the implementation and compliance procedures leave children in a worse position than before. In India, for example, in the case of *M.C Mehta v State of Tamil Nadu*,[351] a court held that an employer could pay 60% of an adult wage to a child.[352] This was a violation of article 14 of the Minimum Wages Act 1948, which requires that wages be fixed for all occupations.[353] The outcome of this case incentivised employers to employ children, which serves to perpetuate child labour.[354] Consequently, the lack of proper procedures and mechanisms for the effective implementation of these laws their purpose.[355] In poor, developing countries, where the population's basic socioeconomic needs are not met, the government is obliged to prioritise these basic needs and lack adequate resources to implement and monitor child labour laws.[356]

3.3.9. CULTURE AND TRADITION

Culture and tradition were discussed as bases for child labour earlier in the chapter (Section 3.2.2). Work is seen in many societies as an essential aspect of a child's personal development,

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Development 1-5, JN Ozoh & UM Chinecherem 'Child labour and its determinants in informal sector of Onitsha, Anambra State, Nigeria' (2017) 7(20) *Research on Humanities and Social Sciences* 105-106.

[349] EAM Sam 'Child labor in Sierra Leone: The intersection between international law and local regulations' (2024) 12 *Open Journal of Social Sciences* 396, J Adu-Gyamfi & F Keating 'Convergence and divergence between the UN Convention on the Rights of the Children and the African Charter on the Rights and Welfare of the Child' (2013) 3(1) *Sacha Journal of Human Rights* 47–58, TJ Aransiola & M Justus 'Evolution of child labor rate in Brazilian states: Policy limits and contradictions' (2020) 1(68) *Economia e Sociedade, Campinas* 282.

[350] EA Faulkner & C Nyamutata 'The decolonisation of children's rights and the colonial contours of the Convention on the Rights of the Child' (2020) 28 *International Journal of Children's Rights* 77, C Pegus 'A review of child labour laws of Trinidad and Tobago - a guide to legislative reform' (2005) *ILO Regional Child Labour Project* 37, GA Arowolo 'Child labour in Nigeria: Need for effective legislative framework' (2018) 7(1) *International Journal of Legal Studies and Research* 28-29.

[351] *M.C Mehta v State of Tamil Nadu* J.T. 1993 (4) S.C. 20.

[352] Supra at 23.

[353] Minimum Wages Act 1948, Article 14.

[354] L Rajamani 'Exploding the myths about child labour' (1995) 37(2) *Journal of the Indian Law Institute* 243.

[355] DR S Meenu 'Implementation child labour laws: Obstacles and efforts' (2013) 2(9) *Asia Pacific Journal of Marketing & Management Review* 85, Dammert et al (note 268 above; 104-123), M Bourdillon & R Carothers 'Policy on children's work and labour' (2019) 33 *Children & Society* 387–395, R Boyd 'Child labour within the globalizing economy' (1994) 27(2) *Labour, Capital and Society* 157.

[356] G Ton et al 'Value chain governance: Entrance points for interventions to address children's harmful work in agriculture' (2020) *ACHA Working Paper No. 6, Action on Children's Harmful Work in African Agriculture* 8-18, C Szyp 'Living wage, living income, and child labour-free zones: Arguments and implications for children's work' (2020) *ACHA Rapid Review No. 1, Action on Children's Harmful Work in African Agriculture* 11-12, S Okyere et al 'Policies and politics around children's work in Ghana' (2020) *ACHA Working Paper 7, Action on Children's Harmful Work in African Agriculture*, January. Brighton: IDS 14-19.

socialisation and learning.[357] Traditionally, children in rural households have participated in their family's agricultural work.[358] However, the type of work traditionally performed by children within the cultural context was once considered an opportunity for children to develop and grow within a protected setting but it has now become a fertile ground for exploiting children.[359] It must be acknowledged that society has evolved over time along with the rights of children, thus parents, care-givers and society at large may intentionally or unintentionally exploit children because what was deemed acceptable many years ago within the rural setting may in fact be regarded as a violation of children's rights.[360]

3.4. CONCLUSION

This chapter has examined the concepts of a child, childhood, child work and child labour and has explored several factors lead children to work, such as socio-economic conditions, culture, society, race, political stability, and other demographics.[361]

Lawful child work is embedded within the concept of child labour which is a multifaceted concept and cannot be considered in isolation. Rather, the complexity of the term child labour requires a nuanced approach when protecting children from harmful work. Child labour is considered illegal for the variety of reasons discussed. The chapter has synthesised the reasons that children engage in legal work and illegal labour in various contexts with a particular focus on Africa. While the total eradication of child labour has been mooted, any initiative to eradicate child labour must consider the underlying factors that give rise to child labour.[362]

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[357] M Liebel 'Do children have a right to work? Working children's movements in the struggle for social justice. in K Hanson & O Nieuwenhuys (eds) *Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations* (2013) 225–249, Aufseeser, Bourdillon & Carothers et al (note 278 above; 241–261), L Groves 'Implementing ILO Child Labour Convention 182: Lessons from Honduras' (2004) 14(1/2) *Development in Practice* 172.

[358] Abdullah et al (note 131 above; 4082), A Pankhurst, G Crivello G & A Tiumelissan 'Children's work in family and community contexts: Examples from young lives Ethiopia' (2016) *Working Paper* 147 1-10, M Boas & A Huser 'Child labour and cocoa production in West Africa: The case of Cote D'Ivoire and Ghana' (2006) 522.

[359] U Xolocotzin & T Jay 'Children's perspectives on their economic activity – Diversity, motivations and parental awareness' (2020) 34 *Children & Society* 424–442, LF Lopez-Calva 'social norms, coordination, and policy issues in the fight against child work' in K Basu et al *International Labor Standards, Issues, Theories, and Policy Options* (2002) 40, N Sancho-Liao 'Child labour in the Philippines: Exploitation in the process of globalization of the economy' (1994) 27(2) *Labour, Capital and Society* 274.

[360] M Akilova 'Pathways to child work in Tajikistan: Narratives of child workers and their parents' (2017) 36 *Cent. Asian Surv.* 231–246, O Adonteng-Kissi 'Parental evidence of impact of policy on worst forms of child labour in rural and urban Ghana' (2019) 35 *Journal of International & Comparative Social Policy* 239–260, A Boakye-Boaten 'Changes in the concept of childhood: Implications on children in Ghan' (2010) 3 *Journal of International Social Research* 104–115, AA Amin 'The socio-economic impact of child labour in Cameroon' (1994) 27(2) *Labour, Capital and Society* 236-237.

[361] M Bonnet 'Child labour in Africa' (1993) 132(3) *International Labour Review* 381.

[362] J Seabrook *Children of Other Worlds: Exploitation in the Global Market* (2001) 5.

The chapter has considered child labour from an international perspective which understands child labour as an international problem that requires the enforcement of international law to ensure that the same standard is applied universally to address child labour.[363] As child labour is considered a human rights issue, the international instruments that aim to protect and advance the rights of children are key in the prevention of their exploitation.[364] This underscores that children are vulnerable members of society and, thus, international, regional, and domestic law must provide children with the assistance that they require to advance their interests, especially when they engage in work.[365] The chapter also highlighted the complexities of applying universal definitions to the African context.

Chapter Four will present the regulation of child labour from a regional and international perspective that will illustrate how Western concepts of child labour are incompatible with the African culture.

[363] JM Zimmerman *Extraterritorial Employment Standards of the United States* (1992) 9.
[364] J September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* (Unpublished Master's thesis, University of Cape Town, 2014) 10.
[365] P Alpman *Mandatory Reporting: The Legal Protection of Child Victims of Trafficking for the Exploitation of Child Labour in South Africa* (Unpublished Master's thesis, University of KwaZulu-Natal, 2014) 14.

CHAPTER FOUR: INTERNATIONAL AND REGIONAL REGULATION OF CHILD LABOUR

4.1. INTRODUCTION

4.2. THE ILO CONVENTIONS

4.2.1. MINIMUM AGE CONVENTION 138 OF 197

4.2.2. CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR 182 OF 1999

4.3. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

4.4. AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF CHILDREN (ACWRC)

4.5. SUMMARY OF THE SIMILARITIES AND DIFFERENCES BETWEEN THE FOUR INSTRUMENTS

4.6. CONCLUSION

4.1. INTRODUCTION

The purpose of this chapter is to discuss the relevant articles in three international and one regional instrument about child labour. The international regulatory framework highlights the vulnerabilities of children and the paramount responsibility that states have to protect children.[1] International non-governmental organisations advocated for the endorsement of children's rights which led to the promulgation of legally binding international conventions to eradicate child labour.[2] In the aftermath of World War Two, the ILO endeavoured to protect children to maintain peace and social justice.[3] The ILO was the first international institution to consider the protection of children not only from a human rights perspective but also from a labour stance.[4] This led to the promulgation of a plethora of international conventions over the years

[1] Md N Momen 'Child labor: History, process and consequences' in L Filho et al *No Poverty. Encyclopedia of the UN Sustainable Development Goals* (2021) 80-87; M Freeman 'Taking children's rights more seriously' (1992) 6 *International Journal of Law and Family* 55; see BJ Gran 'An international framework of children's rights' (2017) 13 *Annual Review of Law and Social Science* 79 -100 for an historical overview and critique of the development of international children's rights.

[2] SM Kannapathi *Reconciling Child Labour Practices in South Africa with International Standards: Prospects and Challenges* (Unpublished Master's thesis, University of KwaZulu-Natal, 2015) 9, SO Oladiji *The Role of International, Regional and Domestic Standards in Monitoring Children's Rights* (Unpublished Master's thesis, UNISA, 2012) 15.

[3] M Mila *The Concept of Child Labour of the International Labour Organisation* (Unpublished Master's thesis, University of Jyvaskyla, 2006) 18.

[4] E van Daalen and K Hanson 'The ILO's shifts in child labour policy: Regulation and abolition' in C Gironde & G Carbonnier (eds) *The ILO @ 100 Addressing the Past and Future of Work and Social Protection* (2019) 133-134, A Foua & W Diriwari 'The ILO's endeavour to eliminate child labour worldwide: A discourse on legitimacy and standards fit for purpose' (2019) 10 *Beijing Law Review* 1263; M Liebel & A Invernizzi 'The movements of working children and the International Labour Organization. A lesson on enforced silence' (2019) 33 *Children and Society Volume* 143, L Zamfir 'Child labour: A priority for EU human rights action' (2019).

that were designed for the protection of children against child labour as well as the protection of children while they engaged in child work.[5]

In line with the purpose of this thesis discussed in Chapter 1 and 2, this chapter focuses on the relevant provisions of four key conventions that address child labour. These are the ILO Convention 182 of 1999: Prohibition and Immediate Action on the Elimination of the Worst Forms of Child Labour (Convention 182); the ILO Convention 138 of 1973: The Minimum Age Convention (Convention 138); the United Nations Convention on the Rights of the Child (CRC); and the African Charter on the Rights and Welfare of the Child (ACWRC). All four instruments contain provisions that specifically address child labour and the protection of children from child labour. These four instruments contain provisions that define and interpret child labour and provide guidelines for states to draft domestic legislation for the protection of children from child labour. A review of these instruments was key to this study, as it investigates the effectiveness implementation of child labour laws and not merely on the general rights that every child is entitled to. The four instruments thus work together to protect children from child labour. These instruments share similarities, but also differ, in terms of their interpretation and scope.[6]

South Africa and Uganda have signed and ratified all four instruments. South Africa ratified the ILO Minimum Age Convention 138 of 1973, the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 182 of 1999, and the African Charter on the Rights and Welfare of Children in 2000. It ratified the United Nations Convention on the Rights of the Child in 1995.[7] Uganda ratified the United Nations Convention on the Rights of the Child in 1990, the African Charter on the Rights and Welfare of Children in 1992, the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 182 of 1999 in 2001, and the ILO Minimum Age Convention 138 of 1973 in 2003. [8] The USA has only ratified

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[5] S Hoffman & R Thorburn Stern 'Incorporation of the UN Convention on the Rights of the Child in National Law' (2020) 28 *International Journal of Children's Rights* 134, J von Bahr *International Organizations and Children's Rights: Norm Adoption, Pressure Tactics and State Compliance* (Unpublished Doctoral thesis, Stockholm University, 2020) 22-23, J Theis 'The state of international children's rights' (2018) CPC Learning Network 6-7.

[6] See table 4.5 for a summary.

[7] ILO 'Ratifications for South Africa' available at *https://www.ilo.org/dyn/ normlex/ en/f?p=1000: 11200 :0::NO:11200:P11200_COUNTRY_ID:102888,* The ACERWC 'Ratification Table' available at *https://www.acerwc.africa/en/member-states/ratifications*. See Parliament of the Republic of South Africa 'Promoting Children's Rights in South Africa: Fast Facts – United Nations Convention on the Rights of the Child (UNCRC)(2019),

[8] See also ILO 'Ratifications for Uganda' available at *https://www.ilo.org/dyn/ normlex/en/ f?p=1000 :11200:0::NO:11200:P11200_COUNTRY_ID:103324*, The ACERWC 'Ratification Table' available at

the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 182 of 1999 in 1999.[9] The USA has not ratified the United Nations Convention on the Rights of the Child and the ILO Minimum Age Convention 138 of 1973. The obligations and consequences of the USA's failure to ratify these instruments will be discussed further in the chapter. Chapter 8 also provides a comparative analysis of the ratification of conventions by all 3 countries.

This is pertinent as the ratification of these instruments influences how South Africa and Uganda are guided in their drafting and implementation of child labour laws. It was thus useful in this comparative analysis of South African and Ugandan law to consider how the child labour provisions in these instruments relate to each other and how they are implemented, particularly given that they are both developing countries with similar cultural contexts and socio-economic challenges.

The ILO Conventions 182 and 138 have set a standard for all countries for child labour provisions. This helps to create uniformity across countries on child labour provisions. The United Nations Convention on the Rights of the Child, which is the convention that has been ratified by the most countries,[10] comprehensively endorses the rights of children and sets an international standard for the enforcement of children's rights—particularly, the right to be protected from child labour.

The African Charter on the Rights and Welfare of the Child (ACRWC) correlates with the rights of children endorsed in the CRC by entrenching similar children's rights. As a regional instrument, the ACRWC goes further to include the cultural rights of children and protection from harmful social practices,[11] which highlights the unique cultural needs of African children living in Africa.[12] The ILO Convention 138 is regarded as flexible

https://www.acerwc.africa/en/member-states/ratifications) and UNICEF 'Child Rights Governance' available at https://www.unicef.org/uganda/what-we-do/child-rights-governance#:~:text=In%201990%2C%20Uganda%20ratified%20the,of%20the%20Child%20(CRC).

[9] See ILO 'Ratifications for USA' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11110:0::NO::P11110_COUNTRY_ID:102871*.

[10] U Kilkelly & T Liefaard 'Legal implementation of the UNCRC: Lessons to be learned from the constitutional experience of South Africa' (2019) *De Jure* 524.

[11] The ACRWC, Article 21.

[12] EA Faulkner & C Nyamutata 'The decolonisation of children's rights and the colonial contours of the Convention on the Rights of the Child' (2020) 28 *International Journal of Children's Rights* 70-71, J Sumberg & R Sabates-Wheeler 'Children's work in African agriculture: Time for a rethink' (2020) 49(2) *Outlook on Agriculture* 99, C M Sibani 'Impact of western culture on traditional African society: Problems and prospects' (2018) 10(1) *International Journal of Religion and Human Relations* 57.

and responsive in its approach to developing countries as it makes a distinction between the enforcement of its provisions in developed countries and developing countries.

4.2. THE ILO CONVENTIONS

4.2.1. MINIMUM AGE CONVENTION 138 OF 197

Convention 138 of 1973 replaced ten previous conventions that dealt with the minimum age of employment or work.[13] Convention 138 was the first international instrument to embrace mandatory rules and regulations concerning the abolition of child labour.[14] Convention 138 is unique to its predecessors as it differentiates the concept of child labour from other forms of economic exploitation (as was discussed in detail in Chapter Three of this thesis), basing this differentiation on the age of the child and the working environment.[15] This differs significantly from previous conventions that focused on the well-being of children engaged in labour, rather than abolishing child labour.[16] These previous conventions focused primarily on specific employment sectors and sought to eliminate forced child labour as well as prohibit any labour conducted underground by children.[17]

Article 1 of Convention 138 mandates that all member states introduce legislation to eradicate child labour and institute a minimum age for entrance into employment or work, in line with the objectives of the Convention.[18] Convention 138 emphasises that childhood is a vulnerable period of development in a child's life and that this time should be consecrated for a child's learning and development.[19] Hence, Convention 138 requires that the

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13 CI Tshoose 'Appraisal of selected themes on the impact of international standards on labour and social security law in South Africa' (2022) 24 *PER* 2; RA Mavunga 'A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999' (2013) 16(5) *PER* 122-143; The World Bank Doing *Business 2010:* Reforming *Through Difficult Times* (2009) 70.

14 Van Daalen and Hanson (note 4 above; 2).

15 Convention 138, Article 2 & 3, Foua & Diriwari (note 4 above; 1263).

16 A Kornikova 'International child labour regulation 101: What corporations need to know about treaties pertaining to working youth' (2009) 34(1) *Brooklyn Journal of International Law* 219.

17 A discussion on the conventions dealing with child labour between 1919 - 1940 can be found in S Hepburn & A Jackson 'Colonial exceptions: The International Labour Organization and child labour in British Africa, c.1919–40' (2022) 57(2) *Journal of Contemporary History* 219-220, F Koliev 'Promoting international labour standards: The ILO and national labour regulations' (2022) 24(2) *The British Journal of Politics and International Relations* 362.

18 E van Daalen 'Could it be that they do not want to hear what we have to say?' Organised working children and the international politics and representations of child labour' in B Sandin et al *The Politics of Children's Rights and Representation* (2023) 135.

19 J Herring 'Vulnerability and children's rights' (2023) 36 *International Journal of Semiotics & Law* 1513; E Keddell 'The vulnerable child in neoliberal contexts: The construction of children in the Aotearoa New Zealand child protection reforms' (2018) 25(1) *Childhood: A Global Journal of Child Research* 94*;* H Hindman *A World of Child Labour: An Historical and Regional Survey* (2015) 140-141; J Tobin 'Understanding children's rights: A vision beyond vulnerability' (2015) 84(2) *Nordic Journal of International Law* 168; E Edmonds & N Pavcnik 'Understanding child labour: Patterns, types and causes' (2005) 19(1) *Journal of Economic Perspectives* 3.

legal age of admission to employment or work should be congruent with a child's development.[20] This requirement suggests that a child-centred approach is compulsory in considering the minimum age of employment or work, as the age at which a child begins employment or work has a bearing on a child's development.[21]

It is significant to note that even though Article 1 of Convention 138 encourages the abolition of child labour, it does not supply a definition for the term child labour in any of its provisions. This is unfortunate, as a clear understanding of child labour is necessary in order to develop a comprehensive understanding of the difference between child labour and child work.[22] The general perception that is prevalent in Article 1 of Convention 138 is that it would be sufficient for member states to draft legislation and policies that would serve to reduce child labour, but it does provide guidance as to the content of such policies and how they should be implemented.[23] This has resulted in member states adopting measures that to combating child labour that are not aligned internationally.[24] It is therefore submitted that Convention 138 provide more clarity on the term child labour rather than simply enforcing guidelines for ratifying states to determine whether an act falls in or out of that boundary. This would allow ratifying states to approach combating child labour from the same legal stance.

In terms of Article 2(1) of Convention 138, member states have a duty to enforce a minimum age of employment or work across their territory. The minimum age of employment or work applies to all children, irrespective of whether they are engaged in employment or work for their benefit or the sustenance of their families.[25] The use of the word 'employment' or 'work' in Article 2(1) of Convention 138[26] enlarges the scope of the definition of child labour, as it assimilates all forms of work—whether conducted in terms of a contract of employment, within family enterprises or in a domestic environment—irrespective of whether

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[20] A Mohammed & AS Achanso 'Problematising the dominant child rights discourses: Why we need a nuanced approach to combat child labour' (2021) 8(2) *Advances in Social Sciences Research Journal* 479; S Wal *Combating Child Labour-Legal Approach* (2006) 258.

[21] A Skelton 'Too much of a good thing? Best interests of the child in South African jurisprudence' 2019 *De Jure Law Journal* 559; J Sloth-Nielsen 'Children's rights jurisprudence in South Africa – a 20 year retrospective' 2019 *De Jure Law Journal* 506-507; S Saluzzo 'The best interest of the child in international trade policies: Some remarks on child labour and trade' (2022) 89 *Questions in International Law* 53-55.

[22] Mavunga (note 13 above; 126).

[23] KG Harrison et al 'Human rights issues of child labour and economic activities: The way forward' (2018) 4(2) *American Journal of Social Science Research* 41-42.

[24] JJ Brudney 'Hiding in plain sight: An ILO Convention on labor standards in global supply chains' (2023) 23(2) *Chicago Journal of International Law* 281.

[25] W Myers 'The right rights? Child labour in a globalising world' (2001) 575 *Annals of the American Academy of Political and Social Science* 46.

[26] Convention 138; Article 2(1) reads as follows: "Each member which ratifies this Convention shall specify in a declaration appended to its ratification a minimum age for admission to employment or work within its territory…… no one under that age shall be admitted to employment or work in any occupation."

it is for remuneration or based on an informal agreement.[27] In this thesis, the researcher uses the term "work", rather than "employment", in some instances, as this includes all forms of work mentioned above. In other instances, the researcher uses both "work" and "employment" as the international instruments expressly include both terms in their provisions.

Convention 138 assists member states further by providing the minimum age that it deems acceptable for entry into employment.[28] Article 2(3) sets the general entrance into employment at 15 years of age as a mechanism for delaying a child's admission into employment.[29] The most significant aspect of Article 2(3) is that it uses the chronological age of a child to define child labour by enforcing a legal age for work and, in doing so, legalises work under certain conditions for children from the age of 15.[30] Article 2(3) thus makes a clear distinction between two types of employment or work: "child labour", which it considers to be illegal, and "child work", which it deems to be legal and acceptable.[31] By enforcing a minimum age for the lawful entrance into employment or work, Convention 138 intends that all employment or work, irrespective of the conditions under which it is performed, be regarded as child labour, and thus be illegal, for children under the age of 15 .[32]

Article 2(3) of Convention 138 sets the minimum age of employment or work in line with the minimum age required for completing schooling, which is 15 years of age.[33] In doing so, Article 2 highlights a child's right to basic education as a criterion that is used to determine when a child should be permitted to begin employment or work.[34] The underlying purpose of Article 2 is to ensure that children are provided with at least a basic education by the age of 15 years to guarantee that their mental development, as mentioned in Article 1, is

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[27] OECD/International Labour Organization 'Definitions of informal economy, informal sector and informal employment' (2019) *Tackling Vulnerability in the Informal Economy* 155, see also International Labour Office (2002): Decent Work and the Informal Economy; Report of the Director-General; International Labour Conference, 90th Session; Report VI International Labour Office, Geneva, 2002

[28] Eighth meeting of the SRM TWG Examination of instruments concerning Minimum Age of Employment Technical Note 2.2: Instruments concerning Minimum Age, 11-16 September 2023, O Oppong-Nkrumah 'The impact of increasing the minimum legal age for work on school attendance in low- and middle-income countries' (2019) 8 *SSM - Population* 1-2, MA Forere 'The effect of section 43 of the BCEA on employment contracts and legislative protection of minors' (2016) *De Jure* 35-36.

[29] Convention 138, Article 2(3), A Gatsinzi & G Hilson ''Age is just a number': Articulating the cultural dimension of child labour in Africa's small-scale mining sector' (2022) 78 *Resources Policy* 2-3.

[30] T Madziwe *A Critical Analysis of Child Labour Protective Laws in Southern Africa: A Case Study of Malawi, Southern Africa and Zimbabwe* (Unpublished Master's thesis, University of KwaZulu-Natal, 2014) 14.

[31] A Kolk & R Van Tulder 'Child labour and multinational conduct: A comparison of international business and stakeholders' codes' (2002) 36 *Journal of Business Ethics* 292.

[32] Convention 138; Article 2(3).

[33] Convention 138; Article 2(3).

[34] See as an example MA Forere 'The effect of section 43 of the BCEA on employment contracts and legislative protection of minors' (2016) *De Jure* 28.

enabled.[35] Convention 138 is thus cognisant of the significance that education plays in a child's life, as the lack of a proper education increases the probability that the child will be confined to menial and unskilled work that is poorly paid, or even obviates them from obtaining employment altogether.[36] It is intended that the problems encountered by the child that compelled them to engage in employment or work are not perpetuated to the next generation and that their circumstances of poverty do not become a perennial cycle.[37] Convention 138 therefore considers labour to be a deviation from the healthy, or usual, condition that is required for childhood development.[38]

The perspective that labour causes impairment to development has been criticised as a child-unfriendly model of childhood as it infers that the only rightful place in which a child can grow up is within the security of their families and the school context.[39] This, in turn, fails to consider that all children are unique and possess different levels of maturity. and that informal education takes place beyond the realm of formal education.[40] The intention of Convention 138 is to oblige member states to enforce legislation that makes schooling compulsory until the age of 15 years. This denies children under the age of 15 the choice of engaging in employment or work, which is considered to be a positive step toward the eradication of child labour.[41] This requirement does not always achieve its intended purpose, however, as the prevalent levels of child labour indicate that children under the age of 15 who

[35] Convention 138; Article 1.
[36] See NM Tumwesigye et al 'Covid-19 lockdowns in Africa: Their effects and challenges' in P Carmody et al (eds) *Covid-19 in the Global South* (2020) 151 and L Arendse 'The South African Constitution's empty promise of "radical transformation": Unequal access to quality education for black and/or poor learners in the public basic education system' (2019) 23 *Law, Democracy and Development* 113 for discussion on the issues around disrupted schooling; AR Ritualot, CL Castrott & S Gormly 'Measuring child labour: Implications for policy and program design' (2003) 24 *Comparative Labor Law & Policy Journal* 401.
[37] L Arendse 'Slowly but surely: The substantive approach to the right to basic education of the South African courts post-Juma Musjid' (2020) 20 *African Human Rights Law Journal* 287; A Skelton *Strategic Litigation Impacts Equal Access to Quality Education* (2017) 22; R Joubert 'Incorporating international standards into national education law in South Africa: The accountability of the state' (2014) 29 *South African Public Law* 18; W Schurink, C Molope & S Tshabalala *Exploring Some Dimensions of Child Labour in South Africa* (1997) 1.
[38] D Askeland *Social Emotional Development in Early Childhood* (Unpublished Master's thesis, Northwestern College, 2019) 7, TC Nhenga-Chakarisa 'Who does the law seek to protect and from what? The application of international law on child labour in an African context' (2010) 10 *African Human Rights Journal* 167; B White 'Defining the intolerable: Child work, global standards and cultural relativism' (1999) 6(1) *Childhood* 134.
[39] V Barnsley 'Everyday childhoods in contemporary African fiction' (2022) 10(s2) *Journal of the British Academy* 285, M Barra 'Childhood at latitude zero: Revealing Sao Tome and Principe children's play culture' (2022) 10(s2) *Journal of the British Academy* 86.
[40] EW Corrado 'Harambee approach: Towards decolonising East African education through capturing social-cultural ethos' (2022) 10(s2) *Journal of the British Academy* 139; TP Ennin 'Memory, innocence and nostalgia: Other versions of African childhood in two African texts' (2022) 10(s2) *Journal of the British Academy* 270, E Fokala 'Calibrating children's rights to participate in a family setting 30 years after the adoption of the Convention on the Rights of the Child and the African Children's Charter' (2020) 34(2) *Speculum Juris* 116.
[41] M Mursed 'Unraveling child labour and labour legislation' (2001) 55(1) *Journal of International Affairs* 181.

are denied the opportunity for legal employment or work may be forced to perform employment or work "underground" as child labourers, rather than child workers, thus opening the door for their potential exploitation.[42] Thus, the very provision of Convention 138 that intends to curtail child labour may, in actuality, result the expansion of child labour.

Furthermore, Article 2 of Convention 138 neglects to acknowledge that child labour is rife in developing countries where basic education is not always available or is inadequate, and schooling is not always a viable option for all children.[43] This may lead to parents encouraging children to perform labour to acquire skills and experience as a more meaningful alternative to being idle or engaging in vagrancy.[44] Thus, in countries where education is not easily accessible, the minimum age of employment or work enshrined in Convention 138 has little credence to prevent children from undertaking labour before they attain 15 years of age.

Convention 138 contains several provisions which are regarded as "saving" clauses. These are purposed to allow member states, particularly those in developing countries that have inadequate educational infrastructure and emerging economies, discretion in applying the provisions according to their countries' peculiar socio-economic needs.[45] Such member states may set a lower age of minimum entrance to employment or work at 14 years.[46] Member states are only entitled to set a lower age of admission to employment if they have consulted with the workers and organisations concerned.[47]

If any member state adopts a minimum age that is lower than 14 or 15, it is obliged to provide reasons for doing so. Additionally, if a member state sets 14 years as its legal age of admission to employment or work, as part of the minimum core requirements the state is obliged to monitor this age and to ensure that the reasons for lowering the age are remain

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[42] G Adams *The Impact of the Quintile Funding System in Reducing Apartheid Inherited Inequalities in Education* (Unpublished Master's thesis, Stellenbosch University, 2020) 26; C Bellamy *The State of the World's Children 1997* (1997) 22-23.

[43] Oppong-Nkrumah et al (note 28 above; 2); T Crippin *The Political Economy of Child Labor: Urban Society, Rural Communities, & the Case of Sub-Saharan Africa* (Unpublished Doctoralthesis, State University of New York, 2020) 145.

[44] M Ferreira, J Reis-Jorge & S Batalha 'Social and emotional learning in preschool education - A qualitative study with preschool teachers' (2021) 13(1) *International Journal of Emotional Education* 53.

[45] CK Shukla & S Ali *Child Labour- Socio-economic Dimensions* (2006) 14; Gatsinzi & Hilson (note 29 above; 102799).

[46] Convention 138; Article 2(4).

[47] Convention 138; Article 4(1).

applicable.[48] Member states are also mandated to promulgate legislation and policies that include penalties for contravening the minimum age of employment or work.[49] Additionally, states are requested to draft further legislation to ensure that employers record the names, nationality and ages of their workers to enable proper monitoring of the minimum age requirement.[50] Therefore Article 2(4) commended internationally for its attempt to address the differences that exist between developed and developing countries.[51]

Article 3(1) of Convention 138 seeks to protect children from undertaking employment or work that is detrimental to their physical and psychological development.[52] Once again, Convention 138 makes room for flexibility, as Article 3 obliges member states to align national laws to define the term "hazardous work" by using the nature and circumstances of work as a guideline to determine what would constitute a hazard.[53] Irrespective of a country's availability of resources, a government's first concern regarding working children should be identifying and eliminating all forms of hazardous employment or work in both agricultural and non-agricultural sectors of the economy.[54] However Convention 138 has been criticised for not providing sufficient and clear parameters in the determination of hazardous work but it is accompanied by a the Minimum Age Recommendation 146, 1973 (hereafter referred to as Recommendation 146) (adopted contemporaneously) which provides more detail about implementation.[55] Recommendation 146 provides guidelines for aligning national policies dealing with prohibitions on hazardous employment or work.[56] Recommendation 146 identifies several factors that member states should consider when determining hazardous employment or work. These are: the use or exposure to toxic or harmful elements, substances or procedures (as well as ionising radiation); the haulage or lifting of substantial weights; and all work that is conducted underground.[57] However, it is significant to note that Recommendation 146 is a non-

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[48] G Van Bueren 'The establishment of minimum ages and fair remuneration' in A Chapman & S Russell (eds) Core Obligations: Building a Framework for Economic, Social and Cultural Rights (2002) 155-156.

[49] Convention 138; Article 9(1).
[50] Convention 138; Article 9(3).
[51] SA Morgan *Credit and Child Labour: The Impact of Parents Access to Credit on Children's Labor* (Unpublished Master's thesis, Georgetown University, 2008) 3-4.
[52] Van Daalen & Hanseon (note 4 above; 133).
[53] M Hilton *Monitoring International Labour Standards: Quality of Information* (2000) 47.
[54] A Fyfe *Child Labour: A Guide to Project Design* (1993) 12.
[55] Mavunga (note 13 above; 126).
[56] ILO *Child Labour: A Textbook for University Students* (2004) 211.
[57] Recommendation 146; Article 10.

binding instrument; thus, member states are under no compulsion to comply with its specifications.[58]

In terms of Article 3(3) of Convention 138, member states are entitled to permit children from 16 years into employment or work provided that they have received the necessary coaching and vocational tuition, and on condition that they are adequately protected.[59] Convention 138 further permits member states to promulgate national policies that effectively exclude specific types of employment or occupations from the ambit of Convention 138.[60] However Article 4(1) stipulates three prerequisites to this exclusion; namely: the exceptions must be necessary, they must apply to limited areas of employment, and they must pertain to unique and significant problems relating to the application of the Convention.[61] Article 4(1), which is implemented contemporaneously with Article 5(1) as Article 5(1), entitles member states to draft national policies that exclude an entire sector of employment from the ambit of the application of Convention 138.[62] However, while Article 4(1) pertains to the exclusion of an occupation and applies to all countries,[63] Article 5(1) pertains to the exclusion of an entire sector in the economy and is aimed at assisting developing countries rather than developed countries.[64] Although Article 5(1) does not provide any indication as to which sectors may be excluded, it provides a list of sectors which are required to be included in the application of Convention 138.[65]

In terms of Article 5(1) of Convention 138, the agricultural sector is not sufficiently addressed as the convention fails to correctly portray the reality of exploitation that occurs in this sector.[66] It must be emphasised that the agricultural sector is often the main source of income in developing countries and the majority of child labourers and child workers are found within this sector, whether legally or illegally.[67] Moreover, by limiting the application

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[58] ILO *Compilation of International Labour Conventions and Recommendations* (2015) 13.
[59] M Muslim et al 'The role of vocational education in the student career development process' (2023) 6(2) *Indonesian Journal of Educational Research and Review* 331.
[60] Convention 138; Article 4(1).
[61] Convention 138; Article 4(1).
[62] Convention 138; Article 5(1).
[63] Convention 138; Article 4(1).
[64] Convention 138; Article 5(1).
[65] Convention 138; Article 5(1) requires the mandatory application of Convention 138 "mining, quarrying, manufacturing, construction, electricity, gas, water and sanitary service, transport, storage, and communications, and plantations and other agricultural undertakings mainly producing for commercial purposes but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers."
[66] AN Nwazuoke & CI Igwe 'Worst forms of child labour in Nigeria: An appraisal of international and local legal regimes' (2016) 7 *Beijing Law Review* 78.
[67] FAO *FAO Framework on Ending Child Labour in Agriculture* (2020) xiii-xv; P Hurst 'Health and child labour in agriculture' (2007) 28(2) *Food and Nutrition Bulletin* 365.

of Convention 138 only to work undertaken in the agricultural sector for economic purposes, Convention 138 fails to acknowledge that exploitation is a real possibility within the family context and on small-scale holdings, as children in some cultures are viewed by their families as an economic asset, as they provide extra hands for work and are, thus, a source of revenue.[68] This often obscures a true representation of the number of working children as children who are employed or work for their parents are not reported as working children.[69] The result of this is that children who perform work on family farms and small holdings may not be protected under Convention 138 if member states elect to exclude the application of the Convention to this area.[70]

Convention 138 provides two other exceptions to the minimum entrance to employment and work. Article 6 of Convention 138 excludes employment or work conducted by children that takes place at schools, training organisations or institutes for the purpose of practical or vocational learning.[71] Article 8 further provides for the exception to prohibitions of employment or work where children are involved in artistic performances.

Article 7 is a pivotal provision in Convention 138—especially for developing countries. It has become known as the "light work" provision.[72] Article 7 effectively permits children from the age of 13 to undertake light work; this implies that children under the age of 13 years may not perform any type of employment or work.[73] However, while Article 7 of Convention 138 entitles children to engage in light work, it does not define what types of work constitute light work.[74] In light of the absence of a clear definition of "light work", the term is deemed to correlate with the definitions put forward by the CRC and the ILO of beneficial child work.[75] In terms of the IPEC'S concept of "light work", such work is perceived to be

[68] I Sindayigaya 'The African Charter on the Rights and Welfare of the Child, an instrument based on African socio-cultural realities: Truth or utopia?' (2024) 12 *Open Journal of Social Sciences* 512; R Maconachie, N Howard & R Bock 'Re-thinking 'harm' in relation to children's work: a 'situated,' multi-disciplinary perspective' (2022) 50(3) *Oxford Development Studies* 260-261; Sumberg & Sabates-Wheeler (note 12 above; 99).
[69] MG Davidson 'The International Labour Organisation's latest campaign to end child labour: Will it succeed where others have failed' (2001) 11 *Transnational Law & Contemporary Problems* 206.
[70] SI Shukurat *Exploitation of Children in the Informal Sector: Case Study of Street Hawking Children in Ifo Local Government, Ogun State* (Unpublished Master's thesis, Erasmus University, 2012) 56.
[71] Convention 138; Article 6.
[72] D Ogunniyi 'Child labour and a search for conceptual clarity: Congruence or contradiction in children's rights treaty law?' (2021) 2(1) *Carnelian Journal of Law and Politics* 65-76; M Borzaga 'Limiting the minimum age: Convention 138 and the origin of the ILO's action in the field of child labour' in G Nesi, L Nogler & M Pertile (eds) *A Globalized World: A Legal Analysis of ILO Action* (2008) 57.
[73] Ibid.
[74] Ibid.
[75] Ibid.

work that is non-hazardous in nature and is less than 14 hours a week.[76] Irrespective of the lack of clarity regarding this term, member states are encouraged to draft national legislation and policies that address and regulate children undertaking light work.[77] It is noted that this failure to define light work could, however, benefit developing countries where children are compelled to undertake work in order to survive.[78] It is further submitted that Article 7 would benefit children as they would be protected under Convention 138, thus eliminating potential exploitation.

It has been argued that Convention 138 is of limited value as it fails to adequately address the problem of child labour that exists. In India, for example, 20 percent of children who are not in school are between the ages of 5 and 15.[79] This means, effectively, that such children have neither the option of accessing education nor the possibility of employment or work, as all employment or work under the age of 13 is regarded as child labour and thus unlawful. The reality of the situation is that children who are confined to these circumstances are prone to undertaking employment or work without the necessary protection that Convention 138 ought to provide to them, therefore creating the possibility for exploitation.

Considering that poverty is the compelling factor that drives children to engage in child labour,[80] one of the major shortcomings of Article 7 is that it does not effectively address the needs of children if it places a ban on children under the age of 13 engaging in employment or work without giving them an alternative to sustain themselves and their families. Article 7 has been condemned for prohibiting light work for children under 12 years old in developing countries where culture often dictates that these children engage in child

[76] ILO/IPEC/SIMPOC *Every Child Counts, New Global Estimates on Child Labour* (2002) 32; Lucas provides a detailed analysis of Article 7 of the European Social Charter in terms of how light work is viewed in European labour law which mirrors and usefully expands on the Convention's meaning: K Lucas 'Article 7: The right of children and young persons to protection' of her book *The Revised European Social Charter An Article by Article Commentary* (2021) 119-133.
[77] N De Wet & Jude Ewemade '"We are small, but we have jobs": A profile of the labour activities of children and youth in South Africa' (2018) 49(3-4) *South African Review of Sociology* 109.
[78] DL Parker & M Overby 'A discussion of hazardous child labour' (2005) 120 *Public Health Reports* 586.
[79] DM Smolin 'Strategic choices in the international campaign against child labor' (2000) 22(4) *Human Rights Quarterly* 960. N Kaur & RW Byard 'Prevalence and potential consequences of child labour in India and the possible impact of COVID-19 – a contemporary overview' (2021) 61(3) *Medicine, Science and the Law* 211-212.
[80] F Fay 'Ordinary childhoods and everyday Islamic practices of protection and care in Zanzibar' (2022) 10(s2) *Journal of the British Academy* 176; A Twum-Danso Imoh 'From the singular to the plural: Exploring diversities in contemporary childhoods in sub-Saharan Africa' (2016) 23(3) *Childhood* 456; ILO, IPEC & SIMPOC *Every Child Counts, New Global Estimates on Child Labour* (2002) 32; Z Aqil 'Nexus between poverty and child labour: Measuring the impact of poverty alleviation on child labour' (2012).

work.[81] Consequently, Article 7 of Convention does not adequately protect children within the African continent.

4.2.2. CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR 182 OF 1999

ILO Convention 182 complements the UN Convention on the Rights of Children by acknowledging that all persons under the age of 18 years are considered children and thus fall under the ambit of Convention 182.[82] Article 1 requires member states to eliminate the worst forms of child labour, using the words "immediate" and "urgency" to convey that it is a matter of priority that states eliminate these forms of labour.[83] While Convention 182 draws attention to the urgent need to eradicate the worst forms of child labour, it approaches the situation pragmatically: it recognises that the worst forms of child labour are deeply rooted in poverty and, therefore, cannot be eradicated overnight by simply drafting legislation.[84]

While the utilisation of the words 'immediate and effective measures' signifies that the elimination of the worst forms of child labour must happen as a matter of importance, at the same time the phrase 'effective measures' indicates that states must take progressive steps with urgency.[85] This acknowledges that the elimination of the worst forms of child labour is a progressive endeavour that must be prioritised.[86] Conversely, Convention 182 has been criticised on whether its aim of 'elimination' is reasonably achievable. It has been argued that states cannot rationally be required to eliminate conduct constituting the worst forms of child labour when domestic and international legislation and policies have been attempting to tackle

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[81] AO Twum-Danso Imoh 'Terminating childhood: Dissonance and synergy between global children's rights norms and local discourses about the transition from childhood to adulthood in Ghana' (2019) 41(1) *Human Rights Quarterly* 11; RA Mavunga 'The historical development of the "light work" provision of Convention No. 138' (2014) 35(3) *Obiter* 568; K Calitz 'The failure of the Minimum Age Convention to eradicate child labour in developing countries, with particular reference to the Southern African Development Community' (2013) 29(1) *International Journal of Comparative Labour Law & Industrial Relations* 83-103.
[82] Convention 182; Article 2.
[83] E Estacio & D Marks 'Child labour and the International Labour Organization's Convention 182: A critical perspective' (2005) 10(3) *Journal of Health Psychology* 479.
[84] Ibid.
[85] Committee on Child Labour Report (1999) para 389. Report of the Committee on Child Labour (Corr.), 87th Session of the International Labour Conference, International Labour Office, Geneva, June 1999, para 389, available at *http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chil.htm* accessed on 25 June 2019.
[86] Ibid.

this problem over centuries without success.[87] From this perspective, Convention 182 has been criticised as weakening its significance and effectiveness by being too ambitious.[88]

On the other hand, Convention 182 has been commended for highlighting informal sector activities, rather than simply focusing only on the formal sectors.[89]

Even though the four categories of the worst forms of child labour are listed as sub-paragraphs, it is pertinent to note that these categories of child labour overlap each other and cannot be viewed in isolation from each other.[90] This essentially entails that a child may be trafficked for the utilisation of commercial sex or a child may be a victim of forced labour as well as trafficking.[91] These are the four categories of the worst forms of child labour are listed as sub-paragraphs:

a) Article 3(a) Forced labour

The ILO Convention 182 defines forced labour and slavery from the ILO Forced Labour Convention No. 29 of 1930 which states that 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.'[92] Slavery, as a worst form of child labour, refers to a condition when children are held in bondage and are forced into occupations such as farming, illegal activities involving the trafficking of drugs, commercial sexual exploitation and armed conflict.[93] Debt bondage refers to a situation where parents become indebted to a third party and as a result are obliged to bond their children to the person to whom the debt is owed to repay the debt owed.[94] The child becomes the property of the person to whom the debt is owed and works for no money and is deprived of the right to receive an education.[95]

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[87] JS Gallinetti *An Assessment of the Significance of the International Labour Organisation's Convention 182 in South Africa with Specific Reference to the Instrumental Use of Children in the Commission of Offenses as a Worst Form of Child Labour* (Unpublished Doctoral thesis, University of Cape Town, 2007) 385.
[88] Ibid.
[89] Davidson (note 69 above; 219).
[90] F Malekian & K Nordlof *Prohibition of Sexual Exploitation of Children Constituting Obligation* (2013) 175.
[91] D Ciza & I Sindayigaya 'The repression of the solicitation of children for sexual purposes online (Grooming) in Burundian positive law' (2023) 17(10) *Applied Mathematical Sciences* 462; African Committee of Experts on the Rights and Welfare of the Child *Mapping Children on the Move in Africa* (2018) 86.
[92] Article 2 of the Forced Labour Convention 1930 No. 29.
[93] V Ndericimpaye & I Sindayigaya 'Applicability of international refugee law to quality education for Congolese children in Burundi: A human rights and refugee perspective' (2023) 17(6) *Applied Mathematical Sciences* 247; ILO *Child Labour: A Textbook for University Students* (2004) 48; ILO 'The worst forms of child labour' [n.d.] available at *https://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm* accessed on 1 April 2024.
[94] Ibid.
[95] Ibid.

b) Article 3(b) Commercial sexual exploitation

Convention 182 envisages that commercial sexual exploitation, as contemplated in Article 3(b), can sometimes assume activities involving forced labour, slavery or even trafficking.[96] This is because sexual exploitation has often been viewed as a circumstance where a child is coerced; even when there is consent on the part of the child, such consent is deemed to be as a result of the child being in a vulnerable position.[97] Although the element of coercion may be present in situations of forced labour, slavery and trafficking, it has been suggested that the coercion envisaged in Article 3(a) cannot equate with the element of coercion in the sexual exploitation of children as contemplated in Article 3(b). Thus, sexual exploitation merits its own category under the worst forms of child labour.[98]

It should be noted that Convention 182 does not supply any definitions to the terms contained in Article 3(b).[99] The Optional Protocol to the CRC has provided some insight as to what may constitute child prostitution, as it states that 'child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration.'[100] Additionally, the United Nations Special Rapporteur pertaining to child prostitution and pornography and the sale of children defines child prostitution as the 'sexual exploitation of a child for remuneration in cash or in kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc.)'.[101] The usage of the terms 'prostitution' and 'child pornography' are essential as they distinguish these acts from any other activities and require penal sanctions specific to their nefarious nature.[102] Convention 182 also subsumes the

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[96] R Harracksingh & EJ Johnson 'An exploratory study on child sexual abuse and exploitation' (2021) 43(2) *Social Development Issues* 42, J Kooijmans *Prostitution, Pornography and Pornographic Performances as Worst Forms of Child Labour: A Comment on Article 3(b) of ILO Convention 182* (2008) 134.

[97] A Visser *Narratives of Child Trafficking Survivors in Rehabilitation: Conceptualisations of Freedom for Human Rights Education* (Unpublished Doctoral thesis, North-West University, 2018) 18.

[98] K Alderson & CA Ireland 'Child sexual exploitation: Definition and the importance of language' (2020) 1(1) *Abuse: An International Impact Journal* 52.

[99] Convention 182, Article 3 reads as follows: ''(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;(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children''

[100] 'Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography', UNGA res. a/res/54/263 of 25 May 2000, art. 2; AJ Mason-Jones & J Loggie 'Child sexual exploitation. An analysis of serious case reviews in England: Poor communication, incorrect assumptions and adolescent neglect' (2019) 42(1) *Journal of Public Health* 63.

[101] JJ Laird et al 'Toward a global definition and understanding of child sexual exploitation: The development of a conceptual model' (2022) 24(4) *Trauma, Violence, & Abuse* 1-2.

[102] Md Mahmudul Hoque 'Reviewing child labour and its worst forms: Contemporary theoretical and policy agenda' (2021) 6(4) *Journal of Modern Slavery* 35.

use and procurement of children for pornographic purposes over the Internet as a direct violation of Article 3(b).[103] The Convention does not address the manner of distribution and usage of such pornographic material, however, but rather obliges states to draft legislation that provides clarity in this area.[104]

Convention 182 is the first international convention to classify sexual exploitation under the banner of labour rights and this has generated much debate around whether sexual exploitation and pornography can be regarded as 'employment' or 'work'.[105] One of the arguments put forward against such a classification during the drafting of the Convention was that designating prostitution as a category of labour would have the unintended effect of legitimising prostitution as a form of 'employment' or 'work', rather than eliminating it.[106] This classification has been further criticised on the basis that referring to prostitution as labour suggests that the aim is valid even though the methods are unsuitable. However, this position is incorrect, as the payment of money for an action does not convert the action from abuse into employment or work.[107]

(c) Article 3(c) The use of a child for illicit activities

The use of children in illicit activities is tantamount to exploitation and abuse. Thus, it should be acknowledged as such instead of referring to it as labour.[108] A major pitfall of this provision, thus, is that it considers criminal and labour within the same frame. The problem remains in the practicality of implementing this provision. While Article 3(b) of Convention 182 can be commended for enriching the protection that would be afforded to children within the category of criminality,[109] it has also been criticised for merely articulating these prohibitions without thorough consideration as to the illogical and confusing ramifications of their implementation.

It is argued by the researcher that the implementation of Convention 182 exceeds the capabilities of labour inspectors. Labour inspectors are already over-burdened with labour matters, and to expect them to take on matters of a criminal nature such as sexual exploitation, child trafficking and illegal activities such as drug trafficking is beyond the scope

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[103] ILO *Fundamental Rights at Work and International Labour Standards* (2006) 108.
[104] A Basson, P Joubert & F Snyders 'The role of pornography in the sexual exploitation of children' (2015) 16(2) *Child Abuse Research: A South African Journal* 66.
[105] E Quayle & KM Ribisi *Understanding and Preventing Online Sexual Exploitation of Children* (2012).
[106] Ibid.
[107] K Bakirei 'Child pornography and prostitution: Is this crime or work that should be regulated? (2007) 14(1) *Journal of Financial Crime* 10.
[108] Ibid.
[109] J Kooijmans & H Van de Glind 'Child slavery today' in Craig G (ed) *Child Slavery Now: A Contemporary Reader* (2010) 25.

and resources of their position. Another criticism is that the Article places labour inspectors in a central role in the identification of cases of sexual exploitation and crime, which is beyond their qualifications. Additionally, labour inspectors are not adequately trained and equipped to confront and deal with such criminal matters. This reduces the likelihood that such cases are identified or addressed successfully, which is to the disadvantage of the victims of sexual exploitation. Categories a-c as mentioned previously, refer to criminal matters and thus should be approached as such, and not from a labour perspective.[110] Furthermore, accurate and current data about to child labour are scarce due to the pernicious nature of the activities; this is particularly so for the worst forms of child labour.[111] This paucity of accurate data on the worst forms of child labour impedes the ability of states to be able to take effective steps in eliminating these worst forms of child labour.[112]

(d) Article 3(d) Hazardous work

Hazardous work, the fourth and final worst form of child labour named in the Article, has often been referred to as 'conditional or hazardous forms of child labour.'[113] The first three classifications of the worst forms of child labour cannot under any circumstances be condoned.[114] The fourth category, however, is regarded as a conditional worst form of child labour because the working conditions within this category can be improved and thus made tolerable for children to perform.[115] Thus, Convention 182 acknowledges that there are types of activities that could be made lawful—differentiating between intolerable child labour and permissible child work.[116] Convention 182 has been lauded for identifying specific activities that constitute hazardous work at the international level, thus only requiring states to determine a list of prohibited activities at the national level through consultation with employers and employees organisations. In this way, Convention 182 limits debate on the types of employment or work which would be prohibited.[117]

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[110] DM Smolin 'Strategic choices in the international campaign against child labor' (2000) 22(4) *Human Rights Quarterly* 961.

[111] A Kamei 'Parental absence and agency: The household characteristics of hazardous forms of child labour in Nepal' (2018) 30 *Journal of International Development* 1118.

[112] Van de Glind & Kooijmans (note 109 above; 154).

[113] EV Edmonds 'Selection into worst forms of child labour' in RKQ Akee, EV Edmonds, & K Tatsiramos (eds) *Child Labor and the Transition between School and Work* (2010).

[114] ILO *Child Labour: A Textbook for University Students* (2004) 46.

[115] J Kane 'What the economic crisis means for child labour' (2009) 9(1) *Global Social Policy* 180.

[116] Article 3, A Abdullah et al 'Social norms and family child labor: A systematic literature review' (2022) 19(7) *International Journal of Environmental Research and Public Health* 4082 *https://doi.org/10.3390/ijerph19074082*.

[117] The case study by Fontana and Grugel examines the impact of international instruments on local conditions and how much of what is considered hazardous work by these instruments is commonplace in a country like

Article 4 of Convention 182 expands on Article 3(d) as it essentially requires states to determine hazardous types of employment or work that are deemed to be unacceptable.[118] The Worst Forms of Child Labour Recommendation assists states with identifying activities that are unlawful and hazardous.[119] Article 4 requires legislators to consult with employer and employee organisations to identify hazardous types of employment or work. However, this Article has been criticised for assuming that employer and employee organisations will readily consult with the government, which is not always the reality of the situation, as it is the very employers who exploit children as child labourers that Article 4 of Convention 182 seeks to work with to eradicate child labour.[120] This brings into the question whether Article 4 can be implemented effectively, as employers may not be willing to assist with the eradication of child labour if they are employing child labourers.

Furthermore, it has been argued that Article 4 of Convention 182 only refers to employer and employee organisations in its consultation process, yet it broadens its ambit beyond the sphere of labour to include criminal activities.[121] This is regrettable, as the Convention 182 does not make any provision for the practical considerations involved with combating the worst forms of child labour from a criminal perspective.[122] It has been suggested by the researcher that a more pragmatic way of approaching the implementation of Convention 182 would be to include officials in law enforcement in the consultation process who have sufficient knowledge and understanding of the criminal activities referred to in Article 3. This

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Bolivia: LB Fontana & J Grugel 'To eradicate or to legalise? Child labour debates and ILO Convention 182 in Bolivia' (2015) 21(1) *Global Governance* 66.

[118] Convention 182, Article 4 reads as follows: "1) The types of work referred to under Article 3(d) shall be determined by national laws or regulations by the competent authority after consultation with the organisations of employers and workers concerned taking into consideration relevant labour standards in particular paragraphs 3 and 4 of the Worst forms of Child Labour Recommendation 1999, 2) The competent authority after consultation with the organisations of employers and workers concerned shall identify where the types of work so determined, 3) The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary in consultation with the organisations of employers and workers concerned."

[119] R190 Worst Forms of Child Labour Recommendations, Section ii.3.a-e.

[120] KH Rao & MM Rao 'Employers' view of child labour' (1998) 34(1) *Indian Journal of Industrial Relations* 20, Md. A Ahad, YK Parry & E Willis 'The prevalence and impact of maltreatment of child laborers in the context of four South Asian countries: A scoping review' (2021) 117 *Child Abuse & Neglect* 105052, *doi: https://doi.org/10.1016/j.chiabu.2021.105052;* Fiji Commerce and Employers Federation *An Employers Guide for Eliminating Child Labour* (2013) 29-49.

[121] M Hoque 'Reviewing child labour and its worst forms: Contemporary theoretical and policy agenda' (2021) 6(4) *Journal of Modern Slavery* 55.

[122] MM Hoque 'Hazardous child labor in Bangladesh: A critical evaluation of the legal and policy framework vis a vis practical challenges' (2022) 3(1) *Proceedings of the World Conference on Children and Youth* 36-40, J Gallinetti 'Don't shout too loud: Reflections on the outrage against human and child trafficking' (2010) 33 *SA Crime Quarterly* 11-17 discusses child trafficking as a worst form of child labour and its criminal implications.

is imperative as employer and employee organisations are not equipped or experienced in criminal matters and consultation with them would thus be futile.[123]

Articles 5 and 6 of Convention 182 essentially pertain to the drafting and implementation of programmes and legislation that seek to eradicate the worst forms of child labour. Article 5 requires states to institute mechanisms and procedures to ensure the monitoring of the implementation of Convention 182.[124] Article 5 is paramount, as it allows states to ascertain the success or failure of their implementation of the Convention. This in turn is necessary as the accumulation of an accurate record of statistics regarding the worst forms of child labour is the first step to eliminating these activities.[125] Articles 5 and 6 have been praised for extending the focus beyond the drafting of legislation as a means of combating the worst forms of child labour.

Article 6 specifically includes 'concerned groups' who would be relevant in the consultation process regarding the drafting and implementation of programmes and legislation to eliminate the worst forms of child labour.[126] Article 6 of Convention 182 has been lauded for suggesting that broad consultation with stakeholders is necessary to eliminate the worst forms of child labour.[127] This indicates that the drafters of Convention 182 were aware that legislation alone would be insufficient in the fight against the worst forms of child labour; rather, the collaboration of society, NGOs and other relevant role players would be essential.[128]

Article 6 has also been criticised for presenting children as passive actors in matters concerning them. It has been postulated that the terms 'consultation' and 'taking into consideration' hold significant weight in the manner in which governments approach the situation.[129] 'Consultation' denotes a more definitive action as it involves taking advice from persons regarded as experts in the field. The term 'taking into consideration' refers to opinions and viewpoints that merely have to be thought over but do not necessarily have to be

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[123] EV Estacio & DF Marks 'Child labour and the ILO Convention 182: A critical perspective' (2005) 10(3) *Journal of Health Psychology* 482.
[124] M Rapatsa 'Understanding trends in the worst forms of child labour and the state's legal responses: A descriptive analysis' (2017) 7 Special Issue *Juridical Tribune* 192-193.
[125] GK Lieten 'What happened to the worst forms?' (2006) 41(2) *Economic and Political Weekly* 105.
[126] R Subrahmanian 'Eliminating child labour: what needs to be done?' (2023) 7(1) *BMJ Paediatrics Open* 1, see also AC Dammert et al 'Effects of public policy on child labor: Current knowledge, gaps, and implications for program design' (2018) 110 *World Development* 104-123.
[127] K Hanson & A Vandaele 'Working children and international labour law: A critical analysis' (2003) 11 *International Journal on Children's Rights* 115.
[128] Ibid.
[129] Estacio & Marks (note 124 above; 482).

included.[130] It has been contended that Article 6 of Convention 182 opens the door for possible exploitation of children as the role players in consultation processes have authority over the children. Thus, Convention 182 has the potential to preserve the power structures which govern society and children within the workplace.[131]

Article 7 of Convention 182 essentially requires states to draft and implement appropriate punishment for offenders who fail to comply with Convention 182.[132] However, the Convention does not provide any guidelines to assist states in determining what would constitute an appropriate sanction. Even though Article 7 differentiates between unconditional worst forms of child labour and conditional worst forms of child labour, it does not provide any insight as to whether the same sanctions should be enforced across all classifications of worst forms of child labour.

Additionally, Convention 182 focuses strongly on education as the key factor in eliminating the worst forms of child labour. However, it is argued in this study that the lack of proper access to education is only one factor that contributes to the worst forms of child labour and should not be singled out, as this creates the perception that if children could access proper education and attend school this would eradicate the worst forms of child labour. This neglects other major factors that perpetuate child labour, such as poverty, the growing number of orphans, migration, illiteracy among parents, and cultural practices, to name but a few.[133] Moreover, the presumption expressed in Article 7 that work and education are incompatible is misleading as this has been countenanced to be incorrect in some instances.[134]

Convention 182 can be credited with promulgating methods for rehabilitating children who have been involved in the worst forms of child labour; however, it is argued that from a practical standpoint, these measures may be beyond the financial resources of countries. It must be reiterated that the worst forms of child labour subsist ubiquitously within the poorest countries. Therefore, it is unlikely that such countries would have the resources to provide rehabilitation to such children. Additionally, it is argued that states would be dealing with matters involving drug trafficking, child prostitution and other illegal activities that require

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[130] Ibid.
[131] Ibid.
[132] ILO *The Tripartite Process of Determining Hazardous Child Labour: Guide for Facilitators* (2012) 3-20; Foua & Diriwari (note 4 above; 1264-1265).
[133] DV Rao *Child Rights – A Perspective on International and National Law* (2004) 5.
[134] D Aufseeser et al 'Children's work and children's well-being implications for policy' (2018) 36(2) *Development Policy Review* 242; see also N Bau et al 'Human capital investment in the presence of child labor' (*NBER Working paper* 27241) (2023); N Brando *Child Work and Education, a Global Perspective* (2022).

rehabilitation and support for children after they are removed from these activities. These activities require funding for proper monitoring and eradication. Unfortunately, poor countries where the worst forms of child labour occur may not have these financial or human resources.

4.3. THE ILO GENERAL SURVEYS OF 1955, 1960, 1969, 1981 AND 2012

The General Surveys of the Committee of Experts on the Application of Conventions and Recommendations provide pivotal information regarding the legislation and policies of member states in response to ILO Conventions and Recommendations. This information helps to identify the needs of member states which require ILO technical assistance.[135] General Surveys also provide comparative and thorough analysis of how member states address labour rights issues. This confirms the compliance of states with ILO Conventions and Recommendations and highlights where states are non-compliant.[136] The International Labour Organisation Governing Body (ILOGB) identifies the theme for the particular General Survey based on the urgency of the matter or the time frame from when the last General Survey on the issue was considered.[137]

There are 5 General Survey Reports on the Elimination of child labour and protection of children and young persons. These are: General Survey Reports of 1955, 1960, 1969, 1981 and 2012. General Survey of 1955 contains information on 78 Conventions that were in force from 1953 to 1954. This discussion will only focus on the Minimum Age Conventions which are relevant to the child labour or the protection of children when they work. The Minimum Age (Non-Industrial Employment) Convention, 1932 (Convention 60) was deliberated on during the 16th Session of the ILO in Geneva in 1932. At the time of this session only 8 countries had ratified Convention 60.[138] The minimum age of employment in terms of Convention 60 is 14 years old.[139] The observations made regarding the application of the minimum age of entry into employment or work indicated that across the 8 countries the

[135] International Labour Office 'Minutes of the 317th Session of the Governing Body of the International Labour Office: Governing Body' (2013) (General Survey 1955) 510.
[136] AN Chaib 'Committee of Experts on the Application of Conventions and Recommendations (ILO)' (2017) 9-10.
[137] Ibid.
[138] These are the countries that ratified the Convention: Argentina, Austria, Belgium, Cuba, France, Netherlands, Spain, Uruguay.
[139] Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60) of Article 2: "Persons under fourteen years of age shall not be employed in any non-industrial employment which the competent authority, after consultation with the principal organisations of employers and workers concerned, may declare to involve danger to life health or morals."

minimum age of employment for only 2 countries were lower than 14 years old which contravened Article 2 of Convention 60.

General Survey of 1960 highlights pertinent changes to the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 No. 59 (Convention 59). Convention 59 raised the minimum age of employment from 14 years to 15 years.[140] Additionally, provisions were included in Convention 59 to authorise states to set national laws that would raise the minimum lawful age of 15 years in types of employment that could possibly endanger the life, health or morals of the child employed.[141] Convention 59 also included provisions directed to 3 Asian countries (China, India and Japan) which permitted them to reduce the minimum age of employment for specific types of employment.[142] Unfortunately, Convention 59 did not address a reduction in the minimum age for African countries and only limited this special provision to the 3 Asian countries mentioned here.

One of the major highlights of this report was that states indicated that their national legislation made a correlation between the minimum age of employment and the end of compulsory schooling. This indicated that states identified that education is a necessary element in the eradication of child labour.[143] However, in some states compulsory schooling was set lower than the minimum age of employment. While in other states it was set higher than the minimum age of 15 years set by Convention 59.[144] In the states where the minimum age of schooling was lower than the minimum age of employment, states enforced certain allowances and safeguards to ensure the protection of children. The Committee endorsed these safeguards set by states. These safeguards included specifying when exceptions could be enforced in types of light work that would not be dangerous to a child's health or well-being or where children have completed compulsory schooling or have been exempted from it. However, the most significant point that the Committee raised was that exceptions to the

[140] International Labour Office 'Conclusions regarding the Effect Given to the Conventions concerning: Protection Of Young Workers In Industry: Minimum Age Of Admission, Prohibition Of Night Work, Medical Examination' (1960) (General Survey 160) 22-23, Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 No. 59.
[141] Convention 59; Article 5.
[142] Convention 59 provides that 12 years is the minimum age of employment for factory work and 15 years for dangerous. In terms of India, the minimum age of employment of 12 years under Convention 5 was increased to 13 years for employment in goods-handling and transport and 15 years for mining or dangerous employment conditions. In Japan, the minimum age of employment was 12 years under Convention 5. This was raised to 14 years under Convention 59 for all forms of employment in industrial establishments and 16 years for dangerous or unhealthy conditions of work.
[143] International Labour Office (note 141 above; 22-31).
[144] Ibid.

minimum age can be considered when children work to support themselves and their families.[145]

General Survey of 1969 considered Convention 59. The Committee acknowledged that the primary difficulty encountered in the application of the convention was that states set a minimum age of employment that was lower than that prescribed by Convention 59.[146] Other difficulties were when states do not have 9 years compulsory schooling. In some countries the minimum age is set at 14 years. In some states where it was set lower than 14 years, there were precautionary steps imposed to safeguard young persons such as ensuring that children do not undertake work that would endanger their health and wellbeing.[147] Some states where the minimum age of employment is 14 years, children were given the opportunity to complete their education at vocational schools, apprenticeships and secondary schools. The main issue that the Committee highlighted in this report was that even if states set a minimum age of employment that is lower than 15 years, safeguards need to be in place that would protect children and would not endanger their lives in any way.[148] This illustrates that the Committee has a flexible approach to enforcing the minimum age of employment on condition that the interests and well-being of children are given paramount consideration.

General Survey of 1981 considered the Minimum Age Convention, 1973 (No. 138) (Convention 138). The major issue that was raised by the Committee was that states have only applied the minimum age provision to employment contracts and have not extended its application to all forms of work outside of formal employment.[149] This failure on the part of states obstructs the success of applying a universal standard for all states in combating child labour.[150] The Committee affirms that all forms of work should not be prohibited by states' legislation which is the same view of the ILO. The Committee discussed that there was a need for flexibility in the application of the provisions of Convention 138. It was highlighted that one of the challenges that dissuaded states from ratifying previous conventions regulating the minimum age of employment was the rigidity in the application of its provisions.[151]

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[145] Ibid.
[146] International Labour Office 'Information and Reports on the Application of Conventions and Recommendations Summary Of Reports On Ratified' (1969) (General Survey 169) 97-102.
[147] Ibid.
[148] Ibid.
[149] International Labour Office 'General Survey of the Reports relating to Convention No. 138 and Recommendation No. 146 concerning Minimum Age' (General survey 1981) 19-33.
[150] Ibid.
[151] Ibid.

In light of the Committee's perspective on the flexibility of the application of Convention 138, the Committee highlighted that Convention 138 has many exclusions and exceptions to the minimum age such as vocational training in Article 6, light work in Article 7 and artistic work in Article 8 of Convention 138.[152] The Committee further noted that states have reported that they have enforced exclusions of the minimum age where children engage in family work, domestic service, home-work, or are self-employed young persons and exclusion by competent authorities or magistrates.[153] The Committee further noted that where these states have applied exclusions and limitations in the application of the minimum age, they have also enforced safeguards to ensure the protection of children. It was further noted that majority of the developing countries have not made use of these exceptions and exclusions provided for in Convention 138, even though these exclusions were specifically targeted at developing countries to make use of the flexibility of applying provisions in Convention 138.[154]

The Committee acknowledged that legislation alone is insufficient to resolve the issues regarding child labour.[155] Poverty is regarded as one of the main causes of child labour. There is a strong correlation poverty and a deficiency in the development of countries, educational infrastructure as well as gaps in child labour legislation and inadequate enforcement mechanisms.[156] The Committee stressed that in light of these complexities that give rise to child labour, the issue cannot be addressed in isolation but rather requires improved social- economic strategies and the commitment to eradicate child labour by states.[157] Further, the report highlighted that the elimination of child labour is a progressive effort by states.[158] Thus, in the writer's opinion it conveys that the ILO considers concerted efforts of states to end child labour to be sufficient in adhering to the provisions of its Conventions. It is not envisaged that states will immediately eradicate child labour once they have ratified Convention 138, but rather it must be shown that governments have enforced their intention to eradicate child labour through legislation and policies. This in turn highlights the ILO's consideration towards developing countries that lack the socio-economic infrastructure to combat child labour.

General Survey of 2012 considered Convention 138. Before the adoption of Convention 138, Conventions addressed the minimum age of employment or work in a

[152] Ibid.
[153] Ibid.
[154] Ibid.
[155] Ibid.
[156] Ibid.
[157] Ibid.
[158] Minimum age for admission to employment, Report IV(2), ILC, 58th Session, Geneva, 1973, p. 7

piecemeal fashion that only focused on specific sectors of the country.[159] Convention 138 comprehensively applies to all sectors of employment or work. Consequently, the application of Convention 138 is extended to include all working children. A significant aspect of Convention 138 is that it takes into consideration the uniqueness of states and their challenges regarding the application of Convention 138. In response to this, there are a number of flexibility clauses in Convention 138 which allow states to set lower thresholds for the minimum age of employment. Article 4 and 5 of Convention 138 give special allowances to developing states that lack socio-economic infrastructure and financial resources to address child labour.[160]

The Committee noted that one of the challenges encountered in the application of Convention 138 was that not all states applied the minimum age to all types of work undertaken by children but rather limited its application to only formal employment. Thus, children who work on their own account, in the informal economy or on an unpaid basis are not protected under Convention 138.[161] The Committee noted that states do not have adequate national legislation protecting working children within these categories of work. Further, that labour inspection in these categories is insufficient and, in some instances, non-existent.[162] The Committee urged states to strengthen their protection of children in the informal economy through national legislation that gives effect to Convention 138.[163]

The Committee considered good practices in certain states that were aimed at withdrawing children from child labour especially within the informal economy and providing assistance through welfare and social service programs.[164] The Committee also noted that states differ in their national legislation regarding the minimum age provision, the regulation of the agricultural sector and the undertaking of hazardous work. The Committee called for states to ensure the application of Convention 138 to all sectors of work through national legislation and effective enforcement mechanisms.[165]

In the writer's opinion, the General Surveys discussed above shows a gradual progression over the years regarding the pertinence of protecting children while they work and

[159] International Labour Office 'General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008' (General survey 2012) 147-167.
[160] Ibid.
[161] Ibid.
[162] Ibid.
[163] Ibid.
[164] Ibid.
[165] Ibid.

preventing them from engaging in child labour. This is evident in the increase of the minimum age of work for children, which was initially set at 14 years and progressed to 15 years in later conventions. Additionally, the application of the minimum age has progressed over the years to include not only formal employment but all forms of work a child can engage in. Further, the provision of enforcing compulsory education to be compatible with the minimum age for work has gained greater significance over the years as more states have included this provision in their national legislation.

The writer notes that the discussion highlights the gradual recognition of the ILO regarding the differences between developed and developing countries, as earlier conventions only allowed 3 Asian countries exceptions to the application of the minimum age. Convention 138 enforces many provisions for exceptions to the application of the minimum age for all countries, but with specific reference to developing countries. This is indicative that the ILO is cognisant of the hardships experienced by children in developing countries that often give rise to child labour. However, even though the Committee acknowledges this, it is pertinent that safeguards are put in place to ensure the protection and safety of children when these exclusions are enforced in national legislation. The safety and protection must be the primary consideration in the application of Convention 138.

This flexible approach of Convention 138 allows states to use their own discretion in the application of the exclusion provisions based on the individual needs of the children within their specific country. Thus, the Committee underscores that there is no rubber stamp in the application of Convention 138. However, even though the exclusion provisions have been made available to all countries, developing countries have not made use of this opportunity and enforced these provisions in their national legislation.

In light of this discussion, South Africa has conformed to the minimum age of work to be set at 15 years and to be compatible with compulsory schooling. However, there are a number of areas where South Africa falls short in its conformity with Convention 138. The proposed amendment to include the term 'work' in labour legislation[166] that would apply to all types of work undertaken by children and not only formal employment is yet to be finalised. It is submitted that the proposed amendment be finalised with haste to improve the country's compliance with Convention 138. Further, South Africa has not made use of the exclusion provisions, as was previously discussed in this chapter. As will be discussed in Chapter 10,

[166] Ibid.

South Africa should take every opportunity to protect children while they work. Thus, by including these exclusions in national legislation South Africa would give effect to the hardships experienced by children while providing safeguards when they work. Lastly, the discussion highlighted that South Africa does not give adequate consideration to child labour within the informal economy especially in terms of labour inspection. Chapter 10 will discuss how South Africa can improve on this especially in regard to investigating domestic chores in private homes.

4.4. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

In 1989, the first United Nations Convention on the Rights of the Child (CRC) was adopted.[167] The CRC is the most universally ratified human rights document in international law and the Convention was endorsed by all countries before its 10th anniversary with the exception of the USA.[168] The CRC enshrines a panoply of civil, political, economic, social and cultural rights accorded a child.[169] While previous international instruments, such as the 1924 and 1956 Declarations on the Rights of the Child, enumerated the rights of children, these documents were non-binding for member states and thus carried little persuasive weight in terms of shaping the development of national legislation to uphold these rights.[170] The USA has signed but has not ratified the CRC thus it is not legally bound to implement the provisions of the CRC in domestic legislation. However, the USA has indicated its support of the goals and objectives of the CRC.[171] Further, the USA stated that it is carrying out a review of the CRC and its working towards how it can ratify the CRC.[172] The instrument seeks to afford children rights of autonomy.[173] This means the CRC acknowledges the rights afforded to children from the viewpoint of a child's autonomy to make their own choices regarding their own needs.[174] Even

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[167] B Goldson *Dictionary of Youth Justice* (2012) 71.

[168] Committee on the Rights of the Child 'Ratification Status for CRC - Convention on the Rights of the Child' available at *https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en* accessed on 30 March 2024; Kilkelly & Liefaard (note 10 above; 524).

[169] T Liefaard 'Access to justice for children: Towards a specific research and implementation agenda' (2019) 27 *International Journal of Children's Rights* 196.

[170] D Fottrell 'One step forward or two steps sideways?' Assessing the first decade of the Children's Convention on the Rights of the Child' in D Fottrell (ed) *Revisiting Children's Rights. Ten Years of the UN Convention on the Rights of the Child* (2000) 75.

[171] CSR Report 'The United Nations Convention on the Rights of the Child' (2015) 5.

[172] Ibid.

[173] M Jupp 'Confronting the challenge of realizing human rights now: Rights of children: The United Nations Convention on the Rights of the Child: An opportunity for advocates' (1991) 34(15) *Howard Law Journal* 21.

[174] J Murray, BB Swadener & K Smith 'Part 1 Policy affecting young children's rights' in J Murray, BB Swadener & K Smith (eds) *The Routledge International Handbook of Young Children's Rights* (2020) 6; T Maguire 'Human beings in a theatre made for them: The child's voice in contemporary theatre for young audiences' (2021) 8(4) *Journal of the British Academy* 21; BC Hafen & JO Hafen 'Abandoning children to their autonomy: The United Nations Convention on the Rights of the child' (1996) 37(2) *Harvard International Law Journal* 451.

though children are vulnerable members of society, the CRC states that they have equal worth and value to adults when making their own decisions.[175]

The CRC defines four pillars of rights that are fundamental to children, namely: the right to non-discrimination,[176] the best interests of the child,[177] the right to survival,[178] and the right of a child to participate in decisions concerning them.[179] These rights have been categorised into three broad groups which are known as the 'three 'p's': protection, provision and participation rights.[180] The CRC does not rank these rights.[181] Rather, it reiterates the indivisibility of children's rights and affirms that children's rights must be considered from a holistic viewpoint.[182]

Even though the CRC addresses a range of children's rights, only five of its articles have a bearing on the issue of child labour. Article 1 pertains to the definition of a child, which is pertinent to the determination of whether the person engaged in labour is a child.[183] Article 19 addresses the protection of children from violence and exploitation. Article 32 addresses the protection of children from exploitation and performing hazardous work that could impede their education, physical and mental health, or overall development. Article 34 provides that all children should be afforded free compulsory primary education. Article 36

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[175] A McTaggart *Immunisation as Part of the Child's Right To Health – Examining Immunisation in New Zealand in the Context of Article 24 of the Convention on the Rights of the Child* (Unpublished honours thesis, Victoria University of Wellington, 2020) 8; S Lee 'A child's voice vs a parent's control: Resolving a tension between the Convention on the Rights of the Child and US Law' (2017) 17(3) *Columbia Law Review* 687; T Hammarberg 'The United Nations Convention on the Rights of the Child – And how to make it work' (1990) 12(97) *Human Rights Quarterly* 99.

[176] The CRC; Article 2.

[177] The CRC; Article 3.

[178] The CRC; Article 6.

[179] The CRC; Article 12; J Sloth-Nielsen & BD Mezmur '2 + 2 = 5? Exploring the domestication of the CRC in South African jurisprudence (2002-2006)' (2009) 16(1) *International Journal of Children's Rights 2.*

[180] M Freeman *Article 3: The Best Interests of the Child* (2007) 231; U Kilkelly 'Using the Convention on the Rights of the Child in law and policy: Two ways to improve compliance' in J Williams & A Invenizzi (eds) *Human Rights of Children: From Visions to Implementation* (2011) 175 .

[181] S Imanian *Evaluating the Impact of Independent Children's Rights Institutions: A European Case Study* (Unpublished Doctoral thesis, University of Lancashire, 2016) 20; Vienna Declaration and Programme of Action, note 110, para 5.

[182] Committee on the Rights of a Child 1996; JE Doek 'The human rights of children: An introduction' in U Kilkelly and T Liefaard (eds) *International Human Rights of Children* (2019) 5; E Verhellen 'The Convention on the Rights of the child: Reflections from a historical, social policy and educational perspective' in W Vandenhole et al (eds) *Routledge International Handbook of Children's Rights Studies* (2015) 132; A Viviers & A Lombard 'The ethics of children's participation: Fundamental to children's rights realization in Africa' (2013) 56 *International Social Work* 19.

[183] EV Edmonds 'Does minimum age of employment regulation reduce child labor?' (2014) 73 *IZA World of Labor* 3; A Radfar A, Asgharzadeh, F Quesada & I Filip 'Challenges and perspectives of child labor'(2018)27(1) *Industrial Psychiatry Journal* 17-20.

addresses the protection of children from all types of exploitation.[184] Each of these is discussed in more detail next.

Article 1 of the CRC defines a child as a human being who is under 18 years of age unless the individual has obtained majority before this age.[185] This is pertinent as the age of a child is one of the determinants used to determine whether or not a child is engaging in child labour in terms of the stipulated minimum age of employment or work in the international conventions.[186] The CRC does not, however, provide a universal minimum age of employment or work. The CRC merely confers the authority on states to set a minimum age for admission into employment or work.[187] Nevertheless, this does not sanction states to set the age of admission into employment or work solely at their discretion. The Committee on the CRC has provided guidance in this regard, recommending that states set the minimum age at 15 years which is the age endorsed by other international instruments.[188]

Article 32 of the CRC deals directly with the eradication of child labour. The CRC does not define what it regards to be economic exploitation or provide a definition of child labour. However, the wording of Article 32 focuses on the effects of harmful practices that children must be protected from, rather than on the activities that children should be prevented from undertaking.[189] Van Buuren takes the view that the basis of child labour is whether it is exploitative. Child work becomes economic exploitation when it impedes the child's physical, mental, psychological or social growth and development. Thus, economic exploitation is considered 'exploitative' when it involves work that poses a risk to the child's development.[190] In essence, the CRC centres the child's development as the fundamental consideration in determining whether an activity constitutes child labour.

The ILO has attempted to provide more clarity regarding what forms of employment or work could be considered harmful to a child by enlisting the following criteria: employment or work that is undertaken by children who are too young, employment or work that is undertaken for long periods, or on streets for a meagre wage, involving an inappropriate

[184] The CRC; Articles 1, 19, 32, 34, 36.
[185] The CRC; Article 1 reads as follows: "Every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."
[186] G Lansdown et al 'Part I: General Principles' in G Lansdown et al *Monitoring State Compliance with the UN Convention on the Rights of the Child* (2022) 11-20; Mavunga (note 13 above; 126).
[187] The CRC; Article 32, para 2(a).
[188] Convention 138; Article 2(3).
[189] For example see FAO *Handbook for Monitoring and Evaluation of Child Labour in Agriculture* (2015) 12.
[190] G Van Buuren *The International Law on the Rights of the Child* (1994) 264.

level responsibility, and being subjected to intimidation.[191] These criteria pertain to work that is harmful and abusive to a child and could be easily identified as child labour; as they fail to acknowledge child work, as benign and permissible activity, they raise more issues than they resolve. This area of law which is undefined becomes unregulated and creates an opportunity for exploitation of children and illegal activity. When children are not protected by the law the possibility of abuse arises, as children who are dependent on work for their survival can find themselves at the mercy of their employers.

On the other hand, it is argued that the lack of clarity on the definition of child labour could be argued to prove beneficial to children. There is no distinct definition of what constitutes a 'hazard' as enshrined in Article 32 of the CRC. Realistically, this would subsume several indicators that are contingent on the cultural context which would determine whether an activity constitutes a hazard as well as the level of that hazard. In some ways, it could be argued that the CRC seeks to assimilate the various needs of children internationally especially those children from developing countries who find themselves compelled to undertake work for their survival. Additionally, the CRC is cognisant of the diverse cultural contexts which hold differing parameters for child labour and acceptable child work; in this regard, the Convention acknowledges the diverse social conditions found across the world.

The CRC posits that it is the effect of the activity that a child undertakes that determines whether the child is engaged in child labour. This is essential to an understanding of child labour, as it follows that not all employment or work are harmful and unlawful. The development of the child is key to the determination of child labour. Child work becomes child labour when it denies a child of childhood and prevents a child from achieving their full physical, emotional and psychological growth.[192] The CRC is cognisant of the fact that children who engage in child labour are more susceptible to the negative effects of labour as their bodies are not fully developed.[193]

Various academics who embrace child work have asserted that Article 32 of the CRC creates a basis for acceptable child work as it focuses on the effect of the type of activity

[191] Maconachie, Howard & Bock (note 68 above; 259-271); M Bourdillon & W Myers 'Illusions in the protection of working children' in N Howard & S Okyere (eds) *International Child Protection: Towards Politics and Participation* (2021) 77-100.
[192] K Chinyoka & N Naidu 'Underage and unprotected psychosocial effects of child labour on academic performance of learners in Zimbabwe' (2014) 5(1) *Journal of Psychology* 65.
[193] CF Faira 'Why is child labour detrimental for children?' (2010) 9 *Nurture* 20.

rather than on the activity itself.[194] This understanding also aligns with the perspective that, if certain types of activities were brought in line with the law and posed no harm to children, they would be considered acceptable under the CRC. The CRC thus focuses on the protection of children from the harmful effects of certain activities rather than on a prohibition on all forms of employment and work.[195] States must make this differentiation between child labour that is exploitative and child work that is benign or beneficial so that they do not enforce a blanket ban on all employment and work and so prevent children from engaging in any employment or work, be to their detriment.[196]

Article 4 obliges all state parties to take legislative, administrative, social and educational measures to actively address and eliminate child labour,[197] and give effect to the provisions enshrined in the CRC in their domestic laws.[198] Article 2 of the CRC reinforces this obligation by mandating all states to promote the welfare of children through the implementation of policies so that they are protected from hazards that could be detrimental to their development as children or negatively impact on their political and socio-economic rights.[199]

To give effect to Articles 2 and 4 of the CRC, state parties are mandated to determine a minimum age for the lawful entrance into employment or work, a proper framework for the regulation of acceptable hours of work and appropriate sanctions to guarantee the effective implementation of the Article.[200] This study asserts that the state is under an obligation to take active steps to ensure the protection of children when they engage in lawful child work.

Fortin's claims support the viewpoint of this thesis by asserting that a child's right to survival does not only refer to the right to life but includes every other right that is necessary to sustain life, which include the right to receive adequate health care and satisfactory

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[194] Aufseeser et al (note 135 above; 242), SK Jha & V Malviya 'Employment and working conditions of child labour' (2020) 8(1) *Journal of Politics & Governance* 41-42, MJ Hossain 'Child labor in the harmful work and concerned issues: Bangladesh perspective' (2011) 3(4) *European Journal of Business and Management* 214.
[195] SM Kannapathi *Reconciling Child Labour Practices in South Africa with International Standards: Prospects and Challenges* (Unpublished Master's thesis, University of KwaZulu-Natal, 2015) 25.
[196] B White 'Globalisation and the child labour problem' (1996) 8(6) *Journal of International Development* 12.
[197] R Hennessy 'Exploring the role of social protection interventions in preventing child labour: Reinforcing the case for a human rights based model of intervention' (2023) 15 *Journal of Human Rights Practice* 263.
[198] General Comment No 5 'General Measures of Implementation of the Convention on the Rights of the Child' (2003) para 19.
[199] Rapatsa (note 125 above; 186- 199).
[200] MM Masindi *The Impact of Child Labour in Agricultural Sectors in the Vhembe Region: Issues and Challenges* (Unpublished Master's thesis, University of Limpopo, 2015) 25.

housing.[201] The survival rights that the CRC establishes therefore operate contemporaneously with the protection rights afforded to children. The CRC obliges states to develop positive initiatives to protect children from all types of abuse, neglect and ill-treatment.[202] In doing so, the CRC requires an enumerated list from each state of protection rights for children that would ultimately ensure that children enjoy a life that allows them to mature into healthy adults.

Consequently, when protection rights are not materialised, the right to life is violated.[203] This is particularly pertinent to this study as the research seeks to enforce that states are obliged to protect children from all forms of abuse, such as child labour. This requires states to move beyond legislation as a mechanism for protection to implement programmes and policies aimed at providing socio-economic rights that would protect children against neglect and abuse which take the form of malnutrition, poor housing and inadequate access to education, among other things. States are under a greater burden to ensure that their structures work congruently to realise the rights of children in their totality, rather than prioritising certain aspects of children's rights over others.[204] This is indicative of the CRC's perspective that child labour cannot be eradicated solely by enacting bans through legislation but rather requires the realisation of socio-economic rights to relieve children of the need to work to secure their survival.[205]

Article 3(1) of the CRC requires states to consider the best interests of the child in all matters concerning the child. Article 3(1) does not articulate any obligations or rights; rather, it serves as a guiding principle for interpretation of the CRC when dealing with all matters affecting a child.[206] The CRC is the first international instrument to extend the application of the best interests of the child beyond legislative measures to include administrative policies.[207] Previous instruments, such as the 1959 Declaration, only obliged states to apply the principle of the best interests of the child when drafting legislation.[208] The

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[201] J Fortin *Children's Rights and the Developing Law* (2009) 41.
[202] J Josefsson et al 'Representing children' in B Sandin et al (eds) *The Politics of Children's Rights and Representation* (2023) 9.
[203] A Quennerstedt, C Robinson & J I'Anson 'The UNCRC: The voice of global consensus on children's rights?' (2018) 36(1) *Nordic Journal of Human Rights* 42.
[204] E Ingleby, C Hedges, & MG Martin 'Children's rights and child labour' (2023) 5(2) *PRISM* Journal 3-4.
[205] J Tobin & J Cashmore 'Thirty years of the CRC: Child protection progress, challenges and opportunities' (2020) 111 *Child Abuse & Neglect* 104437; L Chenwi 'Monitoring the progressive realisation of socio-economic rights: lessons from the United Nations Committee on Economic, Social and Cultural Rights and the South African Constitutional Court' (2010) 1.
[206] G Van Bueren 'The United Nations Convention on the Rights of the Child: An evolutionary revolution' in CJ Davel (ed) *Introduction to Child Law in South Africa* (2000) 202.
[207] Article 3(1); the CRC.
[208] T Hammerberg 'The principle of the best interests of the child – what it means and what it demands from adults' (Lecture, Warsaw 30 May 2008 – Commissioner for Human Rights, Council of Europe) 2-3.

CRC has broadened its ambit of protection to children by including all actions that have bearing on a child.[209] The ambit of this provision encompasses the entire well-being of a child, subsuming various factors that impact a child, such as the child's age, maturity, environment and past experiences.[210] This demonstrates the Convention's position that all measures, such as social programmes, administrative policies and legislation, are relevant in addressing any challenge that children may encounter.[211] Other articles of the CRC endorse the principle of the best interests of a child as well.[212]

Article 28 of the CRC obliges states to provide free and compulsory primary education.[213] State parties are required to take active steps to ensure that learners attend school and thus reduce the rate of school dropouts.[214] Article 29 supplements Article 28, further obliging states to establish educational institutions.[215] Articles 28 and 29 must be read together as they form the basis for the right to education. Article 28 provides for the right to access education and Article 29 provides for the right to realise the aims of education.[216] The right to education is regarded as an essential right that is vital for the attainment of all other rights.[217] The right to education enshrined in the CRC can be classified within the three-generation rights under international human rights. Article 28(1) can be regarded as a second-generation right as it endorses the right to equal opportunity of all children. Article 28(1) can also be regarded as a third-generation right as it seeks to further social and cultural rights. Lastly, Article 29(2) can be regarded as a civil right under first-generation rights as it provides individuals and organisations with the freedom to establish institutions that further the right to education.[218]

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[209] Quennerstedt, Robinson & I'Anson (note 204 above; 43); UNHCR *Guidelines on Determining the Best Interests of the Child* (2008) 14.
[210] A Nolan & A Skelton ''Turning the rights lens inwards': The case for child rights-consistent strategic litigation practice' (2022) 22 *Human Rights Law Review* 2.
[211] UNICEF *Implementation Handbook for the Convention on the Rights of the Child* (2007) 2.
[212] Articles 4, 9, 18, 20, 21 & 37; the CRC.
[213] TC Chanda 'Effects of child labour on education' (2023) 4 *International Journal of Research Publication and Reviews* 1704-1710; B Sheppard 'It's time to expand the right to education' (2022) 40(1) *Nordic Journal of Human Rights* 96–117.
[214] OHCHR 'Convention on the Rights of the Child, 1989' Article 28(1)(c) available at *http://www2.ochrc..org/english/law/crc.htm*, accessed on 13 May 2019.
[215] The CRC, Article 29, paras 1 & 2; Lansdown et al (note 187 above; 8).
[216] M Mehedi 'The realisation of economics, social and cultural rights. The realisation of the rights to education, including education in human rights-the content of the right to education working paper' (UN Doc.E/CN.4/Sub.2/1999/10,1999) (1999) para 40.
[217] ACERWC 'General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child on "The responsibilities of the child"' (2017) para 34; ST Tesemma *A Critical Analysis of Law and Policy on the Education of Disabled Children in South Africa* (Unpublished Doctoral thesis, UNISA, 2012) 26-27.
[218] M Verheyde *A Commentary on the United Nations Convention on the Rights of the Child: Article 28 The Right to Education* (2006) 2-3.

The right to education is paramount, as it constitutes one of the elements that must be taken into account when determining whether an activity qualifies as child labour.[219] As previously stated, the CRC does not focus so much on whether children should engage in labour or not, but rather on the conditions of labour and whether these conditions hinder or obstruct their basic rights, such as the right to education.[220] Additionally, when determining whether an activity qualifies as child labour, the CRC places significance on whether the activity could hamper the child's development.[221] By ratifying the CRC, states thus acknowledge that education is fundamental to a child's development and is necessary for their preparation for life as an adult.[222] Furthermore, the CRC endorses the right to education which serve as a mechanism to develop and enhance children's opportunities to compete economically that will ultimately protect children from exploitation and abuse.[223]

4.5. AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF CHILDREN (ACWRC)

The argument for a regional instrument to enshrine the rights of children within the African continent was two-fold. First, Africa believed that it was under-represented in the process of drafting the CRC: from the African continent, only Algeria, Egypt, Morocco and Senegal participated actively in the drafting of the Convention.[224] Second, while the CRC provides a comprehensive international framework for the rights of children, this UN instrument was largely viewed by African states as a product of the West that promoted the ideologies of the West and failed to consider the circumstances of children in Africa.[225]

As a result of the lack of participation of African states in the development of the instrument, the concerns and challenges raised regarding African children were

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[219] The CRC, Article 32(1).
[220] OP Narayan *Harnessing Child Development: Volume 2 (Children and the Right to Education)* (2005) 5.
[221] The CRC, Article 32(1).
[222] A Visser 'Child labour is a matter of national concern: What is the curriculum doing about it?' (2021) 85 *Journal of Education* 31; DF Danielle *The Right to Education for the Girl-Child and Problems Facing Adolescent Girls in the Pursuit of their Right to Education: A Focus on South Africa* (Unpublished Master's thesis, University of Pretoria, 2012) 12.
[223] T Abebe & J Waters 'Geographies of laboring and learning: Introduction' in T Abebe, J Waters & T Skelton (eds) *Labouring and Learning (Geographies of Children and Young People)* (2017) 93; MN Mpya *An Appraisal of the Efficiency of Implementation Mechanisms with Regards to International Children's Rights Law* (Unpublished Master's thesis, UNISA, 2013) 18-19.
[224] F Viljoen 'Supra-national human rights instruments for the protection of children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31(2) *Comparative and International Law Journal of Southern Africa* 200.
[225] M Liebel *Decolonizing Childhoods: From Exclusion to Dignity* (2020) 31; H Morrison *The Global History of Childhood Reader* (2012) 334; AJ Wilson 'Seen, heard and protected in their best interest: Childhood construction within the worldview of the Fantse of Ghana' (2022) 10(s2) *Journal of the British Academy* 200.

disregarded.[226] For these reasons, the need was identified for an instrument designed specifically for the African content that would take into consideration the peculiar vulnerabilities of African children.[227] The Organisation of African Unity (OAU) viewed the CRC as having failed to consider the context of African children; this necessitated the development of a regional instrument that would address the specific challenges encountered by African children, such as apartheid; the limitations placed on female children; obligatory minimum age requirements for military service social; cultural and economic impediments; and other harmful practices perpetuated in different African societies.[228]

In 1990, after the promulgation of the CRC, the Assembly of the Organisation of African Unity Assembly adopted the African Charter on the Rights and Wellbeing of Children.[229] The ACRWC was largely inspired by existing instruments that addressed children's rights, such as the UN 1924 and 1954 Declarations. The CRC, in particular, influenced the language used in the ACRWC, resulting in numerous similarities between the two instruments.[230] The ACRWC can thus be viewed as a complementary tool for the effective implementation of the CRC; it does not replace the CRC, but rather reinforces and extends the rights of children enshrined in the CRC in the African context.[231] While the ACRWC addresses numerous rights, this chapter discusses only those sections relevant to child labour.

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[226] A Strohwald 'An analysis of the role of African values, traditions and morals in the interpretation of children's rights' (2023) 26 *PER* 187; F Viljoen *International Human Rights Law in Africa* 2nd ed (2012) 133; CN Okenke 'The use of international law in the domestic courts of Ghana and Nigeria' (2015) 32(2) *Arizona Journal of International & Comparative Law* 375.

[227] HA Gafur *Child labour - Causes and Solutions of Child Labour: A Comparative Case Study of Two African Countries* (Unpublished Bachelor thesis, Linnéuniversitetet, 2017) 23; E Durojaye 'The potential of the Expert Committee of the African's Children's Charter in advancing adolescent sexual health and rights in Africa' (2013) 46(3) *Comparative and International Law Journal of Southern Africa* 390; D Olowu 'The regional system of protection of human rights in Africa' in J Nielsen (ed) *Children's Rights in Africa, A Legal Perspective* (2008) 23.

[228] TN Khoza & C Zuma 'The pas de deux between education and recreation: Facilitating the realisation of articles 11 and 12 of the African Charter on the Rights and Welfare of the child in schools' (2020) 14(2) *Pretoria Student Law Review* 382; BD Mezmur & J Sloth-Nielson 'An ice-breaker: State party reports and the 11th session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* 598; T Kaime 'The foundations of the rights in the African Charter on the Rights and Welfare of the Child: A historical and philosophical account' (2009) 3 *African Journal of Legal Studies* 131; MA Mindzie 'Regional protection of child rights in Africa' in H Abbas (ed) *Africa's Long Road to Rights: Reflections on the 20th Anniversary of the African Commission on Human and People's Rights* (2008) 50.

[229] BD Mezmur 'Happy 18th birthday to the African Children's Rights Charter: Not counting its days but making its days count' (2017) 2 *African Human Rights Yearbook* 128: F Viljoen *International Human Rights Law in Africa* (2007) 261.

[230] M Lombe et al 'Conceptualizing the African child as orphan and vulnerable: A label in need of redefinition?' (2019) 62(1) *International Social Work* 63; AG Assefa 'Advancing children's rights in Africa: The role of the African Children's Charter and its monitoring body' (2013) 2(1) *Mekelle University Law Journal* 71.

[231] I Sindayigaya 'The overview of Burundi in the image of the African Charter on Rights and Welfare of the Child' (2023) 14 *Beijing Law Review* 814; A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet' (2002) 10(179) *International Journal of*

The ACRWC defines a child as a person who is under the age of 18 years.[232] This provision affirms unequivocally under what circumstances an individual is regarded as a child and makes no exceptions to this guideline.[233] This definition has been viewed by academics as being at odds with cultural definitions of a child in the African context, where majority is not always attained through chronological age but rather through the acquisition of a status gained through the performance of initiation rites and entering into marriage.[234] The definition of a child in terms of African culture is determined by the factors that are intrinsic to a specific community. Therefore, the end of childhood and the beginning of majority largely depends on the practices of individual communities.[235] Despite this, the ACRWC offers benefits to children as it extends the protection afforded to children until the age of 18 years.[236] In doing so the ACRWC prohibits marriage below the age of 18 years.[237]

The CRC differs from the ACRWC in this regard, as the CRC provides for the possibility of majority being attained at an age earlier than 18 years, thus accommodating cultural practices that determine a different endpoint to childhood and beginning of majority.[238] The ACRWC, in contrast, is explicit about the age of majority and does not allow for this to be altered under any conditions.[239] This inflexibility has both beneficial and non-beneficial consequences. In terms of its benefits, the ACRWC grants individuals greater protection, as children, until the age of 18.[240] This has been countenanced to be in line with the best interests of children as it has been deemed that children should not marry until they are mature enough to do so.[241] However, by preventing children from attaining majority before the age of 18, the

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Children's Rights 184; R Fambasayi & R Koraan 'Intermediaries and the international obligation to protect child witnesses in South Africa' (2018) 21 *PER* 4.

[232] Article 2.

[233] C Himonga 'African customary law and children's rights: Intersections and domains in a new era' in Sloth-Nielsen, J (ed) *Children's Rights in Africa: A Legal Perspective* (2008) 84.

[234] AK Johnson & J Sloth-Nielsen 'Child protection, safeguarding and the role of the African Charter on the Rights and Welfare of the Child: Looking back and looking ahead' (2020) 20 *African Human Rights Law Journal* 649; ES Nwauche 'Child marriage in Nigeria: (Il)legal and (un)constitutional' (2015) 15 *African Human Rights Law Journal* 430; J Sloth-Nielsen 'Modern African childhoods: Does law matter? in MDA Freeman (ed) *Current Legal Issues* (2012) 199; T Falola *Culture and Customs of Africa* (2001) 10.

[235] J Westwood 'Childhood in different cultures' in T Maynard & S Powell (eds) *An Introduction to Early Childhood Studies* (2013) 13.

[236] Article 2; the ACRWC.

[237] Article 2; the ACRWC.

[238] Committee on the Rights of a Child, Fifth session- General Comment No. 11 (2009) 2.

[239] TS Braimah 'Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage' (2014) 14 *African Human Rights Law Journal* 478; A Lloyd 'A theoretical analysis of the reality of children's rights in Africa: An introduction to the ACRWC' (2002) 2(1) *African Human Rights Law Journal* 20.

[240] Ibid.

[241] R Adeola 'Ending child, early and forced marriage in Africa: A human rights-based approach' in K Matlosa et al (eds) *2016: African Year of Human Rights with a Focus on the Rights of Women* (2016) 50; KO Fayokun

ACRWC places itself in conflict with African culture which, as discussed in Chapter 3, espouses child marriage and initiation rites as a manner of attaining majority.[242] By not recognising the possibility of children attaining majority before reaching the age of 18 years, the ACRWC thus disregards the culture in which children are raised. This ultimately nullifies the purpose of the ACRWC, which was drafted to give effect to the unique cultural context of African children that was not considered in the provision of the CRC. While it has been argued that preventing children from attaining majority before the age of 18 is in their best interests, cultural realities bring into question whether this restriction is practical. By disregarding the cultural practices which enable an individual to attain the age of majority earlier than 18 years of age, the ACRWC does not acknowledge the activities, impediments and limitations that are expected of children in the context of their culture. This is concerning: if the ACRWC does not acknowledge the cultural context of the children it aims to protect, how can it adequately protect them from threats that arise from cultural practices? Furthermore, is it appropriate for an instrument designed expressly to speak to a regional context, such as the ACRWC, to disregard the cultural practices of the people who live in that context?

Article 4(1) of the ACRWC states that 'the best interests of a child must be "the" primary consideration in all action concerning children.'[243] The ACRWC's use of the word 'the', as compared to the use of the word 'a' in the CRC, provides a more stringent standard when applying the best interests of the child principle. Essentially, the use of the word 'the' indicates that the best interests of a child must take precedence over any other matter affecting a child.[244] The use of the word 'a' in the CRC, in contrast, signifies that other principles may contend equally with the principle of the best interests of a child.[245] This semantic difference is significant because the ACRWC necessitates that the principle of the best interests of the child be afforded greater credence when contending with other rights and matters.[246] Van

'Legality of child marriage in Nigeria and inhibitions against realisation of education rights' (2015) 12 *US-China Law Review* 815; A Bunting *Particularly of Rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage* (Unpublished Doctoral thesis, University of Toronto, 1999) 145.

[242] B Ehimuan *Developing a Legal Framework which Protects and Promotes the Sexual and Reproductive Rights of Children as Described in International Law: What can Nigeria Learn from South Africa?* (Unpublished Master's thesis, University of KwaZulu Natal, 2017) 61; R Levine 'Ethnographic studies of childhood: A historical overview' (2007) 109(2) *American Anthropologist* 250.

[243] A Moyo 'Reconceptualising the 'paramountcy principle': Beyond the individualistic construction of the best interests of the child' (2012) 12(1) *African Human Rights Law Journal* 142 – 177.

[244] C Cohen 'The developing jurisprudence of the rights of the child' (1993) 1(6) *St Thomas Law Review* 19.

[245] Article 3 (1); the CRC.

[246] H Ross 'CRC General Comment 14 on the Right of the Child to have his or her best interests taken as a primary consideration' (2013) 16(4) *Irish Journal of Family Law* 112; A Skelton 'The development of fledgling child rights jurisprudence in Eastern and Southern Africa based on international and regional instruments' (2008) 9 *African Human Rights Law Journal* 484.

Bueren,[247] Sloth-Nielsen[248] and Chirwa[249] postulate that the phrase 'the primary consideration' provides greater protection for children as it prevents the Charter from allowing any other interests from taking priority over the best interests of the child.[250]

The ACRWC differs significantly from the CRC as per the unique cultural context of African children as it mandates that the school curriculum takes into account African culture, ethics and ethnic values.[251] Article 11(1)(a) of the ACRWC provides for the right to free and compulsory education. The ACRWC acknowledges that education is an essential means to alleviate poverty and access other human rights.[252] The ACRWC extends its ambit of protection by necessitating that state parties provide admittance to education for 'female, gifted and disadvantaged children.'[253] This is particularly significant in the African cultural context, where the enrolment of female children in schools is marginally lower than the enrolment of males.[254] In addition to these provisions, the ACRWC seeks to further the right to education of female children by requiring that state parties guarantee that pregnant female learners are permitted to complete their education.[255] While teen pregnancy is not encouraged within most African culture, the ACRWC seeks to protect the rights of pregnant learners by ensuring that such learners may continue their education after giving birth.[256] These provisions represent a significant advancement in the African continent, where female children are often withheld the

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[247] G Van Bueren *The International Law on the Rights of the Child* (1995).
[248] J Soth-Nielsen & BD Mezmur 'A dutiful child: The implications of Article 31 of the African Children's Charter' (2008) 52(2) *Journal of African Law* 159-189.
[249] DM Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10(2) *The International Journal of Children's Rights* 157-178.
[250] J Adu-Gyamfi & F Keating 'Convergence and divergence between the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (2013) 3(1) *Sacha Journal of Human Rights* 52.
[251] Article 11 (2)(c) of the ACRWC; A Strohwald *The Child's Rights to, in and Through Basic Education: An Analysis of South Africa's International Obligations* (Unpublished Doctoral thesis, University of Stellenbosch, 2021) 92; BD Mezmur 'No second chance for first impressions: The first amicable settlement under the African Children's Charter' (2019) 19 *African Human Rights Law Journal* 63; R Murray *The African Charter on Human and People's Rights: A Commentary* (2019) 438.
[252] L Arendse *Inequality in the Public Basic Education System: The Role of the South African Courts in Effecting Radical Transformation* (Unpublished Doctoral thesis, University of Pretoria, 2020) 64; L Arendse 'The obligation to provide free basic education in South Africa: An international law perspective' (2011) 14(3) *PER* 101; K Tomasevski *Human Rights Obligations in Education: The 4-A Scheme* (2006) 47; CESCR General Comment 13 The right to education E/C.12/1999/10 para 1.
[253] Article 11 (3)(e) of the ACRWC.
[254] AO Abari & NO Orunbon 'Building bridges and walls: Education and COVID-19 in Nigeria' (2020) 1(1) *Research Journal in Comparative Education* 45; B Egbo 'Women's education and social development in Africa' in AA Abidi & A Cleghorn (eds) *Issues in African Education* (2005) 141.
[255] Article 11 (6) of the ACRWC, T Runhare, E Kanaga-Majanga & RN Mathebula 'Resilience of pregnant and parenting learners to pursue educational aspirations within a stigmatising school setting in rural South Africa' (2021) 10(4) *Academic Journal of Interdisciplinary Studies* 163-167.
[256] SAHRC 'Charter of children's basic Education Rights – The right of children to basic education' (2012) 34.

right to education, especially in the event of pregnancy, where they may be asked to leave school without the option of returning.[257]

In Article 15, the ACRWC, provides for the protection of children from child labour. This provision reflects the words enshrined in Article 32 of the CRC. There are several rights that can be inferred from Article 32. First, the right to not be subjected to exploitation essentially entails that children should not be used for economic gain. This means that children should not be engaged in child slavery, child prostitution or begging. Exploitation could entail employment or work that does not correspond with the pay given to the child or that is hazardous.[258] Article 15 of the ACRWC, similarly to the CRC, considers hazardous work from the viewpoint of the effect that such work would have on a child rather, than the type of employment or work that the child undertakes.[259] The ACRWC thus extend the prohibitions of the CRC on the employment or work that a child may undertake.

The ACRWC omits pertinent details regarding a child's right to be protected from employment or work that hampers their right to education, with the consequence that work that hinders a child's access to education is not be considered illegal in terms of the ACRWC.[260] This omission is highly regrettable, especially as the ACRWC provides for a child's right to compulsory primary education in Article 11(3) yet its other provisions are silent on this right. This omission creates the perception that education is not a factor to be considered in determining whether a child is engaging in child labour.

Additionally, the ACRWC does not prescribe a minimum age for the lawful employment or work of children. Thus, there is no correlation between the minimum age of employment and the minimum age to which a child is obliged to attend school. This essentially means that children at any age may engage in employment or work irrespective of whether such employment or work impedes their access to education. The ACRWC has effectively lessened the value of education as an element that could improve the lives of children who

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[257] AI Ajayi et al 'Lived experiences of pregnant and parenting adolescents in Africa: A scoping review' (2023) 20(113) *Reproductive Health* 2*;* J Ndayisenga & I Sindayigaya 'The pedagogy of integration, the child in the center of education: participation of the child in the schooling program' (2024) 18(1) *Applied Mathematical Sciences* 28; S Liebenberg 'Remedial principles and meaningful engagement in education rights disputes' (2016) 19 *PER* 22: AJ Isokpanand & Durojaye 'Impact of the Boko Harma insurgency on the child's right to education in Nigeria' (2016) 19 *PER* 4; A Chigona & R Chetty 'Teen mothers and schooling: Lacunae and challenges' (2008) 28 *South African Journal of Education* 261.

[258] E Brems *Human Rights: Universality and Diversity* (2001) 140.

[259] K Swinnerton & C Rogers 'A theory of exploitative child labor' (2008) 60 *Oxford Economic Papers* 20–41.

[260] B Oyinloye 'Children's everyday work in rural Muslim Yorùbá communities in North Central Nigeria' (2022) 10(s2) *Journal of the British Academy* 154; D Ogunniyi *International Law and Child Labour in Nigeria- Specific Challenges and Alternative Normative Standards* (Unpublished Doctoral thesis, University of Antwerp, 2019) 76.

engage in child labour and break the perennial cycle of poverty. In doing so, the ACRWC opens the door to the exploitation of children, rather than eliminating it.

Article 16 of the ACRWC provides that a child must be protected from all forms of abuse. Article 16 works in congruence with Article 15 of the ACRWC, as child labour is deemed to be an abuse of children.[261] Abuse refers to any act or threatened act that causes or is likely to cause physical, psychological or sexual harm.[262] Child abuse is most common across Africa, as flogging is viewed as an acceptable form of discipline in the domestic setting. Consequently, this creates an opportunity for parents and caregivers to administer physical and emotional punishment to children.[263] With a view to safeguarding children against possible abuse, Article 20(1)(c) of the ACRWC mandates all parents to administer domestic discipline that is in line with a child's right to dignity.

Article 21 of the ACRWC seeks to protect children from harmful social practices that could be detrimental not only to their health but also to their dignity and development.[264] It compels states to protect children from undertaking activities that may be expected in their culture but constitute child labour. Article 31 of the ACRWC further provides that children possess certain responsibilities towards their family, community and country as was discussed in Chapter Three.[265] This concept is unique to the ACRWC; the CRC does not contain a similar provision.

The ACRWC does, however, allow duties to be assigned to a child if two conditions are met. First, the duties and responsibilities that the child is expected to perform must be consistent with the age and capabilities of the child. Second, the duties and responsibilities must not exceed the limitations of the ACRWC.[266] The first condition opens the door for considering the progressive development of children's abilities and capacities, which is the foundation on which international instruments base participation rights for

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[261] IO Ifeanative 'The denial of sustainable energy as a violation of child rights' in Y Omorogbe & AO Ordor, (eds) *Ending Africa's Energy Deficit and the Law – Achieving Sustainable Energy for All in Africa* (2018) 228.
[262] G Van Buren *The International Law on the Rights of the Child* (1995) 45.
[263] J Sloth-Nielson 'The role of national human rights institutions in enhancing the impact of children's rights reporting in Africa' in R Miamingi (ed) *State Party Reporting and the Realisation of Children's Rights in Africa* (2020) 301; O Ekundayo 'Does the African Charter on the Rights and Welfare of the Child (ACRWC) only underlines and repeats the Convention on the Rights of the Child (CRC)'s provisions?: Examining the similarities and the differences between the ACRWC and the CRC' (2015) 57(1) *International Journal of Humanities and Social Science* 152.
[264] Nhenga-Chakarisa (note 38 above; 161).
[265] Strohwald (note 227 above; 8-9); BD Mezmur 'The African Children's Charter @ 30: A distinction without a difference? (2020) 28 *International Journal of Child Rights* 696-697.
[266] P Martin, B Mbambo & B Mulenga *An Exploratory Study on the Interplay Between African Customary Law and Practices and Children's Protection Rights in South Africa* (2011) 22-23.

children. By allowing children to undertake duties and responsibilities, they can be empowered to acquire the confidence and competency needed to be able to make informed decisions regarding themselves.[267]

The second condition safeguards children against the potential abuse and sexual exploitation that may occur as a result of being required to submit to their elders. The ACRWC does not envisage that Article 31 should be utilised in any way to subject children to abuse or sexual exploitation on the basis that children are compelled to adhere to any command from an elder irrespective of whether the command is in contravention of their rights.[268] Article 31 acknowledges that children do not automatically acquire the capacity to undertake adult responsibilities upon reaching the age of 18 years but, rather, that children develop these capacities gradually.[269] In this way the ACRWC can be commended for highlighting the pertinence of the concept of the family unit within the African context. This has been recognised as affirming positive traditions of childrearing.[270]

4.6. REVIEW OF OBSERVATIONS FOR CONVENTIONS 138, 182, THE CRC AND THE ACRWC

4.6.1. SOUTH AFRICA

MINIMUM AGE CONVENTION 138 OF 1973

2011 observation

The CEACR commented on the application of Article 3(1) and (3) of Convention 138 which are the minimum age provision and the determination of hazardous work provisions. The Committee noted that the Government had taken steps to draft regulations on child labour through the support of the ILO–IPEC project.[271] The Committee further expressed its satisfaction with South Africa on the adoption of these regulations in 2010, which included the Health and Safety of Children at Work Regulations (pursuant to the Occupational Health and Safety Act) and the Basic Conditions of Employment Act Regulations on Hazardous Work by

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[267] H Thorgeirsdottir 'Article 13: The right to freedom of expression' in A Alen et al (eds) *A Commentary on the United Nations Convention on the Rights of the Child* (2006) 4.
[268] P Parkinson 'Family law and parent-child contact: Assessing the risk of sexual abuse' (1999) 23 *Melbourne University Law Review* 345.
[269] J Sloth-Neilson & BD Mezmur 'A dutiful child, the implication of Article 3 of the African Children Charter' (2008) 52(2) *Journal of African Law* 177.
[270] Ibid.
[271] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:2699938,102888*, accessed 5 March 2025.

Children. It was noted that s 4–10 of the Health and Safety of Children at Work Regulations conformed to Article 3 of Convention 138.[272]

2016 Observation

The Committee considered Article 1 of Convention 138 regarding national policy designed to ensure the effective abolition of child labour and application of the Convention in practice. The Committee acknowledged that according to the South African Young People's Survey of 2010 (SAYP 2010), there were 821 000 children engaged in child labour and this required immediate action.[273] The Committee notes the Government's progress on developing the Child Labour Programme of Action, Phase III (2013–17) a child labour strategy that defines child exploitation according to national legislation. The Child Labour Programme of Action, Phase III (2013–17) required the collaboration between Government and civil society organisations to reduce child exploitation.[274]

The Committee, however, stated its concern regarding Government's response to the UNCRC's issues raised on the high number of children engaged in child labour, particularly in agriculture. The Committee requested that the Government improve its efforts aimed at progressively eliminating child labour. The Committee further requested that the Government provide recent data on child labour statistics in the country and progress on the implementation of the Child Labour Programme of Action, Phase III (2013–17).[275]

2020 Observation

The Committee acknowledged that the country celebrated the National Day Against Child Labour to raise awareness of child labour. The Committee noted that the Child Labour Programme of Action Phase IV covering 2017–21 was implemented.[276] The Committee further noted that according to the Survey of Activities of Young People, 2015, (SAYP 2015) there was a decrease in child labourers from 779,000 in 2010 to 577,000. KwaZulu-Natal was identified as the province with the highest prevalence of child labour.

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[272] Ibid.
[273] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3292844,102888*, accessed 5 March 2025.
[274] Ibid.
[275] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3292844,102888, accessed 5 March 2025.*
[276] Ibid.

Even though the Committee noted that the Government was successful in the steps taken to reduce child labour, the Committee requested the Government to continue its efforts to progressively work towards eradicating child labour. The Committee further requested that the Government provide tangible measures taken in the Child Labour Action Programme 2017-2021, and the actual number of children withdrawn from child labour as a result of the implementation of the programme.[277]

2024 Observation

The Committee noted that the Government has implemented programmes that are directly and indirectly aimed at improving the conditions of children. These include: Programmes aimed at addressing poverty, the Child Labour Programme of Action (CLPA) 2017-2021 which was extended to 2022 as a result of COVID-19, in 2022 Durban hosted the 5th Global Conference on Elimination of Child Labour, which led to the adoption of the "Durban Call to Action" aimed at eradicating child labour.[278]

The Committee notes that the Survey of Activities of Young People, 2019, (SAYP 2019) indicated a decline in the number of children engaged in child labour from 577,000 in 2015 to 571,000 in 2019. The survey further indicated that the number of children engaged in child labour increased in accordance with age and race.[279] The oldest age category (16-17) and black African children recorded the highest number of child labourers. The survey also indicated that there was a decrease in child labour in all age categories except children aged 10-15 years and even though there was a decrease in child labour in KwaZulu-Natal, the province remained as having the highest child labour statistics.[280]

The Committee expressed concern that COVID-19 and the floods in various areas of the country could reverse the decline of child labour experienced between 2015 and 2019 if it is not monitored and addressed. The Committee noted with interest that the Government has received ILO technical assistance from the "Strengthening the prevention and elimination of Child Labour in the Agricultural sector in South Africa" Project 2023–24, which

[277] Ibid.
[278] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4400202,102888*, accessed 5 March 2025.
[279] Ibid.
[280] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4400202,102888*, accessed 5 March 2025.

encourages the collaboration between relevant stakeholders and different levels of government.[281] The Committee welcomed the positive outcomes of the Government's endeavours to reduce child labour. The Committee further requested information from the Government on the following areas: Measures taken to reduce child labour, the implementation of Phase V of the CLPA, the number of children withdrawn from child labour and the results achieved from the Strengthening the prevention and elimination of Child Labour in the Agricultural sector in South Africa Project 2023–24.[282]

In the writer's opinion, the observations of the Committee regarding the implementation of Convention 138 indicates the South Africa has made strides towards the eradication of child labour. The implementation of policies and programs focused on eradicating child labour signifies South Africa's commitment to its obligations as a member of the ILO. Further, the data collection of child labour statistics through the Survey of Activities of Young People provides an understanding on the prevalence of child labour in the country and the specific areas that are of great concern. This data is essential to allow the country to take necessary action in these specific areas that require immediate attention. The programs implemented such as "Strengthening the prevention and elimination of Child Labour in the Agricultural sector in South Africa" and the CLPA Phases 3-4 indicate that South Africa is responsive to the plight of child labourers especially in agriculture where it is most prevalent.

However, the Committee has frequently requested actual results from these programs that can be assessed to determine the progress and success of these initiatives. The Committee's requests convey that the reports provided by South Africa lacked this important aspect to enable an objective evaluation of the country's progress in eliminating child labour. This is something that South Africa can improve on when they submit their next report.

THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR 182 OF 1999

2011 Observation

The Committee notes with satisfaction that the Children's Act 38 of 2005 defines and prohibits child trafficking. The Committee noted that data on child trafficking and commercial sexual exploitation was being compiled by the South African Police Services and the Department of

[281] Ibid.
[282] Ibid.

Social Development. The Committee requested this data to ascertain the number of infringements, investigations, prosecutions and convictions of perpetrators as well as the sanctions applied with regard to the worst forms of child labour.[283] The Committee noted from the Government's report that 2 child trafficking victims were rescued and repatriated to their home, but there were challenges repatriating 2 other children who had to remain in temporary safe care. The Committee notes that sections 286, 289 and 290 of the Children's Act enforce measures on how child trafficking victims must be assisted and repatriated to their own countries. The Committee requested the Government provide data on the number of children assisted and repatriated in terms of the Children's Act.[284]

The Committee noted that the Government implemented a second National Plan of Action (2009–12) to assist orphans and other vulnerable children (OVC) of HIV/AIDS. The Committee noted the country's progress on the declaration of the "Commitment to HIV/AIDS of 2010" regarding the assistance provided to OVCs in the form of social grants as well as the school attendance of orphans.[285]

2013 Observation

The Committee expressed its concern regarding the results of the South African Survey on Young People 2010 (SAYP 2010) that indicated children among all age categories were exposed to hazardous working conditions. Further, that a high number of children had been injured at work. The Committee thus requested the Government to increase its efforts to eradicate the worst forms of child labour especially hazardous work. The Committee further requested that the Government continue providing data on the worst forms of child labour in South Africa and the measures taken to combat the worst forms of child labour.[286] The Committee noted with appreciation the increase in the number of OVCs benefiting from home and community-based care services. However, the Committee expressed its deep concern regarding the increase of OVCs as a result of HIV/AIDS. The Committee requested that the

[283] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:2700599,102888*, accessed 5 March 2025.
[284] Ibid.
[285] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:2700599,102888*, accessed 5 March 2025.
[286] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3141647,102888*, accessed 5 March 2025.

Government supply information on the time-bound action taken and its success in addressing this issue.[287]

2016 Observation

The Committee noted that the Government had taken the results of the SAYP 2010 into account when drafting the CLPA's third phase (2013–17) and the draft document for standard operating procedure on finding child labour for labour inspectors. The Committee expressed its deep concern regarding the absence of statistics on the worst forms of child labour.[288] This is despite the training provided and the reporting matrix developed to the DSD and civil society organisations which act as monitoring bodies of child labour. The Committee urged the Government to intensify its measures to eradicate the worst forms of child labour especially hazardous work. The Committee requested information on the worst forms of child labour existent in the country as well as the infringements reported by monitoring bodies.[289]

The Committee noted with regret that the information requested from the Government regarding the measures taken to protect OVCs from the worst forms of child labour was not supplied. The Committee acknowledges the Government's progress report on the assistance given to OVCs through the DSD in the form of food support, social grants and Home and Community-Based Care (HCBC).[290] The Committee also noted that the number of OVCs due to AIDS remained unchanged. The Committee further expressed its concern as the OVCs are at a greater risk of being involved in the worst forms of child labour. The Government was strongly urged to increase its efforts to protect children from the worst forms of child labour and to supply information on the measures and results taken in this regard.[291]

2020 Observation

The Committee notes that the Government did not provide information regarding the number of infringements of the worst forms of child labour as requested by the Committee. However, the Committee noted that the country's report under the Labour Inspection Convention, 1947 (No. 81) indicated that extensive training and various initiatives to improve monitoring and

[287] Ibid.
[288] Ibid.
[289] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3292848,102888*, accessed 5 March 2025.
[290] Ibid.
[291] Ibid.

functioning of the labour inspectorate is on-going.[292] Including mechanisms to improve data collection on labour inspections undertaken. The Committee noted that the SAYP 2015 indicated that even though there was a reduction in the number of children involved in hazardous work, there remained children who were working under hazardous conditions. Even though the Committee noted the reduction in the number of children engaged in hazardous work, it encouraged the Government to strengthen the capacities of the Labour inspectorate to prevent children from engaging in hazardous work, to continue training for labour inspectors to identify children engaged in hazardous work and to continue supplying information on the efforts and success in this regard.[293]

The Committee noted that the DSD partnered with the National Association of Child Care Workers (NACCW) to implement a five-year intervention programme known as *Isibindi* which is a community-based child and youth care programme aimed at assisting and supporting vulnerable children.[294] The Committee noted that this programme has been successful in ensuring that vulnerable children remain in school. Additionally, the Department of Basic Education together with the National Student Financial Aid Scheme has been successful in providing funding for vulnerable children to enter tertiary education. The Committee expressed its concern regarding the high number of children orphaned by HIV/AIDS that are at risk of engaging in the worst forms of child labour.[295] The Committee strongly encouraged the Government to improve the access of vulnerable children to tertiary and vocational education. The Committee requested information on the concrete measures taken in the *Isibindi* program and the number of children withdrawn from the worst forms of child labour and placed into education or vocational training.[296]

2024 Observation

The Committee noes that the Government has not provided any information on the object and results of child labour inspections conducted by the labour inspectorate. The Committee notes that the Survey of Activities of Young People (SAYP) 2019 indicated a reduction in children

[292] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3292848,102888*, accessed 5 March 2025.
[293] Ibid.
[294] Ibid.
[295] Ibid.
[296] Ibid.

engaged in hazardous work.[297] The Committee requested that the Government improve the capacities of the labour inspectorate through on-going training and collaboration with relevant stakeholders. It further requested that the Government provide concrete measures taken in this regard, the results achieved and the reasons why the labour inspectorate cannot identify situations when children are engaged in hazardous child labour.[298]

The Committee noted that even though the Government provided free basic education, no-fee schools in rural areas and school nutrition schemes, there was an increase in school drop-outs. The Committee urged government to improve access to free basic education especially to children from disadvantaged communities.[299] The Committee requested that concrete measures be taken in this regard and that the results obtained in terms of school enrolment, attendance and completion, reduction of school drop-outs and the number of children out of school.[300]

The Committee notes that the Government has not provided information regarding the *Isibindi* programme. The Committee notes that the National Strategic Plan on HIV, sexually transmitted infections and tuberculosis 2017–2022 identifies "child orphans and vulnerable children" as a vulnerable group that requires special and targeted interventions.[301] The Committee further notes the number of child orphans due to AIDS decreased. The Committee encouraged the Government to continue its efforts to prevent the worst forms of child labour. The Committee requested that the Government provide concrete measures taken in regard to the *Isibindi* programme and the National Strategic Plan on HIV 2017–2022, the results in this regard and the results achieved regarding the number of orphaned and vulnerable children withdrawn from the worst forms of child labour and placed in tertiary or vocational schooling.[302]

In the writer's opinion, South Africa has demonstrated progress in eliminating the worst forms of child labour. This is illustrated through the legislative enactments, programs and policies implemented. However, even though these efforts have been acknowledged, South

[297] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4400208,102888*, accessed 5 March 2025.
[298] See ILO 'Supervising the application of International Labour Standards for South Africa' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4400208,102888*, accessed 5 March 2025.
[299] Ibid.
[300] Ibid.
[301] Ibid.
[302] Ibid.

Africa has failed to provide information specifically requested on certain aspects. Additionally, a frequent downfall of South Africa is the failure to provide time-bound targets for the programs implemented as well as concrete evidence on the progress and success of the programs. The writer submits that this failure on the part of South Africa creates a loophole to be held accountable for the measures implemented to eradicate child labour. If there are no actual time-frames to show that South Africa has met targets then it cannot be said that they have failed to meet a required standard.

SOUTH AFRICA

CONVENTION ON THE RIGHTS OF THE CHILD, 1989

In light with the purpose of this study, the discussion will only focus on the aspects that have a direct bearing on child labour.

2000 Observation

The Committee appreciated the efforts made by the Government such as the enactment of legislation and various initiatives to protect the rights of children.[303] The Committee noted with concern that the establishment of the National Programme of Action Steering Committee (NPASC). It was also noted with concern that government ministries lacked coordination and efforts to include community-based organizations to implement such programmes.[304]

The Committee was concerned that the data collection mechanism is insufficient to cover all children in the country and recommended this be improved to include vulnerable children. The Committee expressed its concern regarding the insufficient efforts made to ensure the adequate distribution of resources allocated for children's programmes and activities.[305] This resulted in insufficient number of alternative care facilities in previously disadvantaged communities to accommodate vulnerable children. The Committee was also concerned that professional groups and the general public were not sufficiently aware of the Convention and the rights of children. The Committee noted the implementation of the Child Support Grant but was concerned about the phasing-out of the Maintenance Grants. The Committee

[303] United Nations Committee on the Rights of a Child 'Concluding observations of the Committee on the Rights of the Child: South Africa' (2000) 2-15.
[304] Ibid.
[305] Ibid.

recommended that more financial assistance be provided to disadvantaged women and children.[306]

The Committee noted the implementation of the National Primary School Nutrition Programme, which provides meals to children at schools. However, the Committee was concerned that even though education is compulsory, it is not free. Further, that there are inequalities among black children especially in rural communities that result in poor state of schools, well trained teachers, lack of resources and learning material.[307]

The Committee noted that State has signed the International Programme for the Elimination of Child Labour of the ILO to undertake to compile comprehensive national child labour statistics. However, the Committee was concerned about the significant number of children below 14 years that still engaged work, mainly in commercial agriculture and domestic service work. The Committee recommended that the State improve its efforts to ratify the Worst Forms of Child Labour, 1999 (No. 182) and to improve monitoring mechanisms to protect children from child labour.[308] The Committee noted the efforts to implement legislation, policies and programmes to protect children from sexual exploitation, but was concerned that there is still a significant number of children being sexually exploited and the high number of children trafficked, especially girls. The State party was recommended to improve efforts to strengthen its measures to prevent trafficking and to increase awareness on trafficking of children.[309]

2016 Observations

The Committee welcomed the various legislative enactments for the protection of children. The Committee expressed its concern regarding the lack of funding for programmes targeted at children and recommended that this be improved. While the Committee noted the collection of data on children, it expressed concern that this data was not published and easily accessible.[310] Although the Committee noted the positive measures taken to provide children with alternative care, the Committee was concerned about the significant number of children that are orphaned as a result of HIV/AIDS who require alternate care. The

[306] Ibid.
[307] Ibid.
[308] Ibid.
[309] Ibid.
[310] United Nations Committee on the Rights of a Child 'Concluding observations of the Committee on the Rights of the Child: South Africa' (2016) 1-3.

Committee recommended that additional grants be provided to these children and that monitoring and assistance to these children be improved.[311]

The Committee noted the efforts to improve children's access to water, sanitation and housing. The Committee recommended that the Government improve its efforts to ensure access to safe water and sanitation for all households, schools and health facilities and adequate housing.[312] The Committee noted the Government's efforts to improve access to adequate education. However, the Committee noted its concern regarding the persistence of poor infrastructure of schools, insufficient resources and learning materials, inequalities regarding access to schooling based on economic factors and the continuation of high drop-out rates. The Committee recommended that the Government improve access to education and increase budget allocations to improve the state of schools and resources provided to children.[313]

The Committee noted the state's ratification of Convention 182, but it raised concerns regarding the significant number of children engaged in work especially agriculture and the worst forms of child labour and lack of data on children engaged in the worst forms of child labour. The Committee recommended that improvements be made regarding data collection and effective enforcement of child labour laws. Further, that the number of inspections and penalties imposed be increased.[314] The Committee noted the development of the National Strategy for Children Living and Working on the Streets. The Committee recommended that the Government assess the causes and number of children living and working on the streets. That the Government show progress of the strategy in assisting these children.[315]

2024 Observations

The Committee notes the progress of the State party in enacting legislation to enhance the protection of children. The Committee recommended that the State party start developing a new Medium-term Strategic Framework for 2024–2029 which puts children as a national priority that sets clear actions, targets and indicators. The Committee called for

[311] Ibid.
[312] United Nations Committee on the Rights of a Child 'Concluding observations of the Committee on the Rights of the Child: South Africa' (2016) 16-21.
[313] Ibid.
[314] Ibid.
[315] Ibid.

realisation of previous comments made on budget allocations regarding funding for children.[316] Further, that the Government improve data collection processes and to adopt the United Nations Children's Fund (UNICEF) Multiple Indicator Cluster Surveys, to monitor the implementation of children's rights that would assist in planning, monitoring and allocation of the resources for the National Plan of Action for Children.[317]

The Committee called for deinstitutionalisation of children especially for children under 3 years old. This must be supported by human, technical and financial assistance and community-based and family-based alternate care. The Committee recommended that the Government provide the Child Support Grant to all children in need of the grant and to expediate the process of obtaining this grant.[318] The Committee recommended that the Government provide access to free schooling for both primary and secondary phases, to take measures to identify causes of school drop-outs and to strengthen the quality of education by training teachers, providing learning resources and adequate infrastructure.[319] The Committee further recommended that the State collect data on street children and revise the Strategy and Guidelines for Children Living and Working on the Street.[320]

In the writer's opinion, South Africa has shown progress in developing legislation and policies to enforce the rights of children. However, it was highlighted that there are many areas where South Africa falls short in terms of realising the basic socio-economic needs of children. This is significant as the failure to realise the socio-economic rights of children compels children into child labour and to living on the streets. This indicates that South Africa can improve in this area through various measures indicated by the Committee.

SOUTH AFRICA

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD, 1990

2001 Observation

The Commission welcomed the State's ratification of various human rights instruments, various measures to address human rights issues and the enactment of legislation that gives effect to human rights. However, the Commission noted various concerns regarding the State's

[316] United Nations Committee on the Rights of a Child 'Concluding observations of the Committee on the Rights of the Child: South Africa' (2024) 2-12.
[317] Ibid.
[318] Ibid.
[319] Ibid.
[320] Ibid.

reporting obligations to the Commission. Its initial report did not answer various issues raised and the information contained in it did not provide specific targets for the Commission to objectively assess the progress of the State. Further, that the State failed to submit 1 report to the Commission.[321] The Commission raised further concerns regarding the prevalence of HIV/AIDS and the number of orphans as a result of the disease. The Commission recommended that the State strengthen its measures to reduce the number of HIV/AIDS patients through policies and programmes.[322] The Commission did not discuss any issues regarding child labour in its report.

2005 Observation

The Commission noted the positive measures taken by the State in the policies, programmes and legislation enacted to give effect to human rights in the country. There were major concerns raised regarding the report. The Commission questioned the contents of the report as it was submitted 4 years after it was drafted which meant that the information contained in it was outdated.[323] Further, that there was a lack of collaboration among civil society organisations and government institutions in drafting the report. Also, there were no specific targets indicated so that the Commission could assess the progress of programmes. There were also no measures effected to address xenophobia that could confirm that targets had been achieved.[324]

In the absence of detailed reporting by the State, the Commission made general recommendations regarding the strengthening of coordination between civil society organisations and government entities to address human rights issues.[325] Increase legislative measures and programmes to prevent exploitation of children and develop and implement more awareness programmes to inform communities, schools and children of their human rights enshrined in the ACRWC.[326]

2023 Observations

The Committee noted the national policies, measures and strategies to advance the human rights enshrined in the ACHRC. However, a number of concerns were raised by the Committee.

[321] African Union 'Concluding Observations and Recommendations on the Republic of South Africa' (2001) 2-25.
[322] Ibid.
[323] African Union 'Concluding Observations and Recommendations on the Republic of South Africa' (2005) 3-15.
[324] Ibid.
[325] Ibid.
[326] Ibid.

These included the budget allocations that were made for education. The Committee recommended that this budget should be increased, that the Implementation Plan for the Policy on the Prevention and Management of Learner Pregnancy in Schools should be speedily adopted and implemented and that the State report on the progress of these initiatives be submitted to the Committee. Additionally, the Committee recommends that the State strengthen its efforts to provide adequate infrastructure for learning by building schools that are safe, providing learning material and training of teachers.[327]

The Committee raised further concerns regarding the high number of children involved in child labour particularly undertaking hazardous work. The Committee recommended that improved data collections be implemented to accurately monitor the prevalence of child labour. Further, that measures be taken to remove children from hazardous work and provided with welfare and social assistance. Reduce the vulnerabilities of children by providing social protection and he realisation of their basic human rights.[328] The Committee noted the measures taken to address the hardships of street children. However, the Committee recommended that there must be effective monitoring of programmes for street children that can be assessed in the next report.[329]

In the writer's opinion, South Africa has made notable efforts to give effect to the human rights of children. However, a major issue highlighted was that the State failed to provide current and reliable data on programs implemented. The reports that do not include statistics, targets and time-frames create a vague understanding of the progress of the country's efforts in complying with the Convention. This is an area that South Africa needs to take immediate action on as it has been a recurring concern in all the observations discussed above.

4.6.2. UGANDA

MINIMUM AGE CONVENTION 138

2020 Observation

The Committee noted with concern that the Government's report was not submitted. The previous comments were repeated. The National Labour Force and Child Activities Survey

[327] African Union 'Concluding Observations and Recommendations on the Republic of South Africa' (2023) 8-13.
[328] Ibid.
[329] Ibid.

2011–12 of 2013 indicated that 16% of all children were involved in child labour and 25% of these children worked under hazardous conditions.[330] The Committee noted that the Government implemented the National Action Plan for the elimination of the worst forms of child labour in Uganda (NAP) in 2012, which was a plan of action for the monitoring, investigating and evaluation of child labour. The Committee requested that the Government supply comprehensive information on the implementation of the NAP and its success.[331]

The Committee notes that the NAP was in the process of being reviewed with support from the ILO. It further notes that 335 children were removed from child labour and provided skills training. The awareness of child labour was promoted through governmental and civil society organisations. The 2016 UNICEF Annual Report on Uganda indicated that 7,226 were removed from child labour.[332] However, the Committee expressed its concern regarding the high child labour statistics especially in hazardous work. The Government was urged to improve efforts to eliminate child labour particularly in hazardous work. The Committee requested that the Government submit detailed reports on the implementation and success of NAP, the application of Convention 138 in practice, especially the statistics involving the employment of children below 14 years old.[333]

2021 Observation

The Committee noted with regret that the Government did not submit its report as requested by the Committee. The 2020 observation was repeated with the same requests by the Committee. The Committee informed the Government that, if it has not provided responses to the issues raised by 1 September 2022, then it will conduct the examination of the application of the Convention based on the information at its disposal at its next session.

2022 Observation

The Committee noted with deep concern that the Government failed to submit its report. It was thus bound to repeat its previous comments. The Committee informed the Government that if

[330] See ILO 'Supervising the application of International Labour Standards for Uganda' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4061262,103324*, accessed 5 March 2025.

[331] Ibid.

[332] Ibid.

[333] Ibid.

no responses were provided by 1 September 2023, then it will conduct the examination of the application of the Convention based on the information at its disposal at its next session.[334]

2023 Observation

The Committee noted the Government's measures taken to combat child labour, such as the National Steering Committee on Child Labour (NSCCL) which was established in 2021 and the National Action Plan on the elimination of child labour 2020/21 – 2024/25 (NAP II). The Government further indicated in its report that the "ACCEL-Accelerating Action for the Elimination of Child Labour in the supply chain of tea and coffee in Africa" project was implemented to determine the root causes of child labour.[335] Phase I of the project resulted in the collaboration by the Federation of Ugandan Employers and corporate social responsibility departments to enable communities to combat child labour. The second phase of the ACCEL Africa project (2023 to 2028), will extend the efforts to eliminate child labour through the strengthening of governmental frameworks, initiating projects aimed at social protection, decent work opportunities for youth and encouraging knowledge building and partnerships.[336]

The Committee noted that according to the 2019–20 National Household Survey of the Uganda Bureau of Statistics (UBS) that the number of children engaged in child labour especially hazardous work increased due to COVID-19. The Committee further noted the measures taken by the Government to train and capacitate the labour inspectorate.[337] The Committee observed that the Government did not provide information regarding how many child labour violations were identified through inspections or the number or types of penalties enforced for child labour violations.[338]

The Committee urged the Government to strengthen its efforts to combat child labour through training the labour inspectorate and the penalties imposed for violations. The

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[334] See ILO 'Supervising the application of International Labour Standards for Uganda' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4124082,103324*, accessed 5 March 2025.

[335] See ILO 'Supervising the application of International Labour Standards for Uganda' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4356988,103324*, accessed 5 March 2025.

[336] Ibid.

[337] See ILO 'Supervising the application of International Labour Standards for Uganda' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4356988,103324*, accessed 5 March 2025.

[338] Ibid.

Committee requested that the Government provide information regarding investigations and penalties for child labour as well as a copy of all published Annual Labour Inspection reports. The Committee noted with deep concern that the child labour statistics including hazardous work increased considerably in a short period of time.[339] The Committee also observed with regret that there was no information available indicating the number of child labour violations identified by the labour inspectorate. The Committee considered that this situation satisfies the criteria of its General Report to be asked to come before the Conference at its 112th Session and to reply in full to the present comments in 2024.[340]

2024 Observation

The Committee encouraged the Government to strengthen its efforts to eliminate child labour through implementing awareness programmes and free basic education for all children. It requested detailed information and statistics on the implementation of the 2020/21 – 2024/25 (NAP II) and of the ACCEL project. The Committee noted the Government's work with the National Steering Committee on the Elimination of Child Labour. The Government also extended its focus on the "reviewed" NAP II to include additional measures to address child labour.[341] The ACCEL–Africa project together with the "Ending child labour in supply chains: Addressing the root causes of child labour in supply chains through an area-based approach" (CLEAR Supply Chains) project, brought together the ILO, the Food and Agricultural Organization (FAO), the International Trade Centre (ITC) and the United Nations Children's Fund (UNICEF) in identifying and addressing causes of child labour.[342]

The Committee notes with concern that the most recent data indicates that cases of child labour is very high in the country with a large number of children engaged in hazardous work. The Committee requested that the Government continue in the implementation of the NAP II, ACCEL Africa project and CLEAR project, and to submit reports on the results achieved. The Committee further requested that the Government provide accurate and up-to-date statistics on child labour in the country. The Committee noted the Government's recent

[339] Ibid.

[340] Ibid.

[341] See ILO 'Supervising the application of International Labour Standards for Uganda' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4414939,103324*, accessed 5 March 2025.

[342] See ILO 'Supervising the application of International Labour Standards for Uganda' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4414939,103324*, accessed 5 March 2025.

measures taken to strengthen and capacitate the labour inspectorate to effectively identify child labour.[343]

The Committee noted with regret that there was no information supplied on the extent of inspections conducted, violations of child labour identified, and the penalties enforced. In this regard, the Government confirms that the Annual Labour Inspection report of 2022 is being compiled, and that a copy will be submitted as soon as it is published.[344] The Committee urged the Government to improve efforts to capacitate the labour inspectorate to identify child labour, and to ensure that penalties for violations are enforced. The Committee again requested that the Government supply information on the results achieved in this regard, and a copy of the Annual Labour Inspection reports, which would indicate the number and nature of violations involving children identified by the labour inspectorate.[345]

In the writer's opinion, Uganda has shown noteworthy efforts to eliminate child labour through legislation, policies and programs. However, even though this is the case, there are high numbers of children involved in hazardous child labour. Unfortunately, there is no indication from the Government that immediate action has been taken in this specific area as a worst form of child labour. Much like South Africa, these programs lacked time-bound targets and recent statistics on the progress of these initiatives. These areas can be improved to improve the protection of children from child labour.

UGANDA

CONVENTION ON THE RIGHTS OF THE CHILD, 1989

1997 Observation

The Committee noted the positive measures taken by the State such as the National Council of Children and the adoption of the Uganda National Plan of Action for Children. However, the

[343] Ibid.
[344] Ibid.
[345] Ibid.

Committee was concerned about the lack of capacity, human and financial resources and the coordination of the institutions established for the protection of children.[346] The Committee raised further concerns regarding the lack of systematic data on all areas of the CRC involving children. Additionally, the Committee expressed its concern regarding the lack of measures taken regarding awareness campaigns on the rights of children endorsed by the CRC.[347] The Committee raised further concerns regarding the high number of children involved in child labour and the lack of legislative and programs implemented to combat child labour. Even though the Committee notes the States efforts to assess the number of street children, it expressed its concern regarding the escalating number of street children.[348]

The Committee recommended that the State improve its efforts to finance institutions established to protect children as well as improving cooperation between government and non-government entities. The Committee recommended that the State improve data collection methods and consider obtaining technical assistance from the United Nations Children's Fund.[349] The Committee further recommended that the State improve its efforts to train teachers, provide learning materials and to increase the enrolment of children into schools and reduce the drop-out rate from schools.[350] The Committee suggested that the State give more attention to developing labour laws specifically for the protection of children from child labour and that policies and programs be implemented to prevent the economic exploitation of children.[351]

In the writer's opinion, Uganda has made efforts to give effect to the rights of children in the country. These programs that have been implemented are targeted at realising the socio-economic rights of children. This is significant as a lack of socio-economic services leads to children engaging in child labour. However, it was highlighted that a high number of children are still engaged in child labour and there has not been much effort from Uganda to address this. Thus, this is an area that can be improved by the State.

2005 Observations

The Committee welcomed the States legislative enactments and the ratification of human rights instruments that give effect to the CRC. The primary concern of the Committee was the long-

[346] United Nations Committee on the Rights of a Child 'Concluding observations of the Committee on the Rights of the Child: Uganda' (1997) 2-7.
[347] Ibid.
[348] Ibid.
[349] Ibid.
[350] Ibid.
[351] Ibid.

standing conflict in the country. The Committee recommended that the State, through the assistance of the United Nations, strengthen its efforts to end the conflict and displacement of children.[352] The Committee noted the positive measures taken in terms of the National Council for Children (NCC), National Programme of Action for Children (UNPAC) and improved data collection mechanisms. The Committee recommended that the State strengthen its efforts to provide specific targets for its projects so that its progress could be assessed.[353] The Committee expressed its deep concern regarding the high number of children that are orphaned as a result of HIV/AIDS. The Committee recommended that the State improve its efforts to effectively implement its National Strategic Plan of Interventions for Orphans and Other Vulnerable Children for the years 2005/06-2009/10.[354] Additionally, that the State must provide more HIV/AIDS awareness campaigns and preventive programs.[355]

The Committee noted the State's efforts to improve the education system such as the employment of teachers, the construction of classrooms and the purchasing of desks. However, the Committee noted with concern the high number of drop-outs especially in higher grades, poor quality education and adequately trained teachers.[356] The Committee recommended that the State increase public expenditure on education, increase the enrolment of children into schools, provide alternate schooling methods to vulnerable groups as well as vocational schooling.[357] The Committee expressed its concern regarding the high number of children engaged in exploitative child labour especially between the ages of 10 and 14 years.

The Committee noted with concern that the State has not made meaningful efforts to reduce the high number of children involved in child labour. The Committee recommended that the State strengthen its efforts through the assistance of the ILO and UNICEF as well as international and national civil society organisations to combat child labour.[358] The Committee noted with concern the high number of street children that are prone to exploitation. The Committee expressed its grave concern that these children were considered to be dangerous and a burden to society. The Committee urged the State to improve methods to prevent the victimisation of street children, assess the root causes of children living on the

[352] United Nations Committee on the Rights of a Child 'Concluding observations of the Committee on the Rights of the Child: Uganda' (2005) 2-12.
[353] Ibid.
[354] Ibid.
[355] Ibid.
[356] Ibid.
[357] Ibid.
[358] Ibid.

street, enforce systems for reunification with families and take measures to improve medical assistance to street children. Further, the Committee urged the State to take more active measures in conducting systematic data collection for all forms of child labour but especially for hazardous child labour in the agricultural sector. Data should also be collected to find out the veracity of the prevalence of street children. [359]

UGANDA

ACRWC

2006 Observations

The Committee noted the positive measures taken by the State in enforcing legislation, policies and programmes to give effect to human rights. The Committee notes that Uganda failed to ratify pertinent conventions regulating human rights. The Committee acknowledges the implementation of the National Steering Committee on Child Labor, and efforts made towards addressing HIV/AIDS. The Committee, however, notes various concerns. The report that was submitted appears to be a copy of a report submitted under a different convention, thus the provisions of the ACHRC are not addressed. Uganda still has high prevalence of HIV/AIDS and a significant number of orphans as a result of this.[360]

The Committee made general recommendations regarding improving programmes and policies regarding the application of the convention. Additionally, that the State should strengthen efforts to collaborate with national entities, civil society organisations and international stakeholders. Uganda still has high prevalence of HIV/AIDS and a significant number of orphans as a result of this. Thus, more effort needs to be given to providing ways in which to reduce the number of infections and assist those who are living with the disease.[361]

2009 Observations

The Committee noted the measures taken to enhance the human rights of citizens such as the enactment of legislation, the establishment of human rights institutions and special courts to address human rights violations. Additionally, it was noted that the State established HIV/AIDS Health Centres at every sub-district to improve access to medical assistance. However, the Committee raised concerns regarding the lack of non-governmental entities in the drafting of the report. Further, that Uganda did not ratify fundamental human rights

[359] Ibid.
[360] African Union 'Concluding Observations and Recommendations on the Republic of Uganda (2006) 4-9.
[361] Ibid.

conventions. The Committee recommended that improved measures be taken to protect children from exploitation and harmful cultural practices especially those related to marriage. Additionally, that the State increase its efforts to work with civil society groups to provide social assistance to citizens.[362]

2011 Observations

The Committee noted the positive measures taken by Uganda to endorse the provisions of the convention. These include legislation and policies aimed at addressing human rights in the country. Further, that the State has improved access to education especially for girl children as well as improvements regarding the number of schools and teachers. The Committee, however, raised concerns regarding detailed statistics of assertions made for the protection of children. The Committee recommended that the State ratify all conventions pertaining to human rights. Additionally, that the State increase its collaboration with civil society organisations to provide assistance to citizens to realise their human rights.[363]

2010 – 2012 Observations

The Committee noted the positive measures taken in reporting to the Committee such as the inclusion of non-government entities in the drafting of the report, the various legislative measures to give effect to human rights and policies and framework to advance the protection of human rights. Additionally, the Committee commended the States efforts to implement Universal Primary Education (UPE) and the Universal Secondary Education (USE) which has led to an increase in the enrolment of children and fewer drop-outs. However the Committee raised concerns regarding the active steps taken to implement the economic, social and cultural rights as set out in the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (ECOSOCC Guidelines).[364]

Additionally, that Uganda has failed to ratify important conventions relating to human rights and the lack of alignment of national legislation with human rights conventions. The Committee recommended that the State ratify all outstanding human rights conventions. Further, that domestic legislation be brought in line with international human rights

[362] African Union 'Concluding Observations and Recommendations on the Republic of Uganda (2011) 6-10.
[363] Ibid.
[364] African Union 'Concluding Observations and Recommendations on the Republic of Uganda (2010-2012) 5-12.

conventions. Also, continue efforts towards increasing the retention of girl children in school at all levels of education and promote full and equal access to quality education for all children.[365]

2024 Observations

The Committee noted the positive measures taken by Uganda in enforcing human rights such as the ratification of important human rights conventions, and the implementation of policies and programmes as well as the establishment of the Inter-Ministerial Committee (IMC) which currently serves as Uganda's National Mechanism for Implementation, Reporting and Follow-up (NMIRF). However, the Committee raised concerns regarding the implementation of economic, social and cultural rights that have not been addressed by the State. The Committee recommends that the State ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and ensure that all citizens have access to the national ID system to enable all persons, especially vulnerable groups, to access public services like social protection. The Committee acknowledged the limited financial resources available to provide more assistance to HIV/AIDS programmes but it recommended that efforts need to made to obtain funding and provide these services to patients.[366]

In the writer's opinion, Uganda has shown progress in implementing policies to give effect to the human rights of children. There have been a number of policies aimed at enhancing the human rights of citizens. These are targeted at education, basic services, HIV/AIDS and social protection. The progress and success of these initiatives were not provided in the States reports which makes it difficult to objectively assess these programs. A significant downfall of the State is its failure to ratify pertinent human rights instruments. Thus, more effort could be given to correct this position so that national legislation could better reflect the objectives of these instruments.

4.6.3. UNITED STATES

THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR 182 OF 1999

2014 Observation

[365] Ibid.
[366] African Union 'Concluding Observations and Recommendations on the Republic of Uganda (2024) 5-8.

The Committee noted that section 213 of the Fair Labor Standards Act (FLSA) allows children who are 16 years and above to undertake farm work under hazardous conditions. The Committee noted that even though Congress considered this type of work to be suitable for children, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) alleged that a large number of children are working in agriculture under hazardous conditions that are detrimental to their health and well-being. It was also noted that the Wage and Hour Division (WHD) of the Department of Labor (DOL) continued its efforts on protecting children who work in hazardous conditions in agriculture.[367] The Occupational Safety and Health Administration (OSHA) through the Office of Maritime and Agriculture (OMA) in 2012, was tasked with the planning, development and awareness of safety and health regulations covering agricultural workers.[368]

The Committee acknowledged that the Government has set in place adequate monitoring of children working in agriculture under hazardous conditions and that WHD is continuously working to ensure the protection and safety of child workers in agriculture. The Committee notes the various mechanisms put in place by the Government to protect young farm workers. These include initiatives such as: Awareness campaigns to farmers, farm labour contractors, workers, parents, teachers and other federal agencies.[369] The DOL works with foreign embassies across the USA to inform migrant workers about their rights as farm workers. The Occupational Safety and Health (NIOSH) continues to serve as a monitoring system with the Federal Interagency Work Group on Preventing Childhood Agricultural Injury to provide statistics on the injuries of youth in agriculture. It has been noted that the number of injuries of child farm workers have decreased by 58% from 1997 and 2009.[370]

Even though these measures have been noted by the Committee, agriculture is a very dangerous sectors where a significant number of children are working under hazardous conditions. The Committee urged the Government to set time-bound initiatives to protect children in agriculture, to improve monitoring systems of violations and to continue to provide statistics on the number of injuries and fatalities of child farm workers, investigations and

[367] See ILO 'Supervising the application of International Labour Standards for the USA' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3189946,102871*, accessed 5 March 2025.
[368] Ibid.
[369] Ibid.
[370] Ibid.

prosecutions of offenders. The Committee requested the results of the CAIS survey conducted in 2015.[371]

2016 Observation

The Committee noted that WHD has opened new offices and improved its monitoring and investigations of children working in agriculture. The most recent CAIS collected data for youth injuries indicated that there was a decrease in juries by 63% between 1998 and 2014 (28,100 to 10,400). The Committee took note of the measures enforced by the Government to protect youth workers on farms. The latest measure by the WHD which included a "hot goods" provision and the Child Labor Enhanced Penalty Program, which permitted the WHD to increase penalties for violations of child labour law.[372] However, the Committee stated that while Article 4(1) of the Convention 182 allows the types of hazardous work to be determined by national laws or regulations or the competent authority, after consultation with the social partners, the agricultural sector even though it is not on the list of hazardous types of work, remains hazardous sectors to young persons. The Committee requested the Government to continue its efforts to protect young workers in agriculture, to strengthen its monitoring and investigations, to provide statistics on the number of injuries and fatalities of youth in agriculture, investigations conducted and prosecutions and penalties imposed.[373]

2019 Observation

The Committee raised concerns that a significant number of children are still injured while working on farms. The Committee requested the Government to continue its efforts to protect young workers in agriculture, to strengthen its monitoring and investigations. The Government was further requested to enforce time-bound measures to ensure the protection of child workers in agriculture, to provide detailed statistics on the number of injuries and fatalities of youth in agriculture, the type and extent of the violations identified as well as the prosecutions, convictions and penalties imposed.[374]

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[371] Ibid.

[372] See ILO 'Supervising the application of International Labour Standards for the USA' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3298576,102871*, accessed 5 March 2025.

[373] Ibid.

[374] See ILO 'Supervising the application of International Labour Standards for the USA' available at *https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4020378,102871*, accessed 5 March 2025.

2020 Observation

The Committee noted the Government's efforts of the Environmental Protection Agency's Worker Protection Standard (WPS) (40 C.F.R. Part 170) which was revised to prohibit all children under 18 from working with agricultural pesticides. The Committee noted that the AFL–CIO indicated in its report that there had not been a significant improvement to the laws, regulations of work or their enforcement. There were only 34 violations identified which signifies weak enforcement.[375] It was further noted that there are still children under 16 years of age engaged in hazardous work in agriculture. The Committee noted the report by the Government in 2020, that the WHD found child labour violations in 858 concluded cases with 3,073 minors were found to be in violation of the FLSA. However, the Committee acknowledged that these statistics was only for the non-agricultural sector.[376]

The Committee noted the surveys related to children working in agriculture carried out by the National Institute for Occupational Safety and Health (NIOSH). The reports indicated that agriculture had the highest fatalities in work-related incidences. These fatalities occur more frequently in family-owned businesses managed by parents or family members. In terms of the 2019 Fact Sheet on Childhood Agricultural Injuries, from 2001 to 2015, 48% of all fatalities to young workers occurred in agriculture.[377] The Committee expressed its concern regarding the significant number of injuries and fatalities of children working in agriculture. It thus urged the Government to intensify its response to the high number of injuries and fatalities of child farm workers. It requested the Government to provide detailed statistics on the injuries and fatalities of youth in agriculture, the type and extent of the violations identified as well as the prosecutions, convictions and penalties imposed.[378]

2024 Observations

The Committee noted that the Occupational Safety and Health Administration (OSHA) and the Wage and Hours Division (WHD) of the Department of Labor (DOL) engaged in educational and awareness campaigns to educate youth of their rights regarding safety at work. It was noted that the Department of Homeland Security's (DHS) extend temporary status protections and work permits to immigrant workers who assist labour agency investigations.[379]

[375] Ibid.
[376] Ibid.
[377] Ibid.
[378] Ibid.
[379] See ILO 'Supervising the application of International Labour Standards for the USA' available at

Majority of child labour violations involve migrant children, thus this incentive encouraged immigrant workers to report violations. The Committee took note of the Government's efforts to continue investigations and the increase in the amount of penalties imposed on violators. The Committee notes the National Children's Centre for Rural and Agricultural Safety and Health which publishes an annual fact sheet on childhood occupational injuries.[380] The Committee observed that there were 133 fatal work-related injuries to agricultural workers in 2021 which was 15 fewer than in 2020. However, these statistics exclude farms with less than 11 employees. Thus, it does not provide a true reflection on fatal work-related injuries of all agricultural workers.[381]

The Committee requested the Government to provide statistics on hazardous child labour in agriculture regarding the number of FLSA child labour violations involving children under 16 years engaged in hazardous work in agriculture, including those working on family farms, the number of migrant children who have been withdrawn from working in hazardous work in agriculture due to the various measures taken to protect them.[382]

In the writer's opinion, the USA has made use of the exclusion clause that allows States to exclude a specific sector from the application of the convention. As highlighted, child work in agriculture is closely monitored especially when hazardous work is involved. This is because the agricultural sector even though it is not on the list of hazardous types of work, can cause serious and fatal injuries to young people. This is evident in the number of injuries arising from agricultural work. Thus, even though the USA's efforts are in compliance with Article 4(1) of Convention 182, there are many children employed in agriculture undertaking hazardous work and this must be addressed immediately as a worst form of child labour.

4.7. ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND ITS FOLLOW-UP

In terms of the ILO Declaration of Fundamental Principles and Rights at Work, all members of the ILO according to Article 9 of the ILO's Constitution are by virtue of being a member are obliged to work towards the objectives of the organisation. All members even if they have

https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4399865,102871, accessed 5 March 2025.

[380] Ibid.

[381] Ibid.

[382] Ibid.

not ratified the Conventions, are required to respect, to promote and to realize, the principles of the rights enshrined in the Conventions.[383]

Members who have not ratified one or more conventions are according to Article 19 paragraph 5(e), of the ILO's Constitution required to submit reports on the efforts that have been made regarding the five categories of fundamental principles and rights indicated in the Declaration. These report forms are drawn up to gain understanding from the governments regarding any changes that have taken place in law and practice. These reports are reviewed by the governing body of the ILO.[384]

Thereafter, a global report is drafted based on the annual follow-up report provided by non-ratifying members and for ratifying members, it will include the reports submitted in terms of article 22 of the ILO's Constitution. The global report is then discussed at the ILO Conference by the ILO Governing Body.[385] ILO Governing Body will then draw conclusions from the discussions and determine means of action and any technical assistance that can be provided by the ILO to member states on their national laws and practices that can be improved.[386] Thus, even though the USA has not ratified Convention 138, it is still obliged to submit annual follow-up reports regarding its efforts to give effect to the objectives of the five categories of fundamental principles and rights indicated in the Declaration.

4.8. SUMMARY OF THE SIMILARITIES AND DIFFERENCES BETWEEN THE FOUR INSTRUMENTS

Table 3 Similarities and differences between children's rights instruments

SIMILARITIES	**ILO CON. 138**	**ILO CON. 182**	**UN CRC**	**ACRWC**
Definition of child labour	No definition	No definition	No definition	No definition
Definition of economic exploitation, hazardous work	No definition	No definition	No definition	No definition

[383] ILO *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (2022) 9. The principles of the fundamental rights are: "(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour;
(c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation; and (e) a safe and healthy working environment."
[384] Ibid.
[385] ILO *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (2022) 13.
[386] Ibid.

Emphasises education as a means of ending child labour	Yes, Art 2(3)	Yes, Art. 7	Yes, Art 28	Yes, Art. 11
Protects children from hazardous work	Yes	Yes	Yes	Yes
Mandates states to draft national laws and policies to enforce the conventions	Yes	Yes	Yes	Yes
Promotes safe child work and does not place a complete ban on all forms of labour	Yes	Yes	Yes	Yes
Classifies an activity as child labour or as hazardous based on the effect it has on the child, and not on the activity itself	Yes	Yes	Yes	Yes
DIFFERENCES				
Defines a child as under 18 years of age	No	Yes, Art. 2	Yes, Art 1	Yes, Art. 2
Allows for majority to be attained before 18 years of age	No	No	Yes, Art 1	No
Sets minimum age of employment	Yes	No	No	No
Sets minimum age for hazardous work	Yes, Art. 3(1)	No	No	No
Permits member states to set working age lower than the minimum where educational infrastructure inadequate	Yes, 14 years	No	No	No
Defines "light work" and sets age limit	No but sets limit of 13 years	No	No	No
Considers best interests of a child/child-centred approach in all matters pertaining to the child	Yes, Art 3(1)	No	Yes, Art 3(1)	Yes, Art. 4(1)
Advocates for complete abolition of child labour	Yes, Art. 1	Yes- Art. 1	No, Art 32 promotes protection	No, Art 15 promotes protection
Differentiates between work and employment	Yes, Art 2(1)	No	Yes, Art 32	Yes, Art 15

Considers the African culture of a child	Yes, Art. 7	No	Yes, Art. 30	Yes, Art 31

The four conventions can be classified into two broad categories. ILO Conventions 138 and 182 deal exclusively with child labour provisions, whereas the CRC and the ACRWC conventions consider the protection of children from child labour within the context of the general rights of all children. ILO Convention 182 considers combating child labour more from the perspective of criminal activities and Convention 138 considers combating child labour more from a labour perspective. All four conventions fail to define child labour, economic exploitation, light work and hazardous work. Instead, their classification of an activity as child labour focuses on an assessment of the harmful effect that the activity may have on the physical and mental development of a child. None of the four conventions impose an outright ban on work, but rather endorse safe working conditions for children. This approach creates the opportunity for lawful child work.

Education is considered a means of eradicating child labour by all four conventions and all four conventions oblige states to provide free, compulsory basic education for all children. Convention 138 goes further, by prescribing the minimum age of employment and aligning this with the minimum age of schooling. This highlights the significance of education in eradicating child labour. It also enforces the protection of children from child labour within the early developmental stages of their lives. The requirement to enforce compulsory education as a basic right for all children ensures that there is universal consensus about the role of education in a child's development. Thus, all four conventions endorse a child-centered approach toward the well-being of a child which must be considered when drafting policies and legislation to eradicate child labour.

All four instruments protect children from hazardous work. With the exception of ILO Convention 138, they name prohibited activities that represent hazardous work in the formal and informal sectors, provides states with a clear guideline in this regard. ILO Convention 138, however, identifies industries that involve hazardous work in the formal sectors but does not identify specific activities within these industries that should be prohibited. ILO Convention 182 thus offers more protection to children from hazardous work than ILO Convention 138. Convention 182 also provides states with more clarity on hazardous work than Convention 138. Convention 182 heightens the urgency of the elimination of the worst forms of child labour as an immediate concern to be addressed by states. Convention 182 is the

only convention that makes a differentiation between conditional and unconditional hazardous work. ILO Convention 138, the CRC and the ACRWC do not provide for the possibility of improving hazardous work conditions to enable these activities to be safe for children to undertake. As mentioned, Convention 182 refers to formal and the informal economy. Additionally, Convention 138 includes the terms 'employment' and 'work', which broadens the definition of child labour and the application of Convention 138 and Convention 182, as it includes all forms of work beyond contractual employment.

All four conventions offer some flexibility and accommodation to the realities in developing countries and the diverse cultural contexts in which children live. ILO Convention 138 makes provision for children to engage in light work and reduces the minimum age for employment in developing countries; it also exempts certain sectors from compliance its provisions. ILO Convention 182 provides for the possibility of improving conditional worst forms of child labour to be made safe for children. The CRC provides for the social and cultural rights of children. The ACRWC enforces the cultural rights and obligations of children to their family and society. Thus, all four conventions are responsive to the diverse cultures and socio-economic challenges of children in developing countries. Consequently, each of these four conventions is relevant to enforce the peculiarity of the situation of African children. The CRC provides for children to attain majority before 18 years old. However, the ACRWC does not provide for this possibility and unequivocally enforces that children can only attain majority at 18 years old.

The discussion on the General Surveys have illustrated that the interpretation of the minimum age provision has developed over the years. This shows a gradual progression on the perceptions of children and the urgency of protecting their rights. The minimum age provision was first enforced rigidly but later became more flexible in its application. The ILO has acknowledged the difference between developed countries and developing countries by making special exclusions of employment available to countries. The observations of the ILO, CRC and ACRWC illustrate that South Africa, Uganda and the USA have made meaningful efforts to eradicate child labour in their respective countries. However, these observations highlighted grave concerns of the supervisory bodies regarding reporting and the prevalence of hazardous child labour especially in agriculture. Thus, all 3 countries must make greater efforts to uphold their obligation to eradicate child labour.

4.9. CONCLUSION

Child labour is a global predicament due to its economic and developmental ramifications.[387] The ambit of a child's right to be protected from child labour is clearly defined by the relevant provisions contained within the international instruments discussed in this chapter. Any form of work which is undertaken by children under conditions that fail to meet the standards articulated in the ILO Conventions 182 and 138, the CRC and the ACRWC is recognised under the international legal framework as economic exploitation.[388] In the African context, the ACRWC was designed to counter the perceived Western bias in the international instruments and accommodate the particular circumstances of the child in Africa. As has been discussed in this chapter, the ACRWC falls short in some respects, however.

This chapter has critiqued the role that international instruments play in eliminating and prohibiting child labour through an examination of relevant articles and clauses. It is through international instruments that ratifying states develop a unified stance against child labour that is both standardised and consistent universally, strengthening efforts to eliminate child labour. The chapter has also critiqued the shortcomings and debates around particular sections of these conventions and discussed the issue of the universal application of the CRC and ILO conventions to Africa and other non-Western contexts.

The next chapter discusses how South African legislation has developed with reference to these international instruments to eradicate child labour in the country, as well as where alignment is lacking.

[387] Edmonds (note 184 above; 2).
[388] SK Singh *Bonded Labour and the Law* (1994) 10.

CHAPTER FIVE: CHILD LABOUR IN SOUTH AFRICA

5.1. INTRODUCTION

5.2. THE PREVALENCE OF CHILD LABOUR IN SOUTH AFRICA

5.3. THE LEGAL FRAMEWORK GOVERNING CHILD LABOUR IN SOUTH AFRICA

5.3.1. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

5.3.2. THE BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997 AS AMENDED BY THE BASIC CONDITIONS OF EMPLOYMENT AMENDMENT ACT 20 OF 2013

5.3.2. THE CHILDREN'S ACT 38 OF 2005

5.3.4. THE PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS ACT 7 OF 2013 (PACOTIP)

5.4. GOVERNMENT INITIATIVES TO COMBAT CHILD LABOUR IN SOUTH AFRICA

5.4.1. THE CHILD LABOUR PROGRAM OF ACTION (CLPA)

5.4.2. FIFTH GLOBAL CHILD LABOUR CONFERENCE ON THE ELIMINATION OF CHILD LABOUR 2022

5.5. OBSERVATIONS AND RECOMMENDATIONS

5.6. CONCLUSION

5.1. INTRODUCTION

South Africa has put in place a number of measures to affirm the rights of children and affording them protection in South Africa .[389] The Constitution of the Republic of South Africa, 1996 (hereafter referred to as 'the Constitution'), which is considered to provide a progressive legal foundation, obliges the state to promote, protect and realise the rights of children and explicitly calls for the protection of children from child labour.[390] The Basic Conditions of Employment Act 75 of 1997 (hereafter referred to as 'the BCEA') and the Basic Conditions of Employment

[389] F Dube 'The South African Constitution as an instrument of doing what is just, right and fair' (2020) 54(1) *In die Skriflig* 2-3, M Biggeri et al 'Children conceptualizing their capabilities: Results of a survey conducted during the First Children's World Congress on Child Labour' (2006) 7(1) *Journal of Human Development* 60, K Hall 'A profile of children living in South Africa in 2008' (2010) 34(2) *Journal for Studies in Economics and Econometrics* 45-46, MWT Chibwana 'Towards a transformative child rights discourse in Africa: A reflexive study' (2021) 21 *African Human Rights Law Journal* 134, J Sloth-Nielsen 'Children's rights jurisprudence in South Africa – a 20 year retrospective' (2019) *De Jure Law Journal* 501-520.

[390] The Constitution; s 28, A Skelton 'South Africa' in Liefaard, L & Doek, JE (eds) *Litigating the Rights of the Child: The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* (2015) 14; E Coetzee 'Can the application of the human rights of the child in a criminal case result in a therapeutic outcome?' (2010) 13(3) *PELJ* 126, F Dube *Enhancing Democratic Accountability through Constitutionalism in South Africa* (Unpublished Doctoral thesis, North-West University, 2019) 50, F Venter 'The limits of transformation in South Africa's constitutional democracy' (2018) 34(2) *South African Journal on Human Rights* 143–166, T Sithomola 'Constitutionalism and public administration: Critical considerations for public administrators in South Africa (2022) 30(3) *Administratio Publica* 22.

Amendment Act 20 of 2013 deal primarily with the prohibition of child labour,[391] and the implementation of these prohibitions.[392] The Children's Act 38 of 2005 (hereafter referred to as 'the Children's Act') seeks to protect children by prohibiting them from performing illegal activities or practices pertaining to the worst forms of child labour.[393] While this legislative framework entrenches the prohibition of child labour, the persistence of child labour in South Africa[394] is evidence that a discrepancy exists at the level of the legislation, the implementation of legislation, or both..

This chapter explores the prevalence of child labour in South Africa. It identifies and reviews the pieces of legislation that deal with child labour in South Africa and evaluates whether they contain gaps that that impede their effective implementation. The chapter also assess the enforcement of child labour law to establish whether it is effective in the regulation of child labour.

5.2. THE PREVALENCE OF CHILD LABOUR IN SOUTH AFRICA

Child labour has emerged in South Africa as a consequence of the socio-economic inequalities within society, the economy as well as cultural and political developments.[395] In contemporary times, child labour arises under conditions of unacceptably high unemployment levels that gives rise to poverty, abuse of government funds reserved for social development and weak mechanisms to enforce prohibitions on child labour.[396]

In 1999, South Africa conducted its first survey designed to assess the prevalence of child labour. The 1999 Survey of Activities for Young People (hereafter referred to as 'the 1999 SAYP')[397] was administered in all nine provinces and included 26 081

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[391] The Basic Conditions of Employment Act; s 43(2)(*a*)-(*b*).
[392] The BCEA; s 46.
[393] The Children's Act; s 141.
[394] A Visser 'Child labour is a matter of national concern: What is the curriculum doing about it?' (2021) 85 *Journal of Education* 29-54, K Abdulkareem, SO Ehiane, NI Nnamezie 'Reflecting on the trend of child labour in South Africa' (2021) 8(1-2) *African Journal of Democracy and Governance* 69, N De Wet & J Ewemade '"We are small, but we have jobs": A profile of the labour activities of children and youth in South Africa' (2018) 49(3-4) *South African Review of Sociology* 98.
[395] D Francis & E Webster 'Poverty and inequality in South Africa: critical reflections' (2019) 36(6) *Development Southern Africa* 789, D Norman & B Brett 'Educational aspirations, child labour imperatives and structural inequality in South Africa agricultural sector: Research article' (2008) 26 *Perspectives in Education* 32, ILO *Child Labour: Global Estimates 2020, Trends and the Road Forward* (2021), L Eldring, S Nakanyana & M Tshaedi 'Child labour in the tobacco growing Sector in Africa' (2000) 7.
[396] C Igwe et al 'Legal regime on child labour in South Africa: Lessons for Nigeria' (2020) 2(1) *International Journal of Comparative Law and Legal Philosophy* 14, V Gumede 'Socio-economic transformation in post-apartheid South Africa: Progress and challenges' in B Ngcaweni (ed) *The Future We Chose* (2014) 2, N Mthembu *Dream of Azania: Political and Socio-Economic Struggles in Post-Apartheid South Africa* (2010) 69-80.
[397] StatsSA 'Survey on the Activities of Young People, 1999' (2001) 3-4, available at *https:// SAYP1999.pdf (uct.ac.za),* accessed on 8 August 2024.

households. The 1999 SAYP found that 121 000 of South Africa's 13,4 million children engaged in economic activities on at least a weekly basis in South Africa (0,9% of the total number of children surveyed).[398]

The 1999 SAYP considers economic activity to be any activity undertaken for remuneration or economic profit. This includes activities such as conducting any form of business, assisting in a family business, helping with agricultural activities, catching or collecting food to be sold or to be consumed by the family household, undertaking any form of remunerated work and begging.[399] The 1999 SAYP considers non-economic activities to include domestic chores and school maintenance, such as cleaning the classrooms. The 1999 SAYP deems that household chores such as the fetching of water and wood could constitute child labour.[400]

The 1999 SAYP found that 6 million of the 13,4 million South African children between the ages of 5 and 17 undertook some form of economic activity for at least for 1 hour per week (44,8% of the total number of children surveyed), school-related work for at least 5 hours pers week, and household chores, for at least 7 hours per week.[401] Of these, 1,7 million children engaged in at least 12 hours of economic activity and/or school-related work per week , and at least 14 hours of household chores per week (12,7% of the total number of children surveyed).[402]

In 2013, the SAYP conducted a new survey (hereafter referred to as 'the 2013 SAYP') that surveyed 11,2 million South African children from the ages of 7 to 17 years, 577 000 were involved in child labour (5,2% of the total children surveyed). The research indicated that 2,4 million of the 11,2 million children aged 7-17 years were engaged in economic activities.[403] The age group with the largest numbers engaged in economic activity was from the ages of 15 and 17 years old. The survey found that 349 000 children were engaged in labour for excessive hours beyond the lawful hours of work (as discussed later in the chapter) that can be regarded as child labour (3,1% of the total children surveyed). Moreover, 202 000 children

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398 Ibid.

399 StatsSA 'Survey on the Activities of Young People, 1999' (2001) 3-4, available at *https:// SAYP1999.pdf (uct.ac.za),* accessed on 8 August 2024.

400 StatsSA 'Survey on the Activities of Young People, 1999' (2001) 3, available at *https:// SAYP1999.pdf (uct.ac.za),* accessed on 8 August 2024.

401 Ibid.

402 Ibid.

403 StatsSA 'Survey on the Activities of Young People, 2013' (2015) 3-6, available at *www.statssa.gov.za/ publications/P0212/P02122015.pdf*, accessed on 25 April 2018, StatsSA 'Survey on the Activities of Young People, 2015'(2017) 6, available at *www.statssa.gov.za/publications/P0212/P02122015.pdf*, accessed on 25 April 2018.

were reported to have been injured at work (1,8% of the total children surveyed). Even more alarming was that the study revealed that 34,2% of children who were legally permitted to engage in work were working under conditions that exposed them to a hazard which could constitute child labour.[404]

The 2013 SAYP also indicated that, of the 11,2 million children in South Africa, 179 000 were not attending school (1,6% of the total number of children surveyed). Of these 179 000 children, 65 000 were from the ages of 7 to 15 (36,3% of the total children not attending school), which constitutes the age group for which school attendance is compulsory.[405] The 2013 SAYP reported that 7% of South Africa's children were orphans.[406]

SAPY's most recent survey, conducted in 2019 SAYP, reported that there were 11,4 million children in South Africa in 2019 who formed part of the survey. The number of children engaged in child labour was 571 000 in 2019 (5% of the total number of children surveyed). It was reported that 2,2 million of the 11,4 million were involved in economic activities at least on a weekly basis (19,3% of the total number of children surveyed). The province of KwaZulu-Natal was found to have the highest percentage (22,9%) of children in this age group.[407] The age group from 15 and 17 years was identified as the most commonly engaged in economic activities.[408] Between the period of 2010-2019, the highest number of children were recorded as being engaged in market production within the trade industry. Children who were not in school were more likely to be engaged in economic activities as compared to those children who were attending school.[409] Of economically active children (2,2 million), 33,5% were found to be exposed to at least one hazardous activity.

It was further reported that in 2019 more than 7 million children aged 7-17 years were combining domestic chores at home with schooling.[410] The percentage of children not attending school had increased from 1,1% in 2015 to 1,4% in 2019.[411] The survey further recorded that child labour was most frequent among children between 16 and 17 years old. More specifically, KwaZulu-Natal (KZN) was the province which had the greatest number of

[404] Ibid.
[405] Ibid.
[406] Ibid.
[407] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 11.
[408] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 6-30.
[409] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 6-30.
[410] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 21.
[411] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 14.

child labourers in the country at 8,8%. Children in urban areas were recorded to be less likely to engage in child labour at 2,5% compared to children in non-urban areas at 8,5%.[412]

Stats SA indicated in their latest research that KZN has the largest percentage of children in South Africa which constitutes 22,9% of children of the entire country.[413] KZN accounted for 85,6% of children who were engaged in household chores when compared to the other 8 provinces nationally.[414] Additionally, KZN was identified as having 10% child labourers which was the highest number when compared to the other 8 provinces followed by Mpumalanga at 7,4%.[415]

This alone is not an indicator of the severity of the situation; however, further statistics reveal that KZN has the highest HIV prevalence rate in the country with Pietermaritzburg consisting of the most number of HIV/AIDS patients.[416] This is pertinent because further research has recognised that HIV/AIDS has exacerbated child labour in KZN.[417] The increase in child labour in KZN has been attributed to a deficiency in dependable adults who are able to care for children due to poverty or the death or illness of parents as a result of AIDS related diseases.[418] This is especially concerning as children who are orphaned lack the protection of their parents and are thus more susceptible to child labour.[419]

The United States Department of Labor's Bureau of International Labour Affairs research in South Africa conveyed that even though South Africa has endorsed an extensive legal framework to militate against child labour there were a number of loopholes within legislation that hinder the protection of children from the worst forms of child labour[420] which

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412 StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 6-30.
413 StatsSA 'Survey of Activities of Young People, 2015' (2017) at 16.
414 Department of Labour 'Child labour and other work-related activities in South Africa: An analysis on the study of Activities of Young People' (2010) 3, available at *http://www.labour.gov.za/ DOL/ downloads/ documents/ annual-reports/child-labour-and-other-work-related-activities-in-south-africa/2010/childreportintro.pdf*, accessed on 25 April 2018.
415 Ibid.
416 AJ Mturi & N Nzimande *HIV/AIDS and Child Labour in SA: A Rapid Assessment: The Case Study of KZN* (2003).
417 Ibid.
418 Ibid.
419 UNICEF 'Child protection', [n.d.], available at *https://www.unicef.org/southafrica/child-protection*, accessed 2 March 2018.
420 US United States Department of Labor *2022 Findings on the Worst Forms of Child Labor*, available at *https://www.dol.gov/agencies/ilab/resources/reports/child-labor/south-africa*, accessed 13 June 2024, C Allais 'RECLISA - Reducing Exploitative Child Labour in Southern Africa' *Regional Child Labour Conference July 2006* [5], R Walker, S Mahati & I Magaya *Child Trafficking in South Africa: Exploring the Myths and Realities* (2020) 14, United States Department of Labor *South Africa: Significant Advancement. Findings on the Worst Forms of Child Labor* (2014), available at *https://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/southafrica.pdf*, accessed 23 February 2020.

partly accounts for the persistence of child labour in South Africa.[421] Even though these statistics have provided an understanding of the prevalence of child labour in the country, it must be noted that much of the work undertaken by children goes undetected,[422] therefore this could have the effect of inflating the figures of child labourers in South Africa.

The prevalence of child labour in KZN is pertinent as the empirical research of this thesis is conducted in Pietermaritzburg. This study submits that the factors which cause child labour, as discussed in Chapter Three, are prevalent in South Africa as a whole and are not limited to a specific province. Therefore, if one province experiences challenges in eradicating child labour including the implementation of child labour laws, then it is submitted that other provinces would experience the similar challenges as the factors that give rise to child labour are the same in the entire country. Further, these factors that give rise to child labour such as poverty, HIV/AIDS, child-headed households, unemployment and economic instability are experienced in the entire country,[423] however, Stats SA has indicated that these factors are more prevalent in KZN as indicated above. This study submits that the prevalence of such factors which give rise to high levels of child labour in KZN identifies the province as an area of interest to evaluate the effectiveness of the implementation of child labour laws.

Unfortunately, no previous study has been conducted in Pietermaritzburg specifically to determine the prevalence of child labour in the area. The researcher identifies this as a limitation as well as a motivation for this study to investigate because no previous study has provided any understanding on child labour in Pietermaritzburg. The choice of Pietermaritzburg is further submitted to highlight that there is a gap in understanding the prevalence of child labour and that future research on child labour is necessary by Stats SA.

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[421] M Rapatsa Understanding trends in the worst forms of child labour and the state's legal responses: A descriptive analysis (2017) 7 *Juridical Tribune* 187, South African Law Reform Commission 'Trafficking in persons' *Issue paper 25* of March 2004 Project 30, Parliamentary Liaison Office 'The invisible group child migrants, child labour and the 2022 global conference' *Briefing Paper 529* (2021) 2.

[422] DL Veeran 'Combating child labour - a South African challenge' (2003) 39(1) *Social Work* 83, K Polyxeni & T Metaxas 'Are working children in developing countries hidden victims of pandemics?' (2021) 10(9) *Social Sciences* 2-3, SS Kreston 'Human trafficking legislation in South Africa: Consent, coercion and consequences' (2014) 1 *South African Journal of Criminal Justice* 23.

[423] Z Mbandlwa 'Cause of the economic decline in South Africa. What to expect in the next 10 years from now?' (2023) 10(2s) *Journal of Survey in Fisheries Sciences* 1397- 1400, N De Wet & J Ewemade "We are small, but we have jobs": A profile of the labour activities of children and youth in South Africa' (2018) 49(3 -4) *South African Review of Sociology* 96-114, N De Wet & S Frade 'Non-communicable disease comorbidities (NCDCs) among youth in South Africa: the causal contribution of not being in school or work and other socioeconomic characteristics' (2022) 30 *Journal of Public Health* 1-8, K Abdulkareem, SO Ehiane & NIS Nnamezie 'Reflecting on the trend of child labour in South Africa' (2021) 8(1&2) *African Journal of Democracy and Governance* 63-80.

The motivation for choosing Pietermaritzburg in this study is fully discussed in Chapter Two and 9 of this study.

5.3. THE LEGAL FRAMEWORK GOVERNING CHILD LABOUR IN SOUTH AFRICA

There is a plethora of literature that documents the significant progress that South African has made in terms of legislation addressing the rights of children.[424] Experts such as Skelton and Coetzee have lauded the Bill of Rights as a progressive panoply of rights in the development and protection of children's rights.[425] South Africa is a signatory to all major international conventions pertaining to the rights of children and the prohibition and elimination of child labour.[426] Hence, South Africa has an obligation to comply with the provisions of these conventions and align its domestic legislation with this international legal framework.[427] The South Africa Constitution enacts the mandate of these international instruments in terms of its prohibition of child labour.[428]

In addition to the Constitution, South Africa has promulgated other legislation that is aligned with international law regarding the rights of children and protection of children from child labour.[429] These include the BCEA[430], the Children's Act[431], the Prevention and Combating of Trafficking in Persons Act 7 of 2013[432], and the Child Justice Act 75 of 2005.[433] This chapter focuses on a discussion and analysis of the Constitution and other legislation that is relevant to child labour within South Africa.

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[424] R Fambasayi & R Koraan 'Intermediaries and the international obligation to protect child witnesses in South Africa' (2018) 21 *PELJ* 3-4.

[425] The Constitution; s 28; Skelton (note 2 above; 14); E Coetzee 'Can the application of the human rights of the child in a criminal case result in a therapeutic outcome?' (2010) 13(3) *PELJ* 126, J Sloth-Nielson 'Children's rights jurisprudence in South Africa – a 20 year retrospective' 2019 *De Jure Law Journal* 511.

[426] These include: The Minimum Age Convention, 1973 (No 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the United Nations Convention on the Rights of the Child, 1989 and the African Charter on the Rights and Welfare of the Child, 1999.

[427] Skelton (note 39 above; 391-422), S Rosa & M Dutschke 'Child rights at the core: The use of international law in South African cases on children's socio-economic rights' (2006) 22(2) *South African Journal on Human Rights* 224, K Ngidi 'The role of international law in the development of children's rights in South Africa: A children's rights litigator's perspective' in M Killander (ed) *International Law and Domestic Human Rights Litigation in Africa* (2010) 173-177.

[428] The Constitution; s 28(1)(f).

[429] The Vienna Convention of the Law of Treaties, 1969; Art 11, B Franklin *The New Handbook of Children's Rights* (2002) 287, J Sloth-Nielsen & H Kruse 'A maturing manifesto: The constitutionalisation of children's rights in South African jurisprudence 2007–2012' (2013) 21 *International Journal of Children's Rights* 647.

[430] The BCEA, s 43.

[431] The Children's Act, s 141.

[432] The Prevention and Combating of Trafficking in Persons Act 7 of 2013; section 4(1)(*a*)-(*j*).

[433] The Child Justice Act 75 of 2005, Preamble reads: "South Africa's obligations as party to international and regional instruments relating to children, with particular reference to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child".

5.3.1. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The Constitution is the supreme law of South Africa. [434] In the writer's opinion, the Constitution is commendable as it mirrors the intents and purposes of international regulations regarding children and child labour. Section 28 of the Constitution is regarded as the hallmark of children's rights in South Africa as it encompasses a plethora of rights aimed at protecting children.[435] The purpose of section 28 of the Constitution is two-fold:[436] it seeks to ascribe rights to children as a form of protection, and it creates a mandate for the state to develop governmental strategies and programmes to realise the rights of children and ameliorate the hardships encountered by children.[437] It is through this constitutional framework that children are assigned socio-economic rights that provide for the basic needs of children to obviate children from resorting to child labour as a means of sustenance.[438] Child labour is essentially a consequence of the state's failure to fulfil the basic needs of children. In this way, child labour is countenanced to be a violation of the basic human rights of children.[439] Consequently, the

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[434] Dube (note 1 above; a2601), C Albertyn '(In)equality and the South African Constitution' (2019) 36(6) *Development Southern Africa* 752, see also J Zermatten 'The best interests of the child Principle: Literal analysis and function' (2010) 18 *The International Journal of Children's Rights* 483-499.

[435] A Skelton 'Too much of a good thing? Best interests of the child in South African jurisprudence' (2019) *De Jure Law Journal* 558, J Gallinetti '2kul2Btru: What children would say about the jurisprudence of Albie Sachs' (2010) 25 *South African Public Law* 111, E Bonthuys 'The best interests of children in the South African Constitution' (2006) 20 *International Journal of Law, Policy and the Family* 24, J Krutzinna 'Who is "The Child"? Best interests and individuality of children in discretionary decision-making' (2022) 30 *The International Journal of Children's Rights* 121-122, R Krüger & C McConnachie 'The impact of the Constitution on learners' rights' in T Boezaart (ed) *Child Law in South Africa* 2 ed (2018) 564, see generally M Couzens 'The best interests of the child and the Constitutional Court' (2019) 9 *Constitutional Court Review* 363–386.

[436] The Constitution; s 28 reads : "(1) Every child has the right— (a) to a name and a nationality from birth; (b) to family care or parental care, or to appropriate alternative care when removed from the family environment; (c) to basic nutrition, shelter, basic health care services and social services; (d) to be protected from maltreatment, neglect, abuse or degradation; (e) to be protected from exploitative labour practices; (f) not to be required or permitted to perform work or provide services that— (i) are inappropriate for a person of that child's age; or (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development; Chapter 2: Bill of Rights 12 (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be— (i) kept separately from detained persons over the age of 18 years; and (ii) treated in a manner, and kept in conditions, that take account of the child's age; (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and (i) not to be used directly in armed conflict, and to be protected in times of armed conflict. (2) A child's best interests are of paramount importance in every matter concerning the child. (3) In this section "child" means a person under the age of 18 years."

[437] K Nickolaou & M Durieux 'Addressing child rights and child labour: A poverty strategy for South Africa' (2005) *Children's Institute Seminar* 9.

[438] C Churr 'Realisation of a child's right to a basic education in the South African school system: Some lessons from Germany' (2015) 18(7) *PELJ* 2405, G Sherer 'Intergroup economic inequality in South Africa: the post-apartheid era' (2000) 90 *American Economic Review* 317-321.

[439] C Hedges, E Ingleby & M Martin 'Children's rights and child labour' (2023) 5(2) *PRISM Journal* 34-35, D Francis & E Webster 'Poverty and inequality in South Africa: Critical reflections' (2019) 36(6) *Development Southern Africa* 789, J Tobin 'Justifying children's rights (2013) 21 (3) *International Journal of Children's Rights* 395-399, P Proudlock 'Children's socioeconomic rights' in T Boezart (ed) *Child Law in South Africa* 2 ed (2017) 359-40.

legislature has envisaged that the robust foundation for children's basic rights enshrined in section 28 of the Constitution will actuate the protection of children through the materialisation of their basic human rights, which is the first step in the process of eliminating child labour.[440] Section 28(1)(*e*) and (*f*) of the Constitution explicitly protects children from child labour.[441]

Four key observations can be made from an analysis of sections 28(1)(*e*) and (*f*) of the Constitution. The first observation is that the term 'child labour' is not used in this section. The CRC and ACRWC, international instruments to which South African legislation should be aligned, also do not use the term 'child labour.'[442] Sections 28(1)(*e*) and (*f*) of the South African Constitution uses the terms 'exploitative labour practices' and 'inappropriate'. The approach of the Constitution thus serves as the basis for which successive legislation would be drafted.

The second observation that can be made about section 28(1)(*e*) and (*f*) is that the provision does not enact an outright ban on children engaging in work. Instead, it makes a clear distinction between child labour and child work. The Constitution thus seeks to regulate child labour by articulating the lawful parameters of work. The Constitution explicitly prohibits children from engaging in labour that is exploitative or inappropriate to the child's age or endangers the "child's well-being, education, physical or mental health or spiritual, moral, or social development."[443] Work that is not prohibited by these conditions is considered lawful. This indicates the standpoint of legislators that child work is not, in and of itself, an anathema. This, in turn, provides the basis for a regulatory framework delineating the kinds of work that are permissible. The provision thus ensures that subsequent legislation can be promulgated to regulate child work.

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[440] CK Shukla & S Ali *Child Labour- Socio- Economic Dimensions* (2006) 4, I Magaya & R Fambasayi 'Giant leaps or baby steps? A preliminary review of the development of children's rights jurisprudence in Zimbabwe' 2021 *De Jure Law Journal* 17, K Tissington *Review of Housing Policy and Development in South Africa since 1994* (2010) 16, see also C Daiute 'The rights of children, the rights of nations: Developmental theory and the politics of children's rights' (2008) 64(4) *Journal of Social Issues* 701-723.

[441] In terms of section 28(1)(*e*) and (*f*), "Every child has the right, (e) to be protected from exploitative labour practices; (f) not to be required or permitted to perform work or provide services that –
(i)are inappropriate for a person of that child's age, or (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral, or social development."

[442] Department: Women, children and people with disabilities 'South Africa's Periodic Country Report on the United Nations Convention on the Rights of the Child: Reporting period: January 1998 - April 2013' (2013), Minister Of The Department Of Social Development 'South Africa's second country report to the African Committee of Experts on the Rights and Welfare of the Child on the Rights and Welfare of the Child: Reporting period: May 2013 to May 2016' (2016).

[443] The Constitution; s 28(1)(*e*)-(*f*)(i)(ii).

The third observation that can be deduced from this provision is that section 28(1)(*f*) creates a child-centred approach to eliminating child labour that prioritises the needs of the individual child. By mentioning the "well-being, education, physical or mental health or spiritual, moral, or social development" of a child, the Constitution emphasises that these elements contribute to the holistic development of a child.[444] These elements subsumed in section 28(1)(*f*) correlate to the civil, political and socio-economic rights of children.[445]

The principle enunciated by the United Nations CRC that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"[446], illustrates the notion that children are a group of vulnerable persons distinct from adults who must be afforded special protection to ensure that their interests are upheld.[447] The Constitution expressly distinguishes between children and adults and requires that a child should be treated differently from an adult when power or authority is exerted over them.[448] This is pivotal to this study particularly because the Constitution seeks to emphasise that children are defenceless members of society thus greater cognisance must be ascribed to their well-being and development especially when laws are promulgated to ensure their best interests and protection.[449]

The endorsement of the protection of children in the South African Constitution extends further than what ILO Convention 138 states or requires of member states. In Article 3(1) of Convention 138, the 'health, safety or morals' of young persons is the only parameter

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[444] M Dutschke & K Abrahams 'Children's right to maximum survival and development' (2016) 1, K Abrahams 'Making a case for child survival in South Africa's 'Age of Hope' *Children's Institute Working Paper Number* 4. (2006) 1-5, T Walsh 'Advancing the interests of South Africa's children: A look at the best interests of children under South Africa's Children's Act' (2011) 19(2) *Michigan State Journal of International Law* 223.

[445] P Alderson 'Young children's human rights: A sociological analysis' (2012) 20(2) *International Journal of Children's Rights* 177- 178, E Burman 'Local, global or globalised? Child development and international child rights legislation' (1992) 3(1) *Childhood* 45-46.

[446] JM Pobjoy 'The best interests of the child principle as an independent source of international protection' (2015) 64(2) *The International and Comparative Law Quarterly* 328, M Freeman 'The human rights of children' (2010) 63(1) *Current Legal Problems* 1-5, Declaration of the Rights of the Child pmbl., G.A. Res. 1386 (XIV), U.N.GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354, at 19 (Nov. 20, 1959).

[447] J Zermatten 'The best interest of the child: literal analysis, function and Interpretation' (2010) 18(4) *The International Journal of Children's Rights* 484-485, A Skelton 'Constitutional protection of children's rights' in E Boezaart (ed.) *Child law in South Africa* (2009) 280.

[448] J Tobin 'Justifying children's rights' (2013) 21 *International Journal of Children's Rights* 9, A Moyo 'Reconceptualising the 'paramountcy principle': Beyond the individualistic construction of the best interests of the child' (2012) 12 *African Human Rights Law Journal* 144, *Centre for Child Law v Minister for Justice and Constitutional Development* 2009 (6) SA 632 (CC) at para 14(d).

[449] J Sloth-Nielsen 'Children's rights jurisprudence in South Africa – a 20 year retrospective' 2019 *De Jure Law Journal* 516, R Songca 'Evaluation of children's rights in South African law: The dawn of an emerging approach to children's rights?' (2011) 3 *Comparative & International Law of Southern Africa* 341; D Bendo 'Parallel lines? Childhood discourses emphasized by the children's rights movement and the emerging field of children's rights studies' (2020) 27(2) *Childhood* 173-175.

given against which to test the permissibility of work for children.[450] Article 3 (1) of Convention 138, and the subsequent Recommendation 146 stated in paragraph 2, make mention of the mental and physical development of a child, but only in the context of member states' obligation to align national law with this—there is no obligation to enact this in law.[451] As the Constitution is the supreme law of South Africa, the inclusion of the elements 'well-being, education, physical or mental health or spiritual, moral, or social development'[452] elevates the protection of children to the highest level of legislation, rather than only the level of policy.[453]

The fourth observation that can be drawn from section 28(1)(*f*) is that, by assimilating the element of education within the parameter of permissible work, the Constitution emphasises a symbiotic relationship between child labour and education. This correlation is reinforced through the South African Schools Act 84 of 1996 which also assigns the minimum compulsory school age at 15 years old.[454]

The inclusion of education in Constitutional law regarding child labour serves two purposes. First, Section 28(1)(*f*) of the Constitution links to section 28(2) of the Constitution which makes education compulsory until the age of 15 years.[455] The entrenchment of the right to compulsory education, by implication, prohibits children from engaging in labour before they reach the age of 15 years and thus enforces the minimum age for the admission to employment enshrined in international instruments.[456]

Education is regarded as the key factor in eliminating child exploitation particularly that of child labour.[457] This is demonstrated by the country's adherence to Article 28 of the CRC which requires that member states are required to offer free compulsory primary

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[450] Convention 138; Article 3(1).
[451] Convention 138; Recommendation 146, para 2.
[452] The Constitution; s 28 (*e*)-(*f*)(ii).
[453] Convention 138; Recommendation 146, para 2, E Cameron & M Taylor 'The untapped potential of the Mandela Constitution' (2017) 3 *Public Law* 386.
[454] South African Schools Act 84 of 1996; s 15, article 2, 30 & 31.
[455] The Constitution, section 28 (2).
[456] S Zafar et al *An Analysis of the South African Educational Policy from a Child Labour Perspective* (2005) 28-30, C Chürr 'Realisation of a child's right to a basic education in the South African school system: Some lessons from Germany' (2015) 18(7) *PELJ* 2411, EV Edmonds & M Shrestha 'The impact of minimum age of employment regulation on child labor and schooling' (2012) 1 *Journal of Labor Policy* 1-28.
[457] JA Bukenya *A Comparison Between South Africa and Uganda, in Respect of Child Labour as a Hindrance to the Right to Education* (Unpublished Master's thesis, University of Pretoria, 2014) 11, N Duncan & B Bowman 'Educational aspirations, child labour imperatives and structural inequality in the South African agricultural sector: research article' (2008) 26 *Perspectives in Education* 29-43, C Tang, L Zhao & Z Zhao 'Does free education help combat child labor? The effect of a free compulsory education reform in rural China' (2020) 33 *Journal of Population Economics* 601–631.

education.[458] Article 11(3)(*b*) of the ACRWC reinforces this right to education at a regional level.[459] Additionally, the right to education is vital in determining whether a child is engaging in child labour or not as the definition of child labour includes education as one of the key factors that would determine whether a child is engaged in child labour.[460] This is imperative as child work is deemed lawful when engaged in within reasonable hours and when not obstructing access to education.[461] Child work that hinders a child from obtaining a quality education constitutes child labour and is thus unlawful.[462]

Second, section 28(1)(*f*) enshrines the right to education as a fundamental right primarily because it is considered to be a vehicle for the attainment of other human rights.[463] If children are afforded an education, they are better equipped to secure employment or use their skills to sustain themselves.[464] This underscores the priority placed on education particularly within the context of child labour, as child labour is both a cause and consequence of poverty.[465]

The constitutionalisation of the right to education confers a sense of urgency and pre-eminence to the realisation of right to education compared to other socio-economic

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[458] The CRC; Article 28.
[459] The ACRWC; Article 11(3)(*a*).
[460] The Basic Conditions of Employment Act 75 of 1997; s 43 (1).
[461] R Maconachie, N Howard & R Bock 'Re-thinking 'harm' in relation to children's work: A 'situated, 'multi-disciplinary perspective' (2022) 50(3) *Oxford Development Studies* 260-261, D Aufseeser et al 'Children's work and children's well-being: Implications for policy' (2018) 36 *Development Policy Rev*iew 242, M Liebel 'Protecting the rights of working children instead of banning child labour' (2015) 23 *International Journal of Children's Rights* 353-354, S Mapp *Global Child Welfare and Well-Being* (2011) 39.
[462] J De Hoop 'Child schooling and child work in the presence of a partial education subsidy' (2019) 54(2) *Journal of Human Resources* 504–505, P Chanda 'Impact of child domestic labour on children's education. A case study of Lusaka City in Zambia' (2014) *European Scientific Journal* 180, M Maioa & T Nandi 'The effect of the Israeli–Palestinian conflict on child labor and school attendance in the West Bank' (2013) 100 *Journal of Development Economics* 110.
[463] S Fredman, G Donati & S Naicker 'New beginnings: The right to equality and early childhood care and education' (2022) 38(3-4) *South African Journal on Human Right*s 168, C Simbo 'A hexagon right: the six dimensions of the right to basic education' (2018) 39 *Obiter* 126-127, CESCR 'General Comment 13 The Right to Education' E/C.12/1999/10 para 1.
[464] S Fredman, G Donati & LM Richter et al 'Recognizing early childhood education as a human right in international law' (2022) 22 *Human Rights Law Review* 3, J Pillay 'The relationship between housing and children's literacy achievement: Implications for supporting vulnerable children' (2017) 37 *South African Journal of Education* 2 1-6, The Committee on Social, Economic and Cultural Rights (CESCR), in CESCR General Comment No 11 (1999) para 4, states: "… [T]he work of the [CESCR] has shown that the lack of educational opportunities for children often reinforces their subjection to various other human rights violations. For instance, these children, who may live in abject poverty and not lead healthy lives, are particularly vulnerable to forced labour and other forms of exploitation. Moreover, there is a direct correlation between, for example, primary school enrolment for girls and major reductions in child marriages."
[465] MP Lambon-Quayefio & NS Owoo 'Investigating the long-term effects of child labor on household poverty and food insecurity in Ghana' (2021) 87 *Journal of Demographic Economics* 562-563, IS Abdullahi et al 'Does poverty influence prevalence of child labor in developing countries?' (2016) 6(1) *International Journal of Economics and Financial Issues* 7-8.

rights, such as healthcare, adequate food, housing and clean water and sanitation.[466] However, despite the fact that the Constitution enshrines the right to education as a basic human right, families are still required to pay for uniforms, stationery, and other expenses related to schooling.[467] Families in poverty may be unable to meet these requirements.[468] As a result, their children may be prevented from attending school and, instead, may be encouraged to engage themselves productively in work.[469]

5.3.2. THE BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997 AS AMENDED BY THE BASIC CONDITIONS OF EMPLOYMENT AMENDMENT ACT 20 OF 2013

The Basic Conditions of Employment Amendment Act 20 of 2013 (BCEA), deals exclusively with child labour in Chapter 6. Analogously to the Constitution, the BCEA prohibits children from engaging in child labour.[470] Section 43 of the BCEA, as amended aligns South African legislation with the language used in international instruments[471] by replacing the word 'employ' with 'work'.[472] On 20 March 2012 the submission of the bills was sent to Parliament to be considered by the Portfolio Committee on Labour. The Portfolio Committee on Labour adopted changes to the Basic Conditions of Employment Amendment Bill (B15-2012). It has

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[466] J Sloth-Nielsen 'The intersection between article 6 of the UN Convention on the Rights of the Child and early childhood development' (2015) 26 *Stellenbosch Law Review* 295, S Liebenberg 'South Africa's evolving jurisprudence on socioeconomic rights: An effective tool in challenging poverty?' (2002) 6(2) *Law, Democracy & Development* 160*, Governing Body of the Juma Musjid Primary School v Essay NO (Centre for Child Law and Another as Amici Curiae)* 2011 (8) BCLR 761 (CC) at para 37; SAHRC *Charter of Children's Basic Education Rights* (2012) 7.

[467] S Coetzee & R Mienie 'The 'best interests of a child' standard in education: An overview of South African case law' (2014) 29(1) *South African Public Law* 93-95, see also JM Reyneke *The Best Interests of the Child in School Discipline in South Africa* (Unpublished Doctoral thesis, Tilburg University, 2013), S Jafarey & S Lahiri 'Will trade sanctions reduce child labour? The role of credit markets' (2002) 68 *Journal of Development Economics* 139.

[468] IB Omoniyi *The Impact of Household Poverty Trap on Learners' Academic Performance In Nongoma Secondary Schools in the Zululand District* (Unpublished Doctoral thesis, University of Zululand, 2021) 2 , M Bhat, J Joshi & I Wani 'Effect of socio economic status on academic performance of secondary school students' (2016) 3(4) *International Journal of Indian Psychology* 33, MJ Nortje 'The effect of poverty on education in South Africa' (2017) 1(1) *Educor Multidisciplinary Journal* 49.

[469] V Chikoko & P Mthembu 'The impact of poverty on basic education in South Africa: A systematic review of literature' in F Maringe (ed) *Systematic Reviews of Research in Basic Education in South Africa* (2021) 74-75, BL Mmutle *Determinants of School Dropout in the North West Province* (Unpublished Doctoral thesis, North-West University, 2019) 3-4, AS Mambi *Implementation of the Child Labour Policy in South Africa* (Unpublished Master's thesis, University of Witwatersrand, 2016) 11, S Mapp *Global Child Welfare and Well-Being* (2011) 25.

[470] The BCEA, s 40.

[471] Convention 138; Article 1(3).

[472] The BCEA; s 43 as amended by the BCEA Amendment Act reads as follows: "Prohibition of work by children(1) No person may require or permit a child to work, whether as an employee or as an (2) independent contractor, if the child –(a) is under 15 years of age; or b) is under the minimum school – leaving age in terms of any law, if this is 15 or older (3) No person may require or permit a child to perform any work or provide any services – (a) that are inappropriate for a person of that age;(b) that place at risk the child's wellbeing, education, physical or mental health or spiritual, moral or social development.(4) A person who requires or permits a child to work in contravention of sub-section 1 or sub-section 2 commits an offence."

been submitted to the National Assembly and the National Council of Provinces for consideration and possible adoption.[473]

The White Paper on a Child Labour Action Programme (White Paper policy document formulated as far back as 2003) was drafted to propose appropriate policies on an action programme to address child labour. The White Paper policy document pertaining to the intention and purpose of the amendment to the BCEA endorsed that the word 'employ' is replaced with the word 'work' which would bring our domestic laws in line with international standards as the International Labour Organisation (ILO) refers to the word 'work' rather than 'employ'.[474] The effect of the amendment is to extend the ambit of protection to include all children who engage in any form of work and not only those children who are classified as employees.[475]

The term 'child labour' encompasses certain work-related activities or chores within the home that can be detrimental to a child, such collecting water or firewood for long hours or over lengthy distances.[476] The definition of child labour has been accepted by government and all stakeholders.[477] However, in the White Paper policy document, even though these activities constitute child labour and are encouraged to be dealt with as child labour, it is not ascribed the label of child labour within policy development.[478] The reason that was submitted for this exclusion was that these activities take place because of the socio-economic conditions of families or due to cultural practices of African people in South Africa. Thus, the White Paper policy document acknowledged that there will not be political support for ascribing the label of child labour to these forms of work and should therefore be labelled 'detrimental forms of child work.'[479]

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[473] SAnews 'Progress on Basic Conditions of Employment Amendment Bill' available at *www.sanews.gov.za/ south-africa/ Progress on Basic Conditions of Employment Amendment Bill | SAnews, accessed 25 July 2024.*
[474] Please see Chapter 4, Convention 138 (Article 2) for distinction between 'work' and 'employment', D Bosch, D Budlender & A Fourie 'White Paper (draft) on a National Child Labour Action Programme for South Africa: Draft for consideration by government departments and other stakeholders' (2003) 2.
[475] The draft South African Child Labour Action Programme in 1998 defined the term child labour as: 'work by children under 18 which is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or their social, physical, mental, spiritual or moral development. The term 'work' is not limited to work for gain but includes chores or household activities in the child's household, where such work is exploitative, hazardous, inappropriate for their age or detrimental to their development', 'Memorandum of Objects: Basic Conditions of Employment Amendment Bill, 2012' available at *www.labour.gov.za/ DOL/ downloads/legislation/bills/proposed-amendemnt-bills/bceamemorandum.pdf*, accessed on 12 July 2017.
[476] Ibid.
[477] D Bosch, D Budlender & A Fourie (note 86 above;13-15).
[478] Ibid.
[479] Ibid.

The White Paper policy document discussed that a more nuanced approach is required when addressing child labour rather than the traditional approach of imposing prohibitions.[480] This nuanced approach is favourable as it is deemed to prevent work being forced underground and it permits the identification of activities of child work that are indeed harmful and should be prohibited. This nuanced approach shows that some types of work even though not acceptable, are sometimes beneficial and would place children in a worse off position if they did not undertake that type of work.[481] Therefore, child labour policies will not focus on these types of non-harmful activities. The issue that becomes relevant when household chores can be classified as child labour is when such chores are undertaken in excess and are harmful and detrimental to the child.[482]

In light of these admissions regarding detrimental forms of child work, the White Paper policy document proposed strategies which have not been implemented to date.[483] There are three main strategies that include policies on school attendance, regulation of hours of school labour, increasing social assistance to destitute families and awareness of child labour policies and its harmfulness.[484] It must be noted that these strategies are incorporated into the recommendations in Chapter Ten of this thesis and includes various suggestions on how these strategies can be used to address child labour. The amendment to the BCEA thus addresses all types of work that can be undertaken by a child. South Africa has progressed in the right direction by acknowledging that child labour is manifest in divergent forms especially within the domestic sphere as child labour often permeates in an insidious manner within the rural domestic and agricultural environments.[485]

Even though the discussion documents encourage a nuanced approach, this is not reflected in the amendment to the BCEA. The discussion documents merely acknowledge that there are detrimental forms of child work but there is no reference to this in the proposed

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[480] Dawie Bosch & Associates 'Towards a National Child Labour Action Programme for South Africa: Discussion Document' 2002) 43.
[481] Ibid.
[482] Ibid.
[483] Ibid.
[484] Ibid.
[485] A Visser 'Child labour is a matter of national concern: What is the curriculum doing about it?' (2021) 85 *Journal of Education* 30, M McBride 'Cleaning up the industry: Improving protections for precarious and child domestic worker' (2015) 41(5) *Fordham International Law Journal* 1337, C Heady 'What is the effect of child labour on learning achievements? Evidence from Ghana' (2000) *Innocenti (Working Paper* 79) 2, see also S Bessel 'Education, school, and learning: Dominant perspectives' in T Abebe & J Waters (eds) *Laboring and Learning* (2017) 91-95, De Wet & Ewemade (note 6 above; 96-97), M Haque MD 'Reviewing child labour and its worst forms: Contemporary theoretical and policy agenda (2021) 6 (4) *Journal of Modern Slavery* 38, J Gamlin et al 'Is domestic work the worst form of child labour? The findings of a six-country study of the psychosocial effects of child domestic work' (2013) 13(2) *Children's Geographies* 213.

amendment to the BCEA. The amendment thus needs scrutiny to determine whether it leaves gaps in the regulation of child labour. While the amendment bolsters South Africa's existing prohibitions of acts regarded as child labour, it does not make provision for alternative forms of support to families that have relied on their children performing types of domestic work that constitute child labour.

If legislation increases the prohibitions on child labour without creating an alternative for the survival of children and their households, it may worsen the economic situation of households and infringe on the cultural norms of communities.[486] If the work performed by children has played a critical role in meeting the basic needs of the household, any attempt to eliminate child labour must consider how this might impact the family's ability to cope .[487] As poverty that compels children to undertake labour, child labour must be understood in the context of poverty.[488]

While international conventions may oblige member states to comply with their standards, states must consider holistically the impact on children if national legislation prohibits all forms of work – even if detrimental to the child on one level, and social development is only progressive in its implementation to assist destitute families.[489] In rural areas without access to piped water, it is common for children to spend considerable time fetching water; this contributes significantly contribute to the welfare of their household as it enables adults to engage in economically productive activities to secure livelihood.[490] While this may constitute child labour and put the wellbeing of these children at risk, it must be noted that initiatives to alleviate these conditions have not always been successful, with the result

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[486] J Sloth-Nielsen & BD Mezmur 'A dutiful child: The implications of Article 31 of the African Children's Charter' (2008) 52(2) *Journal of African Law* 161-162, Abdulkareem, Ehiane & Nnamezie (note 6 above; 71), A Dammert 'Effects of public policy on child labor: Current knowledge, gaps and implications for policy design' (2017) 2, see also M Von Fintel, A Zoch & S van der Berg 'The dynamics of child poverty in South Africa Between 2008 and 2012' (2017) 10(4) *Child Indicators Research* 945-969.

[487] SB Rathebe *The Impact of Poverty Alleviation on the Eradication of Child Labour in South Africa* (Unpublished Master's thesis, North-West University, 2016) 13, L Osment *Child Labour; The Effect on Child, Causes and Remedies to the Revolving Menace* (Unpublished Batchelors thesis, University of Lunds, 2014) 14-15.

[488] R Hennessy 'Exploring the role of social protection interventions in preventing child labour: Reinforcing the case for a human rights based model of intervention' (2023) 15 *Journal of Human Rights Practice* 263-264, M Taylor 'Child labor, learning problems, and poverty' (2017) available at *https://files.eric.ed.gov/fulltext/ED580822.pdf* 4.

[489] Lambon-Quayefio & Owoo (note 77 above; 561-562), ILO and UNICEF Office of Research – Innocenti *The Role of Social Protection in the Elimination of Child Labour: Evidence Review and Policy Implications* (2022) 10-11, VM Muzvidziwa 'Child labour or child work? Whitear Policy' (2006) 22(1) *Research Review* 31.

[490] Department of Labour *Child Labour Programme of Action: Putting an End to Work that Harms Children* (2006) 6-8, JP Graham, M Hirai & S-S Kim S-S 'An analysis of water collection labor among women and children in 24 Sub-Saharan African countries' (2016) 11(6) *PLoS ONE* 2-3, D Hemson 'The toughest of chores: Policy and practice of children collecting water in South Africa' (2007) 5(3) *Policy Futures in Education* 323.

that children have been forced to resume these activities for their family's survival.[491] Thus, if South Africa's efforts to comply with international law and provide greater protection to children by expanding the definition of child labour causes greater detriment to children whose basic needs are met through tier labour, it fails in its aims.

A provision allowing children to engage in light work may provide a suitable solution to this quandary.[492] Lowering the legal age at which children may engage in light work would allow more children to undertake household tasks that contribute to their survival. Furthermore, this would allow children engaging in light work to be recognised under the law and enable their activities to be regulated and monitored to limit the exploitation of these children. This alternative will be discussed in greater detail in Chapter Ten.

Additionally, the amendment does not provide an indication of how the undertaking of domestic chores is to be monitored by authorities to ensure that children are protected from child labour at home. If the proposed amendment is not implemented with appropriate monitoring, it is futile. Adequate resources need to be implemented especially taking into account that the proposed amendment would be focusing on domestic private homes, where child labour often goes undetected. The viability of the implementation of regulations in the informal sector is discussed more comprehensively later in this section, with reference to labour inspectors.

The BCEA names it a criminal offense for any person to permit or assist a child to undertake work.[493] The proposed BCEA Amendment Act endorses a maximum of 3 years in prison for a child labour offense.[494] However given the loopholes at the grassroots level of inspections and investigations of child labour it is questionable as to whether an increase in the years of conviction will be effective. Research has indicated that there are gaps in criminal law enforcement that impede effective criminal law enforcement, such as insufficient training for criminal law investigators which hinders convictions of child labour violators.[495]

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[491] Ibid.
[492] Convention 138; Article 7 as discussed in chapter 4.
[493] The BCEA; S 46.
[494] The BCEA as amended by the BCEA Amendment Act; s 93. P Benjamin 'The LRA and the BCEA Amendments: What is all the fuss about?' *25th Annual Labour Law Conference* (2012) 34.
[495] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2019) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html*, accessed 23 May 2020.

Section 48 of the BCEA prohibits the forced labour of children.[496] While this provision was included prior to the ratification of the Elimination of the Worst Forms of Child Labour Convention 182, it is indicative of South Africa's perspective that child labour is tantamount to a human rights violation and thus heightens the severity of worst forms of child labour.[497]

Section 50(2)(*b*) of the BCEA allows for the participation of children in artistic performances and[498] Sectoral Determination 10 permits children under the age of 15 years to participate in artistic performances and provides strict guidelines for the monitoring and enforcement of this section.[499]

It must be emphasised that the BCEA was promulgated before South Africa ratified the ILO Convention 138 and the Elimination of the Worst Forms of Child Labour Convention 182.[500] The BCEA has come under criticism for this, because its child labour provisions do not adequately reflect the intentions and purposes of the Convention 138 and 182. While proposed amendments were made to the BCEA after South Africa ratified Convention 138 and Convention 182, these do not reflect all the provisions contained in Convention 138.[501] For example, Convention 138 provides that children between the age of 13 years old and 15 years old may undertake light work[502] but the BCEA and its proposed amendments do not include a light work provision and thus fail to provide for this form of relief to children and families who rely on child work for their survival.[503] Currently, any work conducted by children within the category of 13 to 15 years is unlawful.

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[496] The BCEA; Chapter 6, s 48.
[497] HK Golo et al 'Human rights issues of child labour and economic activities: The way forward' (2018) 4(2) *American Journal of Social Science Research* 41-42, J Aransiola & C Zarowsky 'Human trafficking and human rights violations in South Africa: Stakeholders' perceptions and the critical role of legislation' (2014) 14 *African Human Rights Law Journal* 512, J Gamlin et al 'Is domestic work a *worst form* of child labour? The findings of a six-country study of the psychosocial effects of child domestic work' (2015) 13(2) *Children's Geographies* 213.
[498] The BCEA; s 50(2)(*b*).
[499] The BCEA; Sectoral Determination 10.
[500] SC Rama *A Critical Analysis of Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities in South Africa* (Unpublished Master's thesis, University of Johannesburg, 2017) 39-40.
[501] 'Memorandum of Objects: Basic Conditions of Employment Amendment Bill, 2012' available at *www.labour.gov.za/DOL/downloads/legislation/bills/proposed-amendemnt-bills/bceamemorandum.pdf*, accessed on 12 July 2017.
[502] Convention 138; Article 2(3).
[503] MFC Bourdillon 'Child labour and education: a case study from South Eastern Zimbabwe' (2000) 15(2) *Journal of Social Development in Africa* 28.

However, by not legalising and regulating this category of work, children are compelled to engage in work that is illegal and may fall prey to exploitation by employers.[504] This would negate the purpose of section 28(1)(*a*) of the Constitution, which provides that children should be protected from exploitative labour practices.[505]

In terms of section 44(1) of the BCEA, the Minister of Labour is empowered to make regulations that either prohibit or control the work undertaken by children who are over 15 years but under 18 years of ages.[506] The regulations that have been drafted subsume the types of hazardous employment children younger than 18 years may not engage in.[507] Although the enforcement of prohibitions can be commended, as it provides a strict guideline for lawful work conducted by children 15 years old and above, this study argues that the regulations are inadequate in safeguarding and endorsing the rights of child workers.

The Regulations on Hazardous Work by Children permits children under 15 to undertake work, but not in the capacity of an employee as endorsed by the BCEA. Children under 15 are permitted to conduct work in the form of fundraising on behalf of a registered fundraising organisation[508] or voluntary work for a charity, sports clubs or a church.[509] This excludes children under 15 from receiving remuneration for their work or from enforcing their labour rights in terms of labour laws. This provision thus discriminates against children under 15 and does not justify why this category of children should be precluded from being remunerated for work that they undertake. Thus, section 4(2) of the Regulations on Hazardous Work by Children disregards the reality of the socio-economic hardships that compel children below 15 years old to engage in work and unreasonably prevents such children from improving

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[504] JC Andvig 'Child labour in Sub-Saharan Africa—An exploration' (1998) 25(2) *Forum for Development Studies* 350.

[505] The Constitution; s 28 (1)(a).

[506] The BCEA; s 44(1) reads as follows: "make regulations to prohibit or place conditions on the employment of children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law".

[507] Government of South Africa. Basic Conditions of Employment Act (75 of 1997):
'Regulations on Hazardous Work by Children in South Africa', *GG* 32862, 16 January 2010. These regulations include the manufacture and sale of liquor, mining, scavenging in dirt and contact with hazardous substances. These regulations include bans on children working in conditions that are hot, cold or noisy, elevated areas, impose risks of respiratory harm, carrying or lifting heavy objects, hinders a child's nutrition, health or education. Additionally, the regulations enforced guidelines which employers must adhere to if the child is conducting work that requires being separated from their parent or guardian.

[508] Fund Raising Act 107 of 1978.

[509] Summary of regulations on the health and safety of children at work and on hazardous work done by children at 3, available at *www.Regulations on hazardous work by Children in South Africa.pdf (labour.gov.za),* accessed 17 June 2024.

their lives by earning an income to sustain themselves and possibly contributing towards costs of their schooling.[510]

In addition, while the regulations provide guidelines on the hours and times when children can work outside school hours,[511] they are insufficient to address the reality that child workers encounter. They do not provide for the possibility that schooling can be adjusted around the work schedule of the child worker.[512] Currently, working times are regulated around school hours, which are standard and not subject to change.[513] It is submitted that the legislature should give more thought to amending the structure of the basic education system to include the possibility of night school, holiday classes and part-time schooling to accommodate working children. This submission correlates with the recommendation proposed at the 5th Global Conference on the Elimination of Child Labour Conference held in Durban in 2022.[514]

The right to education and socio-economic rights should not be evaluated to determine which is greater but rather both rights should be considered as dependent on each other in the best interests of children.[515] Thus, the right to schooling and the opportunity of children to work should be compatible with each other.[516] If the state cannot provide immediate fulfilment of the socio-economic needs of children who are compelled to work for their survival, then it is submitted that the state provide improved mechanisms for working children to be educated while they work.

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[510] H Barnes et al 'Review of research evidence on child poverty in South Africa' (2017) 62, available at *http://www.childrencount.uct.ac.za/uploads/publications/Child%20Poverty%20Review%20update%20010617.pdf,* KO Omotoso & SF Koch 'Exploring child poverty and inequality in post-apartheid South Africa: A multidimensional perspective' (2018) 26(3) *Journal of Poverty and Social Justice* 418-419, M von Fintel & R Burger 'Chronic child poverty and health outcomes in South Africa using a multidimensional poverty measure' (2020) *Stellenbosch Economic Working Papers: WP19/2020* 2-3.

[511] Section 8(1)-9(1) of the regulation on hazardous work by children.

[512] RA Mavunga 'International Labour Organisation Convention No. 138, Article 7 and its implementation in South African municipal laws: Suggested policy changes' (2022) 22(2) *Commonwealth Youth and Development* 6, Aufseeser et al (note 73 above; 245), J Heymann & K McNeill *Children's Chances: How Countries Can Move from Surviving to Thriving* (2013) 61-63.

[513] Section 2 of the regulation on hazardous work by children.

[514] See the 18 page conference report at *https://www.5thchildlabourconf.org/sites/default/files/2023-01/Conference%20Report.pdf*.

[515] M Bourdillon et al *Rights and Wrongs of Children's Work* (2011) 128-129.

[516] M Bourdillon, B White, & W Myers 'Reassessing working children and minimum-age standards' (2009) 29(3/4) *International Journal of Sociology and Social Policy* 106–117, EV Edmonds & M Shrestha *The Impact of Minimum Age of Employment Regulation on Child Labor and Schooling: Evidence from UNICEF MICS Countries* (2012) Working Paper 18623 2, see also C Howieson, J McKechnie & S Semple 'New perspectives on school students' part-time work' (2012) 46(2) *Sociology* 322-338.

Moreover, the Guidelines on Household Chores,[517] which is endorsed in the CLPA, differentiates between domestic work and domestic chores. As mentioned in Chapter 3, household chores do not fall within the category of any economic activity, whereas child domestic work constitutes economic activity and falls within the category of 'work' as envisaged by section 43 of the BCEA. The Guidelines on Household Chores specifies the various types of household chores that are deemed acceptable and the hours a child can be permitted to undertake each chore. The youngest age that the guidelines allow a child to undertake chores is 7 years old.[518]

Section 43 of the proposed BCEA Amendment Act only refers to 'work' and does not make a distinction regarding domestic chores that do not constitute economic activity but may still constitute child labour, if practiced in excess.[519] Considering that these guidelines define domestic chores as falling under the category of 'work', 'labour', or even 'light work', there is ambiguity regarding how to address domestic chores that may constitute child labour or monitor domestic chores that are carried out in the privacy of homes.[520]

Additionally, the BCEA prohibits work by children under 15 yet the guideline for domestic chores permits children to perform domestic chores from the age of 7. The BCEA does not explicitly endorse clarity on these activities but its silence on the matter leads to the assumption that these domestic chores could constitute light work, as envisaged by Convention 138 in Article 7. The BCEA and the domestic chores guidelines lack congruence on the age at which children may engage in these activities. It is submitted that there needs to be clarity on the classification of domestic chores as currently these activities do not fall within the usual terms of work, labour or light work as terms employed by international conventions or domestic legislation. It is further submitted that there needs to be clarity on how these activities will be monitored and the penalties that could be imposed against those who contravene domestic activities.

The purpose of this study is to assess the effectiveness of the implementation of the legislative provisions discussed above. Thus, the role of inspectors in enforcing the law is pertinent to evaluate the success of child labour laws. The implementation and monitoring

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[517] Department of Labour 'The National Child Labour Programme for South Africa: Phase 3: 2012 – 2017' (2012) (CLPA 3) available at *http://www.child-labour.org.za/south-africa/national-plan-on-child-labour,* accessed 23 July 2024.
[518] Ibid.
[519] ILO 'Unpaid household services and child labour' *19th International Conference of Labour Statisticians Geneva, 2-11 October 2013*, 7.
[520] Mavunga (note 124 above; 15).

of labour legislation, including the prohibition of child labour, is enforced through labour inspectors under the auspices of the South African Department of Labour. Labour inspectors are the primary officials who are responsible for the implementation of child labour law.[521] In terms of section 65 of the BCEA, labour inspectors are authorised to enter workplaces and business premises to conduct inspections and issue compliance orders to employers; however, labour inspectors are not authorised to assess penalties to violators of child labour.[522] Labour inspectors are tasked with conducting inspections of workplaces. They currently operate from 127 locations across the country where labour complaints may be filed.[523]

Labour inspectors do not work independently in the enforcement of child labour laws. Rather, they work contemporaneously with the South African Police Service (SAPS), the South African Department of Justice and Constitutional Development, the National Prosecuting Authority (NPA) and the Department of Social Development.[524] The SAPS is mandated to investigate cases that constitute the worst forms of child labour in terms of the Children's Amendment Act. The SAPS also assesses the efforts taken to investigate human trafficking, trains investigators, and refers human trafficking cases to the relevant provincial SAPS division.[525] The role of labour inspectors encompasses reporting victims of child labour to social workers and referring cases to the SAPS for investigation and Department of Justice and Constitutional Development for prosecution.[526]

It has been established that labour inspectors have insufficient resources to conduct its operations effectively, as there are no labour inspectors trained specifically to deal with child labour violations.[527] As labour inspectors carry primary responsibility for instituting

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[521] The BCEA; s 65.
[522] The BCEA; s 65. United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2017) available at *http://www.dol.gov/ ilab/reports/ childlabour/south_africa.html*, accessed 23 May 2020.
[523] Ibid.
[524] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2022) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html*, accessed 23 May 2020.
[525] SAPS *Strategic Plan 2014-2019 South African Police Service* (2015).
[526] Government of South Africa. Department of Labour – 'About Us', available at *http://www.labour.gov.za/ About-Us/Pages/vision-and-mission.aspx*, accessed 23 February 2020; Government of South Africa Department of Labour 'Enforcement Manual for Labour Inspectors', available at *https://www.yumpu.com/ en/document/view/48892065/enforcement-manual-for-inspectors-department-of-labour,* accessed 23 February 2020.
[527] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2022) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html*, accessed 23 May 2020.

child labour laws, this inadequacy impedes the detection and prosecution of violation and the protection of children who are victims of child labour through social services.

Even the most robust legal framework can be rendered powerless if inadequate resources are allocated for its implementation. Additionally, considering that there is inadequate training of labour inspectors within specific fields or sectors of employment, even if labour inspectors were to conduct investigations, they are not trained within the field of child labour.[528] Thus, labour inspectors lack the understanding of how to conduct investigations that give effect to child labour laws. Labour inspectors are not trained on the various legislation pertaining to child labour violations. If labour inspectors are not adequately trained on the various laws regarding child labour violations and the rights of children, how can inspectors be expected to enforce laws that they do not have sufficient understanding of.[529]

Section 65(1)(*a*) of the BCEA empowers labour inspectors to enter the premises of any workplace without giving prior notice to the employer. Additionally, labour inspectors are permitted to enter the private homes of individuals that are suspected to be engaging in child labour; however, permission to enter the premises of private homes must be obtained from the owner of the home or the relevant authorities.[530] In terms of the law regarding an individual's right to privacy, it would be entirely reasonable to obtain the permission of the home owner prior to entering the premises, however in light of practical considerations concerning the enforcement of child labour prohibitions, this requirement creates an impediment.[531] The monitoring of child labour or child prostitution at private properties is thus difficult, as property owners are unlikely to give inspectors' permission to enter their premises if they are engaged in illegal activities. Moreover, the process to obtain a warrant from a magistrate is often time-consuming and affords child labour offenders the opportunity to dismiss the child labourers or conceal their illegal activities.[532]

Thus, the effective implementation and enforcement of child labour laws are limited in this aspect as it creates a loophole for child labour offenders to escape liability. There is clearly a need to ensure that labour inspectors are given more authority to enforce child

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[528] Ibid.
[529] Ibid.
[530] The BCEA; s 65 (2).
[531] SM Mamakwa *The Experiences of Labour Inspectors in Their Field of Work* (Unpublished Master's thesis, University of Pretoria, 2012) 29.
[532] US Department of State 'Trafficking in Persons (TIP) Report' (2023) available at *http://www.state.gov/documents/organization/210737.pdf*, accessed on 23 May 2018, PN Malope *The Impact of a Labour Inspection and Enforcement Strategy on Occupational Health and Safety: The Case of Tzaneen Labour Centre Limpopo Province* (Unpublished Master's thesis, University of Limpopo, 2021) 19-20.

labour prohibitions without having to seek the permission of authorities or obtain warrants prior to entering private homes suspected to be involved in child labour. This submission should be construed in light of the Children's Act which empowers social workers to enter private homes and remove children where there is neglect or abuse of the child or if the child is living in conditions that may endanger their life.[533] It is imperative to note that social workers do not need a warrant or the permission of owners when they enter the premises of private home owners. The authority afforded to social workers illustrates a child-centred approach that recognises the vulnerability of children when immediate intervention is required.

While child labour is regarded as a human rights violation,[534] this is not reflected in the laws implementing the prohibitions on child labour, as the requirements for proper monitoring of child labour do not recognise the urgency of intervention. It is pertinent that child labour be viewed in the same light as any other violation of children's rights and be addressed with the same immediate concern that is afforded to children under section 136 of the Children's Act. The enforcement of child labour prohibitions should adopt the same child-centred approach and deal with all matters pertaining to the suspicion of child labour as a matter of urgency; firstly, to protect the child who is engaging in child labour and, secondly, so that any opportunity to conceal the illegal activities by the offender is prevented.

While the BCEA's proposed amendment includes domestic chores as a form of work that can constitute child labour,[535] there has been no amendment to section 65 of the BCEA to ensure that there is congruence between the amended concept of child labour and its implementation. As labour inspectors are only authorised to enter private homes that are used for business purposes, they do not have the authority required to ensure that children are not engaging in domestic chores that violate child labour law at private residences. Labour inspectors also experience obstacles in accessing farms due to safety issues and reluctance to enter private premises.[536]

The prosecution of offenders on farms is difficult as affidavits must be obtained from the child in question, the child's school, and a doctor affirming that the child is below the lawful age of employment. Obtaining an affidavit from the child is difficult, as they are likely

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[533] The Children's Act; s 136.
[534] J September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* (Unpublished Master's thesis, University of Cape Town, 2014) 10.
[535] The BCEA; s 43 as amended by the BCEA Amendment Act.
[536] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2022) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html*, accessed 23 May 2020.

to have been removed by the time the inspector arrives to obtain the affidavit.[537] Whereas it may be easier to access farms operating for commercial purposes, there is an undeniable problem for labour inspectors to obtain access to private farms or homes to investigate suspected cases of child labour. Thus, the suggestion to empower labour inspectors to enter all premises addresses the problem of access to private homes.

The reason for the above submission is that social workers are already overworked and face numerous challenges in providing assistance[538] and by imposing the additional burden of monitoring domestic chores as a possibility of child labour, social workers would be further burdened. Furthermore, it must be noted that government has decreased its budget for NGOs which means that there will be fewer social workers employed and less resources available to assist in monitoring and helping children in situations of potential child labour.[539] In addition to the recent budget cuts, government has failed to increase its expenditure towards NGOs over the years. The cost of living has risen over the past few years since the COVID-19 pandemic, thus by not adjusting its budget in accordance with the cost of living, government has in effect lowered its budget towards NGOs.[540]

The economic situation in South Africa has been projected to worsen in the near future.[541] Therefore, the budget allocations for NGOs will not improve but rather decrease. It must be acknowledged that child and welfare organisations are the key personnel responsible for the protection of children from abusive situations, including child labour.[542] If government

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[537] C Abrahams *The Protection of Child Labour in South Africa* (Unpublished Master's thesis, Nelson Mandela University, 2019) 30.

[538] R Botha & A Warria 'Challenges of social workers providing social services to adult victims of human trafficking in select shelters in South Africa' (2021) 57(1) *Social Work* 58, S Sibanda & A Lombard 'Challenges faced by social workers working in child protection services in implementing the Children's Act 38 of 2005' (2015) 51(1) *Social Work* 336-338, see generally FM Phiri *The Experiences of Social Workers in Implementing The Children's Act No. 38 of 2005* (Unpublished Master's thesis, University of Johannesburg, 2012).

[539] RM Kajiita & S Kang'ethe 'Appreciating the diversity of NPO's towards service delivery in South Africa: Drawing evidences from Eastern Cape Province', (2017) 9(2) *Insight on Africa* 126–140, O Akintola, O et al 'The global financial crisis: Experiences of and implications for community-based organizations providing health and social services in South Africa' (2016) 26(3) *Critical Public Health* 307–311, R Nt'sekhe 'Gauteng DSD cuts NPO funding by R400m' *PoliticsWeb*, 18 March 2024, available at *https://www.politicsweb.co.za/documents/dsd-cuts-npo-funding-by-r400-million--refiloe-ntse*, accessed 10 June 2024, see also W Bowman 'Financial capacity and sustainability of ordinary nonprofits' (2011) 22(1) *Nonprofit Management and Leadership* 37–51.

[540] L Ratlabyana, L Mkhonza & B Magongo 'South African government funding to non-profit organisations: what is the investment value' (2016) 9, M Molepo 'Lack of funding hampers NGOs protecting children's rights' *Parliament,* 9 November 2021, available at Lack of Funding Hampers NGOs Protecting Children's Rights - Parliament of South Africa, accessed 10 June 2024.

[541] Mbandlwa (note 35 above; 1397), V Bugwandin & MS Bayat 'A sustainable business strategy framework for small and medium enterprises' (2022) 22(1) *Acta Commercii* a1021, IO Fasanya 'Pandemic uncertainty and sectoral stock returns predictability in South Africa' (2023) 14(1) *African Journal of Economic and Management Studies* 53-69.

[542] M Aboya & T McKay 'The financial sustainability challenges facing the South African non-profit sector' (2019) 15(1) *The Journal for Transdisciplinary Research in Southern Africa*, N Banks & D Hulme 'The role of

decreases its budget for these organisations, arguably it would entail that the Department of Social Development would have to carry the load that NGOs would have ordinarily undertaken.

Even though it is the statutory duty of social workers from the Department of Social Development to monitor child labour and enter the premises of private homes, it is argued that given the economic constraints in the country, the Department of Social Development would be unduly expected to undertake a greater workload with fewer resources. Consequently, this would lead to inadequate attention being given to cases and poor service delivery output as the Department of Social Development can only do what is within its ability. It is therefore submitted that in order to alleviate the burden on the Department of Social Development, labour inspectors be afforded greater authority that would permit them to enter private premises without prior notice or a warrant.

Even if budget restraints in the future should lead to a decrease in inspectors, it is submitted that any possible assistance given to increase monitoring of child labour, however minimal, should be considered. This study does not propose that this suggestion is a concrete remedy to the deficiency in adequate monitoring of child labour. Arguably, South Africa finds itself between a rock and a hard place in trying to address the country's economic restraints while adequately protecting children from child labour. Therefore, where possible means can be made to increase the protection of children from child labour then such suggestions should be considered in light of the best interests of children.

These loopholes in the current legislation create a rationale for further investigation into South Africa's legislation that regulates child labour. Considering that the SAYP 2019 recent statistics have revealed a persistence in child labour nationally, the question arises as to whether this is an indication of an inadequacy in the effective implementation of child labour prohibitions and policies. Consequently, the effective implementation of legislation depends on the appropriate and precise drafting of legislation; hence, neglecting to do so will result in an obstacle in implementing prohibitions and negate the intention of legislation.[543]

NPOs and civil society in development and poverty reduction' (2012) 3 *https://dx.doi.org/10.2139/ssrn.2072157,* see also A Habib & R Taylor 'South Africa: Anti-apartheid NPOs in transition' (1999) 10(1) *Voluntas:International Journal of Voluntary and Nonprofit Organizations* 73–82.

[543] T Madziwa *A Critical Analysis of Child Labour Protective Laws in Southern Africa: A Case Study of Malawi, South Africa and Zimbabwe* (Unpublished Master's thesis, University of KwaZulu-Natal, 2014) 5.

5.3.3. THE CHILDREN'S ACT 38 OF 2005

The Children's Amendment Bill 70B of 2003 was divided into two parts as different Parliamentary processes had to be followed. The first part of the Bill was promulgated as the Children's Act 38 of 2005 and came into effect in 2006. The second part of the Bill was promulgated as the Children's Amendment Act 41 in 2007 and came into operation in 2008.[544] The two parts were then put together as a whole and was called the Children's Act. Section 1 of the Children's Act provides clarity on the definition of the exploitation of a child, which the BCEA failed to provide.[545] The Children's Act addresses the worst forms of child labour in section 141(1)(*c*).[546]

During discussion proceedings,[547] the South African Law Reform Commission (SALRC) submitted in one of its projects that the intention of the new Children's Act was to change the manner in which children were perceived and the manner in which welfare services were administered to children.[548] In doing so, the main objects of the Children's Act was to endorse the constitutional rights of a child to parental care and to family, the protection of children from abuse, neglect, degradation and maltreatment, and the principle of the best interests of the child.[549] The key aim was to strengthen the family unit to protect and care for their children. The Children's Act explicitly acknowledges that the majority of parents require additional social assistance and provides a range of ways in which assistance to families can be rendered.[550]

The Children's Act intended to heighten the responsibility of the role of families as the primary source of care for their children. The aim of the Children's Act was to explicitly define the term 'care' to ensure that families are aware of their responsibilities towards their children.[551] Only if care cannot be provided by the parents, the state, as a last resort, is

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[544] P Proudlock & L Jamieson 'Guide to Children's Act No. 38 of 2005, as amended by the Children's Amendment Act No.41 of 2007' (2008) 3.
[545] Children's Act; s 1. In terms of s 1 exploitation of a child is defined as "exploitation'', in relation to a child, includes—(a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage;(b) sexual exploitation;(c) servitude;(d) forced labour or services;(e) child labour prohibited in terms of section 141 (worst forms of child labour); and (f) the removal of body parts'.
[546] Children's Act; s 141(1)(*c*).
[547] The researcher has only made mention of the objectives and aims of the discussion document that are relevant to child labour provisions.
[548] South African Law Commission (SALRC) Issue Paper 13 Project 110 *The Review of the Child Care Ac*t First Issue Paper (1998) [19].
[549] Ibid.
[550] SALRC Project 110 *Report on the Review of the Child Care Act* (2002) 43.
[551]Ibid.

permitted to step in and provide alternate care to the child.[552] The Children's Act aligns with the provisions from international instruments such as The Hague Convention and the UN Protocol on Trafficking to eliminate the worst forms of child labour.[553]

However, the Children's Act contains irregularities in the interpretation of the worst forms of child labour found in section 141(1)(*c*). This in turn obstructs the implementation and conviction of the worst forms of child labour.

The use of the word 'employ' in the Children's Act in section 141(1)(*c*) creates a number of problems with the understanding and application of this provision. The reference to 'employment' creates unrealistic connotations. The word 'employment' refers to the formal sector of legitimate work. This is absurd as illicit activities listed in this section, such as drug production, drug trafficking, and commercial sexual exploitation, fall outside the formal sector of employment. Employment entails a lawful obligation to one's employer in return for remuneration. Employment also encapsulates labour rights and labour benefits. It is illogical to even envisage that a child who is compelled to engage in commercial sexual exploitation would be entitled to maternity benefits, for example. These are unlawful activities and cannot be equated with lawful occupations within the formal sector. The use of the word 'employ' thus downplays the heinousness of the illicit activities that children are forced to engage in, equating these unlawful activities with legitimate work.

Significant to the implementation of child labour laws, section 141(2) mandates that social workers and child care workers report any instance of child labour.[554] Section 150 of the Children's Act delineates situations where children who are victims of child labour require care and protection.[555] The effect of section 150 is that it empowers a police official or

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[552] R September 'A new Children's Act for South Africa: Making it work for children and families' (2008) 44(2) *Social Work* 147.
[553] Ibid.
[554] The Children's Act; s 141(2).
[555] The Children's Act; s 150. The section reads as follows, '(a) has been abandoned or orphaned and is without any visible means of support; (b) displays behaviour which cannot be controlled by the parent or care-giver; (c) lives or works on the streets or begs for a living; (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency; (e) has been exploited or lives in circumstances that expose the child to exploitation; (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being; (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child; (h) is in a state of physical or mental neglect; or (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is.' In the interpretation section, 'abuse' is defined, amongst other things, as: '(d) a labour practice that exploits the child; or (e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally.'

a social worker to remove a child from a place of harm and to place the child in a temporary safe place until the matter is presented in court and a court order is made regarding whether the child is in need of care and protection.[556] Section 150 of the Children's Act reinforces the constitutional rights of a child in terms of section 28(1)(*b*) of the Constitution to family or parental care, and that appropriate alternative care should be provided to a child if the child is removed from the family environment.[557] Thus, Section 150 of the Children's Act must be considered in the light of a child's constitutional rights. The removal of a child should not be taken lightly but with consideration for the rights of the child and the context of the family unit.[558]

Additionally, section 28(1)(*c*) of the Constitution provides that every child has the right to basic nutrition, shelter, basic health care services, and social services. This section must be considered together with section 28(1)(*b*) of the Constitution.[559] The Constitution, first, makes clear the rights to which a child is entitled. Second, the Constitution identifies that family or parents are responsible for fulfilling these rights of a child. Third, the Constitution provides a remedy only if these rights are not fulfilled by conferring the responsibility to provide these rights of a child through social services.[560] Section 28(1)(*c*) and section 28(1)(*b*) of the Constitution enforce a positive duty on parents to fulfil the rights of their children. It signifies that the state should only step in after it has been shown that the family or parent has not fulfilled their role towards the child.[561]

Additionally, section 28(1)(*d*) of the Constitution provides that children should not be maltreated, neglected, abused or degraded. This section places a further responsibility on the family and parents to ensure that the child is not subjected to these forms of treatment. Section 150 of the Children's Act works contemporaneously with section 28(1)(*d*) of the

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[556] The Children's Act; s 151 & s 152.
[557] Skelton (note 449 above; 62).
[558] JM Kruger *Judicial Interference with Parental Authority: A Comparative Analysis of Child Protection Measures* (Unpublished Doctoral thesis, UNISA, 2003) 478, see also A Friedman, A Pantazis and A Skelton 'Children's rights' in Woolman S et al (eds) *Constitutional Law of South Africa* 2 ed, J Heaton 'An individualized, contextualized and child-centered determination of the child's best interest, and the implications of such an approach in the South African context' 2009 *Journal of Juridical Science* 1-18.
[559] D Cronjé & J Heaton *South African Family Law* 3 ed 273.
[560] A Skelton & P Proudlock 'Interpretation, objects, application and implementation of the Children's Act (ss 1-5)' in CJ Davel & A Skelton *Commentary on the Children's Act* (2010) ch1-36-37, Julia Sloth-Nielsen & Benyam D. Mezmur '2+2=5? Exploring the domestication of the CRC in South African jurisprudence' (2002-2006) 16 *International Journal of Children's Rights* 1, 4 (2008), see also J Heaton 'Parental responsibilities and rights' in CJ Davel & AM Skelton (eds) *Commentary on the Children's Act* (2010).
[561] Skelton & Proudlock note 172 above; 35-37), W Binford 'The constitutionalization of children's rights in South Africa' (2015-2016) 60 *New York Law School Law Review* 348, , see also A Louw *Acquisition of Parental Responsibilities and Rights* (Unpublished Doctoral thesis, University of Pretoria, 2009).

Constitution as it provides definitions for terms such as abuse, exploitation, abandoned and neglect.[562] These definitions indicate that child labour could fall within the definition of abuse and exploitation.[563] The Children's Act provides further possibilities where domestic chores undertaken by children in excess and extremity could constitute abuse and justify the removal of a child from family or parental care.[564]

Section 150 of the Children's Act and section 28(1)(*b*) of the Constitution must only be enforced if it is in the best interests of the child concerned. In this regard, both sections should be read together with section 28(2) of the Constitution, which entails that the interests of the child must be afforded paramountcy in all matters pertaining to the child.[565] Section 150 of the Children's Act, section 28(2) and section 28(1)(*b*) of the Constitution oblige the state to consider the removal of a child from the perspective of the child, rather than from the perspective of the family or parents of the child.[566] Skelton in Boezaart in *Child Law in South Africa*, explains that the intention of section 150 of the Children's Act was to highlight that the right of a child within the family unit is of greater significance than the right of the family unit or family life.[567] It has been asserted that the right to family life was deliberately excluded from the Constitution so that the rights of the child would be given greater consideration within the diverse and multi-cultural context of the family and society.[568] Thus, the state is obliged to weigh the rights of the child as more significant against the rights of the family unit to determine whether a child should, in fact, be removed from the family setting.[569]

Chapter 4 of the Children's Act sets out the procedure that must be followed for matters that come before the children's court. Once the social worker identifies a child who would potentially be in need of care and protection, the social worker must investigate the

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[562] The Children's Act; s 1.
[563] The Children's Act; s 1.
[564] The Children's Act, s150 (*e*)-(*g*).
[565] Cronjé & Heaton (note 171 above; 271), S Ferreira 'The best interests of the child: From complete indeterminacy to guidance by the Children's Act' (2010) (73) *Tydskrif vir die Romeins Hollandse Reg* 2.
[566] Skelton & Proudlock (note 172 above; 35-37), E Bonthuys 'The best interests of children in the South African Constitution' (2006) 20 *International Journal of Law, Policy and the Family* 24.
[567] A Skelton 'Constitutional protection of children's rights' in T Boezaart (ed) *Child Law in South Africa* (2009) 278.
[568] J Sloth-Nielsen 'Ratification of the United Nations Convention on the Rights of the Child: some implications for South African law' (1995) 11 *South African Journal on Human Rights* 418, Cronjé & Heaton (note 171 above; 263).
[569] GN Barrie 'The best interest of the child: Lessons from the first decade of the millennium" 2011 *Tijdskrif vir die Afrikaanse Reg* 126, B Clark 'A 'golden thread'? Some aspects of the application of the standard of the best interest of the child in South African family law' (2000) 11 *Stellenbosch Law Review* 3, J Heaton *South African Family Law* 3 ed 276.

matter within 90 days to ascertain whether the child is in need of care and protection.[570] The social worker must file a report with the Department of Social Development. If after the investigation is concluded and the child is found not to be in need of care and protection, then the social worker must include the reasons for this conclusion in the report and submit this to the court for review. The discretion of the court to review whether the child is in need of care and protection allows the court to make decisions that are based on the individual needs of the child. This is the keyhole provision that prevents the judiciary from treating all section 150 cases the same and applying a rubber stamp to all cases.[571] The report must also indicate the measures and assistance that have been provided to the child and the family. Section 155(d) of the Children's Act sets out the types of assistance that can be offered.

In terms of section 150 of the Children's Act, if a child is found to be in need of care and protection from their current situation, the court is empowered to make an order that would ensure that the child is placed in the care of a person appointed by the court or a foster parent, a child or youth care centre, or another form of temporary care that the court deems fit.[572] Matthias & Zaal in Boezaart's *Child Law in South Africa* explains that a child may be regarded to be in need of care and protection that would require state intervention, if the family environment and circumstances that the child is in may cause harm to the child.[573] If, however, the court is of the view that the child is not in need of care and protection in the situation, the court is further empowered to issue a court order to return the child to their parent or current living situation on conditions stipulated by the court, or to mandate an organ of state to provide the child with access to the public services entitled to a child.[574]

Additionally, section 150(2)(a) and section 150(2)(b) empowers social workers to undertake an investigation where a child is deemed to be involved in child labour and or a member of a child-headed household. If after the investigation, the social worker finds that the child is not in need of care and protection, the social worker must still provide services to the child in the form of counselling, prevention and early intervention, family reconstruction and rehabilitation, problem solving and behaviour modification as well as referral to another organisation as the social worker deems fit.[575] It is imperative to note that these interventions

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[570] The Children's Act; s 155(2)(b), J Gallinetti 'Children's Courts' in CJ Davel & A Skelton *Commentary on the Children's Act* (2010) paras 4.21-4.22.
[571] The Children's Act; s 155(3)-(4)(a) & (b).
[572] The Children's Act; s 151 & s 152.
[573] C Matthias & N Zaal 'The Child in Need of Care and Protection' in T Boezaart (ed) *Child Law in South Africa* (2009) 163.
[574] Ibid.
[575] Ibid.

are the only form of assistance that the Children's Act makes mandatory for a child who cannot be removed their home. The term "in need of care and protection" in terms of section 150 of the Children's Act creates a special group of people that would be in need of welfare services. The emotional and physical safety of the child must be a consideration in determining the appropriate welfare assistance that should be administered to the child.[576]

In light of this discussion of section 150 of the Children's Act, the legislation provides that the only resolution for when a child is found to be in need of care and protection is for the child to be removed from the situation and placed in an alternate place of safety. Consequently, in a situation where a child is engaged in exploitative labour practices that constitute abuse, section 150 of the Children's Act acknowledges that such a child cannot be removed from their home. Thus, in situations that constitute neglect as envisaged by the Children's Act[577] where children are living in child-headed households and are required to take care of sick family members and younger siblings, legislature recognises that it would be unreasonable and an unlikely option to remove the child from their home. Additionally, the Children's Act acknowledges that in situations where children are compelled to engage in domestic chores in excess or engage in child labour which can be considered exploitation[578] it would be illogical to remove that child from their family home.

Matthias & Zaal in CJ Davel & Skelton *Commentary on the Children's Act*, explain that the removal of children may not be a viable option in certain circumstances such as when children are victims of child labour or are working for and with their parents, eg hawking, as waste pickers, or in domestic chores. The removal of a child from their home by statutory intervention should only be considered as the last available option to protect the child. Thus, in terms of section 150 of the Children's Act there needs to be proof of a relevant ground that removal and alternative care must be provided. Section 150(1) of the Children's Act sets out 9 grounds for when a child should require removal and placement in alternative care.[579] Thus, the Children's Act upholds the right to family life which significantly contributes to the development of a child, who is dependent on a healthy environment and family relationships.[580]

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[576] C Matthias & N Zaal 'Child in need of care and protection' in CJ Davel & A Skelton *Commentary on the Children's Act* (2012) ch9-6-7.
[577] The Children's Act; s 1.
[578] The Children's Act; s 1.
[579] Matthias & Zaal (note 188 above; 7).
[580] Skelton & Proudlock (note 172 above; 35-37), AV Bengesai & N Nzimande 'The association between family structure changes and high school completion in South Africa' (2020) 9(133) *Social Sciences*. 2, P Dolan, N Zegarac and J Arsic 'Family support as a right of the child' (2019) 21(2) *Social Work and Social Sciences Review*

The development of a child into a healthy adult is influenced by the stability of their family environment as a child.[581] It is thus ideal for a child to grow up in the environment of a family unit.[582]

The Children's Act creates a support structure for child-headed households as a means of alleviating the challenges that these children encounter. In section 137 of the Children's Act, a child-headed household may be legally recognised as a placement option in conjunction with the support of a supervising adult. The role of the supervising adult encompasses mentorship, assistance, and obtaining financial grants on behalf of children.[583] South Africa's provision in this regard can be considered progressive in terms of international standards regarding providing care to child-only households.[584] However, the enforcement of this provision depends largely on the extended family of the children and community members assuming the roles of supervisors and mentors.[585] The assumption that extended family and community members will be willing to provide child–headed households this level of assistance may be unrealistic.

South Africa does provide an incentive for undertaking the role of mentor and supervisor. The National Integrated Plan for Children Infected and Affected by HIV/AIDS (NIP), implemented in 2003, initiated the Home-Based and Community-Based Care (HBCBC) plan as its primary programme.[586] Through this programme, government seeks to ensure that children affected by HIV/AIDS remain within the care of their families; to enable this, the Foster Care Grant is offered to extended family or members of the community who care for AIDS orphans.[587] The Child Support Grant is thus an incentive to encourage the care of orphans. Although the Foster Care Grant was implemented for children who need care and

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9, E Okon 'Towards defining the 'right to a family' for the African child' (2012) 12 *African Human Rights Law Journal* 384.

[581] M Ruiz-Casares et al 'Children's rights to participation and protection in international development and humanitarian interventions: Nurturing a dialogue' (2017) 21(1) *The International Journal of Human Rights* 5, JA Robinson 'Children's rights in the South-African Constitution' (2003) 6(1) *PELJ* 47-48, F Mahlobogwane 'South African courts and the `best interests of the child' in custody disputes' *Codicillus* (2005) 46(1) 34, TM Lutya 'The Importance of a Stable Home and Family Environment in the Prevention of Youth Offending in South Africa' (2012) 1 *International Journal of Criminology and Sociology* 87.

[582] Skelton & Proudlock (note 172 above; 36-37).

[583] The Children's Act; s 137.

[584] International Social Service and UNICEF 'Improving Protection for Children without Parental Care: A Call for International Standards' (2004) 12.

[585] G Foster 'Safety nets for children affected by HIV/AIDS in Southern Africa' in R Pharoah (ed) *A Generation at Risk? HIV/AIDS, Vulnerable Children and Security in Southern Africa* (2004) 69.

[586] D Van Dijk & F van Driel 'Supporting child-headed households in South Africa: Whose best interests?' (2009) 35(4) *Journal of Southern African Studies* 919.

[587] P Proudlock & S Rohrs 'Children and law reform: Recent developments in law and policy affecting children' (2018) *South African Child Gauge* 13.

protection, it has been utilised by social workers as a means of commercialising the vulnerability of orphans in an attempt to find children a home.[588]

The social grants are thus vulnerable to abuse when they are perceived as an 'incentive' for taking in orphaned children, as money that is intended exclusively for the child's needs may be used, instead, for the caregiver's own needs. Additionally, the Children's Act requires that the supervisor of the child-headed household should not make any decisions pertaining to the household without the approval of the child in charge or other children of the household.[589] In theory, this would prevent any decision taken against the household that would be to the detriment of the child. However, in practice children have been taught to respect their elders and not question them. Thus, they will most likely comply with any decision taken by supervisors.[590]

In theory this appears to be a worthy commitment to the rights of children. However, given the current context of South Africa, can this be considered as a subterfuge? It must be highlighted that one of the reasons why children undertake labour is because their basic needs are not met. If individuals within a household are collecting a government grant and this grant is insufficient to meet all the needs of the household, what further alternative would organs of state provide to such a family to sustain themselves without the income of the working child? Furthermore, if organs of state possessed the finances, manpower and resources to readily provide social services to such children who are in dire need of assistance, there would be a reduced need for children to work at all and child labour would not be a persistent problem.

It is argued that even though these interventions mentioned above have been enforced to provide social and financial assistance to children who are engaged in child labour or are living in child-headed households, it has been insufficient to assist children which is evident in the persistence of child labour. Thus, it is submitted that more innovative interventions are necessary. It is recommended that communities form a support network for children engaged in child labour and those living in child-headed households. This support network could include faith based organisations, civil society organisations and businesses to

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[588] H Meintjes et al *Children in Need of Care or in Need of Cash? Questioning Social Security Provisions for Orphans in the Context of the South African AIDS Pandemic* (2003) 89.
[589] The Children's Act; s 137(6).
[590] A Barrat '"The best interests of the child" where is the child's voice?' in S Burman (ed) *The Fate of the Child: Legal Decisions on Children in the New South Africa* (2002) 145-157, D Van Dijk & F van Driel 'Supporting child-headed households in South Africa: Whose best interests?' (2009) 35(4) *Journal of Southern African Studies* 918.

introduce sustainable development programs within the community that would benefit these children.

One initiative that could be considered is to operate food gardens that would allow children and communities to plant their own crops for their daily sustenance. Additional produce could be sold and the income received could be distributed to children to pay for transport and school essentials. Faith based organisations and civil society organisations could possibly donate clothes, shoes and household goods to reduce the use of social grants for these everyday necessities. Businesses could contribute by providing bursaries and scholarships to children that would pay their tuition and provide for the additional costs of schooling. Tertiary and vocational scholarships could be used as an incentive to encourage children to complete their secondary education and further their education. If children have these incentives to look forward to, there would be a greater willingness to improve their performance in school and use education as a viable means of improving their lives.

5.3.4. THE PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS ACT 7 OF 2013 (PACOTIP)

South Africa has been recognised as an ideal location for sex trafficking and forced labour.[591] The trafficking of men, women and children occurs across the borders of South Africa and within the country.[592] Children are trafficked primarily within the borders of South Africa; typically, girls are forced into sex trafficking and exploitation and domestic work, while boys are forced into agriculture, informal street trade, begging and illicit criminal activities.[593] Women and children are predominately the victims of sex trafficking.[594]

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[591] I Mugari & EE Obioha 'Trends, precipitating factors and control of human trafficking in South Africa and Zimbabwe' (2021) 5(2) *Open Journal Anthropological Studies* 41, J Aransiola & C Zarowsky 'Human trafficking and human rights violations in South Africa: Stakeholders' perceptions and the critical role of legislation' (2014) 14 *African Human Rights Law Journal* 516, M Emser & S Francis 'Counter-trafficking governance in South Africa: an analysis of the role of the KwaZulu-Natal human trafficking, prostitution, pornography and brothels task team' (2017) 35(2) *Journal of Contemporary African Studies* 194.

[592] Centre for Child Law *Child Trafficking in South Africa: Exploring the Myths and Realities* (2020) 16, M Emser *The Politics of Human Trafficking in South Africa: A Case Study of the Kwazulu-Natal Intersectoral Task Team and South African Counter Trafficking Governance* (Unpublished Doctoral thesis, University of KwaZulu-Natal, 2013) 27-28, HB Kruger & H Oosthuizen 'South Africa – safe haven for human traffickers? Employing the arsenal of existing law to combat human trafficking' (2012) 15(4) *PELJ* 216-218.

[593] M Riback 'Uncertain outcomes: Evaluating the effects of the trafficking in persons reports in South Africa and Thailand' (2018) 6(1) *Global Societies Journal* 49.

[594] J Aston et al 'Promoting awareness of sex trafficking in tourism and hospitality' (2020) 32(1) *International Journal of Culture Tourism and Hospitality Research* 3, J Raphael 'Returning trafficking prevalence to the public policy debate: Introduction to the special issue' (2017) 3(1) *Journal of Human Trafficking* 5-6.

South Africa is a signatory to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (termed 'the Palermo Protocol'). Through the Palermo Protocol, the United Nations has endorsed a universal standard to combat human trafficking globally.[595] The Palermo Protocol compels member states to enforce legal frameworks to criminalise human trafficking through the investigation and prosecution of traffickers, including preventive measures such as border control.[596] South Africa has subsumed the provisions of the Palermo Protocol in the Prevention and Combating of Trafficking in Persons Act 7 of 2013 (PACOTIP).[597] Section 4(1)(*a*)-(*j*) of this Act defines human trafficking generally to include both adults and children.[598] The PACOTIP goes further to include illegal adoptions of children as well as forced marriages within the definition of human trafficking.[599] This inclusion takes into consideration the protection of children and harmful cultural practices regarding child marriages.[600]

One of the main strengths of the PACOTIP is that it imposes stringent sanctions and punishments for perpetrators of human trafficking. The PACOTIP provides for the investigation and prosecution of perpetrators to the extent of criminalising activities associated with human trafficking such as hampering the investigation and prosecution of human traffickers, or conspiring with or encouraging trafficking of persons.[601] The PACOTIP imposes

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[595] PO Bello & AA Olutola 'Human trafficking and the South African criminal justice system: Where art thou?' (2017) 2 *American Journal of Social Sciences* A61.

[596] BT Mabaso & W Maluleke 'Integrated perceptions on child trafficking: A lifeless life practice' (2017) 18(1) *Child Abuse Research in South Africa* 83, M Franco 'Human sex trafficking: An international problem with an international solution requiring national implementation' (2015) 27(3) *Florida Journal of International Law* 8, H Stöckl et al 'Human trafficking and violence: Findings from the largest global dataset of trafficking survivors' (2021) 4 *Journal of Migration and Health* 1-2.

[597] PO Bello & AA Olutola 'The enforcement of antihuman trafficking law in South Africa: a case of an aircraft without a pilot' (2017) *Police Practice and Research* 3-4, A Gallagher 'Human rights and the new UN protocols on trafficking and migrant smuggling' (2001) 23 *Human Rights Quarterly* 975-1004.

[598] "Any person who delivers, recruits, transports, transfers, harbors, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of – (a) a threat of harm; (b) the threat or use of force or other forms of coercion; (c) the abuse of vulnerability; (d) fraud; (e) deception; (f) abduction; (g) kidnapping; (h) the abuse of power; (i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or (j) the direct or indirect giving or receiving of payments . . . for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons".

[599] The PACOTIP; Section 2(*a*)-(*b*).

[600] PO Bello & A Olutola 'Effective Response to Human Trafficking in South Africa: Law as a Toothless Bulldog' (2020) *SAGE* 7, L Mwambene & J Sloth-Nielsen 'Benign accommodation? Ukuthwala, 'forced marriage' and the South African Children's Act' (2011) *African Human Rights Law Journal* 3, N Indriati 'Analysis of international law on human trafficking with children as the victims' (2018) 54 *SHS Web of Conferences* 1-2.

[601] The PACOTIP; s 4, S Yesufu 'Human trafficking: A South African perspective' (2020) 17(6) *Journal of Social Sciences and Humanities* 115, M Motseki 'An evaluation of perpetrators modus operandi on human trafficking in the three selected areas of Gauteng Province, South Africa' (2018) 10(1) *International Journal of Social Sciences And Humanity Studies* 177-178, S Buthelezi 'Human trafficking and the new legal framework in South Africa: Intervention needed for the law to reach vulnerable girls and women' (2015) 29(3) *Agenda: Empowering Women for Gender Equity* 160.

a fine of not less than R100 million or life imprisonment or both.[602] The PACOTIP mandates various state departments to combat human trafficking by requiring them to work together in investigating and prosecuting offenders.[603] Additionally, the PACOTIP provides for compensation for victims of human trafficking.[604]

Even though South Africa has made strides in enforcing provisions of the Act, the main focus has been to enforce criminal sanctions on perpetrators. Less consideration has been afforded to victims of human trafficking or the resources required to implement the provisions of the PACOTIP.[605] The PACOTIP has been criticised for not creating concrete mechanisms to ensure its effective implementation. One of the major challenges in enforcing the PACOTIP is the severe lack of funding allocated to coordination and assistance of victims of human trafficking.[606] It is submitted that government needs to increase its commitment to eradicate human trafficking by not only inscribing prohibitions on paper but also allocating the funds that are necessary for the protection of victims and prosecution of perpetrators.[607]

Additionally, there is a lack of synergy between entities such as the SAPS, NGOs, the Department of Home Affairs and the Department of Social Development to work together to provide victims with shelter and places of safety.[608] It has been reported that the National Policy Framework (NPF) on the Management of Sexual Offences lacks proper coordination and that government needs to improve the collaboration between task teams and the various departments to ensure interventions are successful.[609] Furthermore, the departments

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[602] The PACOTIP; s 13.
[603] The PACOTIP; s 44(1).
[604] The PACOTIP; s 29.
[605] M Emser 'Human trafficking: Misery and myopia in South Africa' (2024) 120(3/4) *South African Journal of Science* 1, J Aransiola & C Zarowsky, 'Human trafficking and human rights violations in South Africa: Stakeholders' perceptions and the critical role of legislation' (2014) 14 *African Human Rights Journal* 524, AC Mellon *Legislation Regarding the Role of the State and NGOS in Addressing Trafficking in Persons: A Focus on Sexual Exploitation in South Africa and Brazil* (Unpublished Master's thesis, University of KwaZulu-Natal, 2015) 26.
[606] M Emser & S Francis 'Counter-trafficking governance in South Africa: An analysis of the role of the KwaZulu-Natal Human Trafficking, Prostitution, Pornography, and Brothels Task Team' (2017) 35(1) *Journal of Contemporary Studies* 196, LB Najemy 'South Africa's approach to the global human trafficking crisis: An analysis of the proposed legislation and the prospects of implementation' (2010) 171 9 *Washington University Global Studies Law Review* 176.
[607] R Cave 'A critical analysis of human trafficking in South Africa: Remedies and recommendations' (2016) Spring *2016 Seminar The Center For Civil And Human Rights* 8.
[608] J Sambo & G Spies 'Consequences experienced by women survivors of human trafficking in South Africa' (2019) 56(1) *Social Work* 84.
[609] I Palmary & D de Gruchy 'The globalisation of trafficking and its impact on the South African counter-trafficking legislation' (2020) 40(1) *Critical Social Policy* 56-58.

tasked with implementing the PACOTIP have been reported to be compromised by corruption, bribery and unethical conduct by officials.[610]

Also hampered by a paucity of trained personnel to identify and address matters of human trafficking, the success of the PACOTIP has been minimal.[611] The United States Trafficking in Persons Report gives South Africa a Tier 2 ranking, which indicates that South Africa falls short in key areas in the elimination of human trafficking.[612] There needs to be more attention given to the training of all personnel involved in identifying cases of human trafficking, investigating and prosecuting traffickers. Additionally, more awareness regarding human trafficking needs to be made public especially within hotspots of human trafficking.[613]

The prevention of the worst forms of child labour is provided for in further legislation. In Chapter 2 of the Constitution and article 48 of the BCEA forced labour is analogously prohibited. Additionally article 141 of the Criminal Law Amendment Act 32 of 2007 prohibits child trafficking.[614] The Defense Act 42 of 2002 assigns the minimum age for voluntary military service at 18 years old, even during national emergencies.[615] The Sexual Offences and Related Matters Act 2007 (hereafter referred to as 'the Sexual Offences Act') prohibits the sexual exploitation of children.[616] The Sexual Offences Act enforces a mandatory obligation on all citizens to report a matter of sexual exploitation of a child to authorities.[617]

The discussion on the laws regulating child labour illustrates that South Africa has enacted a comprehensive legal framework to combat child labour. These laws work contemporaneously with each other to epitomise the protection of children. As discussed, none of the various laws contradict each other or enforce provisions that are inconsistent with provisions in other laws. This is evident in the compatibility of the lawful age of employment in section 43 of the BCEA and the compulsory minimum age of schooling in the School's Act, which both set the same age of 15 years for employment and compulsory schooling. Further,

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[610] MM Motseki & JT Mofokeng 'An analysis of the causes and contributing factors to human trafficking: A South African perspective' (2022) 8(1) *Cogent Social Sciences* 6-7.
[611] J Ramsamooj 'A comparative study on human trafficking as a crime in South Africa' (2023) 38(2) *Southern African Public Law* 8.
[612] M van der Watt *The Nature and Future of Human Trafficking in South Africa Conference:* The Nature and Future of Human Trafficking in South Africa At: GIBS Business School, Illovo, Johannesburg, South Africa (2018) 4.
[613] MM Moses 'Justice for victims of human trafficking in Gauteng Province, South Africa' (2022) 28 *Technicum Social Sciences Journal* 367.
[614] Criminal Law Amendment Act, Act 32 of 2007; articles 11, 24, 27.
[615] Defence Act, Act 42 of 2002; s 52, articles 28, 29.
[616] Sexual Offences Act; Chapter 6.
[617] Sexual Offences Act; 54(1).

section 43 of the BCEA and section 141 of the Children's Act complement each other, as they both prohibit child labour. Additionally, section 141 of the Children's Act and section 4(1)(a)-(j) of the PACOTIP address prohibitions on the worst forms of child labour. Section 4(1)(a)-(j) of the PACOTIP prohibits trafficking of children with reference to children being trafficked to be subjected to the worst forms of child labour. Section 141 of the Children's Act explains and further details what types of child labour constitute the worst forms of child labour thus providing clarity on what law enforcement can identify as unlawful in terms of the PACOTIP.

In practice, if a social worker identifies a child to be in need of care and protection in terms of section 150(2)(a) of the Children's Act because the child is engaging in child labour as defined by section 43 of the BCEA, the child is given social assistance according to the interventions enforced by section 150 of the Children's Act. Further, if a child is found to be a victim of sex trafficking in terms of the PACOTIP, the courts will consider section 141 of the Children's Act in defining sex trafficking as a worst form of child labour. The prosecution of the crime of trafficking will be enforced through section 13 and 14 of the PACOTIP which deals with penalties for trafficking and the factors that the court will consider in the prosecution of traffickers. The assistance that will be given to the child during the time of the court proceedings will be regulated by section 150 of the Children's Act, which will determine whether the child should be placed in a temporary safe place. Additionally, section 150 of the Children's Act will require the social workers to undertake an investigation to determine if reunification with the child's family must be administered or if it would be in the child's best interests to be removed to a place of safety.

5.4. GOVERNMENT INITIATIVES TO COMBAT CHILD LABOUR IN SOUTH AFRICA

5.4.1. THE CHILD LABOUR PROGRAM OF ACTION (CLPA)

The Child Labour Program of Action (hereafter referred to as CLPA) is a policy that has been developed to address child labour in South Africa. The development of this programme is in line with South Africa's commitment to ILO Convention 138 and Convention 182, which require that member states develop national policies to eradicate child labour and to increase the minimum age of employment over time.[618] Additionally, South Africa was a role player in the drafting of the Worst Forms of Child Labour Convention (1999) which obliges member states to enforce policies to ensure that the elimination of the worst forms of child labour is

[618] Convention 138; Article 3(1) & Convention 182; Article 6 & 7.

undertaken within confined time limits.[619] Moreover the CLPA has been developed as a policy initiative to give effect to the Constitutional mandate that children must be protected from exploitative labour practices as well as a concomitant to Convention 182 in South Africa's observance to its obligation to eradicate the worst forms of child labour.[620]

CLPA was developed and implemented in phases. Phase one emanated from the 1999 (South African Young People's Survey) SAYP. As the first survey conducted in South Africa regarding the prevalence of child labour, it shed valuable light on the forms of labour in which children were engaged. This enabled relevant stakeholders to identify those children who required greater protection and assistance.[621] The information gathered during the consultation process was incorporated into a discussion document that encompassed government's approach to addressing child work and child labour in the country.[622] Phase one was adopted and released in 2003 following protracted consultations with government and non-government organisations as well as children who were involved in different forms of child labour in the country.

The Department of Labour was mandated to spear-head the implementation of the CLPA.[623] The CLPA developed 131 action steps which were organised into an action plan with a general plans, plans specific to the particular work identified (which included work conducted in commercial agriculture), and steps to address the types of harm identified and those likely to escalate harm.[624] The CLPA identified five key areas that would assist in the amelioration of child labour: labour law, education policies, social security, social awareness and job creation.[625] Separate projects were initiated to implement the action steps for these areas.

The funding for these projects was acquired through ILO's International Programme on the Elimination of Child Labour (IPEC).[626] The Towards the Elimination of the Worst Forms of Child Labour (TECL) programme was initiated for the management and funding of the CLPA. The TECL programme is situated within the IPEC office in South Africa

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[619] Convention 182; Article 6 & 7.
[620]The Constitution; section 28 (1)(e)-(f).
[621] D Bosch, D Budlender and S Tshabalala *Towards a National Child Labour Action Programme for South Africa: Discussion Document* (2002) 15.
[622] Ibid.
[623] Department of Labour 'The National Child Labour Programme of Action for South Africa' draft 4.10, (2003) 15.
[624] Ibid.
[625] Ibid.
[626] Ibid.

and is tasked with developing and facilitating programmes to eliminate the worst forms of child labour in South Africa, as well as Botswana, Lesotho, Namibia, and Swaziland.[627] While the TECL is responsible for facilitating CLPA programmes, the South African government is responsible for their implementation. The TECL subsumed the responsibility of implementing 4 primary aspects of the CLPA programmes: collection of data on the extent of child labour and issues related to child labour; the construction, implementation and evaluation of models through the realisation of projects within specific issues; the establishment of networks to raise public awareness of child labour; and the design and implementation of policies and recommendations based on the information gathered.[628]

The second phase of the implementation of the CLPA ran from 2009 to 2013. It focused on action to meet the 2015 target of eradicating the worst forms of child labour.[629] The Department of Labour and the Implementation Committee were tasked with ascertaining that government departments fulfilled the tasks that they were allocated and gave progress updates.[630] The revised document included lessons gleaned from the pilot projects, research conducted and the development of policies.[631]

Phase Three ran from 2013 to 2017. It identified the areas where departments had not met Phase Two targets and put in place stronger monitoring mechanisms.[632] As the implementation report for Phase Three of the CLPA does not present data for each department, it is difficult to determine the progress they made.[633] The CLPA envisions all government departments working in collaboration to eradicate child labour.

National Child Labor Program of Action for South Africa, Phase IV (2017-2021) was implemented as a continuation of Phase 3 of the program with the assistance of international funding from IPEC and UNICEF. The program encouraged cohesive efforts between government and non-government entities by outlining obligations and responsibilities

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[627] US DOL 'Supporting the time-bound program to eliminate the worst forms of child labour in South Africa's Child Labour Action Programme and laying the basis for concerted action against Worst Forms of Child Labour in Botswana, Lesotho, Namibia and Swaziland' (2005).
[628] Ibid.
[629] Department of Labour 'The National Child Labour Programme for South Africa: Phase 2: 2008 – 2012' version 4.4, (June 2007) (CLPA 2) available at *http://www.child-labour.org.za/south-africa/national-plan-on-child-labour,* accessed 23 February 2020.
[630] Ibid.
[631] Ibid.
[632] Department of Labour 'The National Child Labour Programme for South Africa: Phase 3: 2012 – 2017' (2012) (CLPA 3) available at *http://www.child-labour.org.za/south-africa/national-plan-on-child-labour,* accessed 23 February 2020.
[633] Ibid.

of each agency to eradicate child labour. The program promoted a reciprocal reporting system between the SAPS and the SADOL of suspected cases of child labour. The program identified key agencies that would be tasked with working together to further the interests of children and protect children from child labour. These departments included the Department of Basic Education, Department of Labour, Department of Justice and Constitutional Development, Department of Water and Sanitation, SAPS, the NPA and Statistics South Africa.[634]

However, a major pitfall of the program was that it failed to provide time frames for each goal that had to be achieved by the departments mentioned above. Thus, it can be inferred that the initiatives implemented by the program would be on-going. However, the lack of time frames has been criticised by the ILO. It was stated by the ILO that there is no way to assess the progress of the activities within the program if time frames are not in place. Phase 4 thus provides a program that is too vague and fails to enforce accountability on government departments.[635]

South Africa has developed programs that seek to protect children from child labour and advance the rights of children. The CLPA has been drafted to give effect to section 43 of the BCEA, section 141 of the Children's Act, section 4(1)(a)-(j) of the PACOTIP and section 28(1)(e) of the Constitution which prohibit child labour. The projects implemented under the program were designed taking into account the various rights enshrined in the different legislation that are related to child labour. These rights are embedded in the some of the projects directed at labour law, education policies, social security and social awareness. In light of the labour inspectorate that enforces child labour prohibitions under the BCEA, one of the projects in phase 2 dealt with strengthening the monitoring and enforcement of child labour. The right to education as endorsed by section 28(2) of the Constitution and the significance of education within the definition of child labour led to various projects in phase 1 that were aimed at reducing school drop-outs, improving educational infrastructure and providing meals in schools for children.

Additionally, section 141 of the Children's Act and section 4(1)(a)-(j) of the PACOTIP deal with the worst forms of child labour. Phase 2 implemented projects directed at eliminating the worst forms of child labour under the TECL programme. The Constitution

[634] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2023) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html*, accessed 23 March 2025.
[635] Ibid.

affords children basic socio-economic rights in section 28. Section 150 of the Children's Act further deals with providing social protection through social welfare services that have a direct effect on fulfilling the socio-economic rights of children. The CLPA from phase 1-4 have initiated projects to assist in the realisation of socio-economic rights such as providing clean water to communities, sanitation in schools and homes, community-based projects to assist child-headed households and social grants.

5.4.2. FIFTH GLOBAL CHILD LABOUR CONFERENCE ON THE ELIMINATION OF CHILD LABOUR 2022

The 5th Global Conference on the Elimination of Child Labour was held in Durban from 15 to 20 May 2022. The main theme of the conference was to raise awareness of child labour and expediate its elimination. The objectives of the conference were to focus on sharing data on child labour, good practices and challenges encountered in combating child labour. The specific focus of the conference was to provide a clear and actionable approach to eliminate child labour.[636] The conference was organized by the South African Government in collaboration with the International Labour Organisation (ILO). The event welcomed delegates from workers' and employers' organizations, government representatives, civil society organisations, United Nations agencies and children.[637]

There were 12 thematic panel discussions and 28 side events which communicated challenges, trends and innovative thinking regarding child labour. The first panel discussion focused on education as its theme in eliminating child labour. The panel highlighted education as a key factor in eliminating child labour. The panel discussed the challenges and barriers of vulnerable children accessing education.[638] The panel made conclusions and recommendations which could counter these obstacles. The panel called for stronger efforts to provide children with free compulsory schooling, including school fees, books, transport and meals. It was further recommended that schools structure the curricula to allow flexibility for children to return to school after a lengthy absence.[639]

The second panel discussion focused on conflict and climate change as its theme in eliminating child labour. The panel discussed that climate change and conflict contribute to

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[636] Department of Labour and Employment *5th Global Conference on the Elimination of Child Labour - Conference Report* (5th Global Conference Report) 2.
[637] Ibid.
[638] Ibid.
[639] 5th Global Conference Report (note 248 above; 4).

child labour as they give rise to poverty, displacement and food insecurity, among other things. Further, there was a correlation between conflict, climate change and the worst forms of child labour.[640] The panel concluded discussion by recommending that children be considered central to all discussions relating to climate change and armed conflict. It highlighted that improved social protection of children would reduce the socio-economic factors that compel children to work and thus reduce the pressure they may experience to engage in child labour.[641]

The third panel discussion focused on the African Union's challenges in eliminating child labour. This session highlighted the challenges that give rise to child labour in Africa. Once again, lack of education was underscored as a driving factor for child labour.[642] In Africa, child labour is seen primarily in the informal economy and in agriculture. The panel concluded that allocation of adequate funds is key to ending child labour in Africa as more programmes are needed to tackle areas such as upgrading agricultural machinery to eliminate the need to employ child labour and improved enforcement of child labour laws.[643]

The fourth panel discussion focused on innovation and partnership with Latin America and the Caribbean as its theme in eliminating child labour. The panel discussed data that showed that this region had successfully adapted to the COVID-19 pandemic through comprehensive strategies, strengthening its structures, policy frameworks and networking. The panel recommended that this could serve as a model for other countries.[644] The fifth panel discussion focused on social protection in eliminating child labour. The panel discussed that social protection together with child grants would improve the lives of children and prevent them from engaging in work. The panel concluded that financial challenges obstruct social protection and recommended where this was the case that international partners need to assist.[645]

The fifth panel discussion brought together panelists from various CSOs that were not directly involved in combating child labour with the intention to develop new alliances, innovative ideas and improve measures taken. The panel discussed how accountability in different sectors and investment as well as joint strategies can provide positive outcomes contributing to the fight against child labour.[646] The panel concluded that these

[640] Ibid.
[641] Ibid.
[642] Ibid.
[643] Ibid.
[644] 5th Global Conference Report (note 248 above; 7-10).
[645] Ibid.
[646] Ibid.

measures must be strengthened. The sixth panel discussion focused on providing decent jobs for youth and eliminating hazardous work. This session discussed key challenges and opportunities in providing decent work for young people into decent work, especially of those who have engaged in child labour and hazardous work. The panelists highlighted the importance of social protection and access to education as a major contributor to addressing decent work for youth.[647]

The seventh panel discussion focused on financing the elimination of child labour. The panel discussed that trade and investment, national child labour initiatives and international financial support would make a meaningful contribution to financing child labour programs.[648] The panel concluded that the World Bank, Overseas Development Assistance (ODA) and microbanks could provide financing that would support countries in need of financial assistance.[649]

The eighth panel discussion focused on child labour in agriculture. The panel discussed that in Africa, child labour is seen primarily in the informal economy and in agriculture. The panel noted and recommended that allocation of adequate funds is key to ending child labour in Africa. Additional programmes are needed to tackle areas such as upgrading agricultural machinery to eliminate the need to employ child labour and improved enforcement of child labour laws.[650]

The nineth panel discussion focused on the vulnerabilities of children. The panel discussed that there are complex vulnerabilities of children which are interrelated root causes of child labour that lead to the worst forms of child labour.[651] Some of the vulnerabilities identified were gender inequalities between boys and girls, new challenges due to COVID-19, discrimination, migration and lack of funding for social development initiatives. The panel recommended that countries take active roles in providing care work and anti-discrimination programs to mitigate some of the inequalities and exploitation women and girls encounter. Taxation systems and a minimum tax for multinational corporations can provide additional funding but they have to be more progressive.[652]

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[647] Ibid.
[648] Ibid..
[649] Ibid.
[650] 5th Global Conference Report (note 248 above; 10-13).
[651] Ibid.
[652] Ibid.

The tenth panel discussion focused on child labour in supply chain. The panel discussed how child labour in supply chains is a complex issue that requires multi-stakeholder and multi-sector solutions from workers' and employers' organizations and CSOs. The panel concluded that designing trade measures, due diligence and accountability of companies that requires them to examine their supply chains and take measures to eliminate child labour within their supply chain.[653]

The eleventh panel discussion focused on child forums. This was the first conference that included children as delegates. The children were given the opportunity to voice their concerns. The major issue raised by children was the protection of children.[654] The conclusions from this panel requested that government provide social protection to children, increase grants and funding to children, adherence to conventions on the rights of children, progress on the Sustainable Development Goal 8.7 to eliminate child labour and improved national policies and laws on the protection of the child.[655]

The twelfth panel discussion focused on financing in eliminating child labour. The panel concluded that countries that are financially progressive should commit to provide assistance for countries, especially in cases of emergency. Governments should take measures that improve the appropriation of finance that would support socio-economic development in their countries. Governments must also ensure the accountability and transparency of funding in their countries.[656]

The outcome document from the conclusions of the 12 panel discussions were included in a single document, the Durban Call to Action. This document was initially drafted in 2021 through extensive consultations with tripartite members of the ILO and partner organisations of UN agencies and CSO representatives.[657] Together, the Durban Call to Action resulted in commitments to intensify action and take immediate and effective measures to eliminate child labour. These include acceleration of multi-stakeholder efforts to prevent and eliminate child labour, eliminating child labour in agriculture, end child labour and the worst forms of child labour through data and statistics driven and survivor-informed policies, the realisation of children's rights, social protection and improved financing.[658]

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[653] Ibid.
[654] Ibid.
[655] 5th Global Conference Report (note 248 above; 14-16).
[656] Ibid.
[657] Ibid.
[658] Ibid.

5.5. OBSERVATIONS AND RECOMMENDATIONS

This chapter has presented evidence that South Africa has made progress towards eradicating child labour. However, given the severity of the ongoing plight of child labourers, it is clear that more progress is urgently needed. A careful evaluation of the legislative framework regarding child labour laws reveals several inconsistencies that hinder the interpretation of child labour and thus result in loopholes in the implementation of the law. These could be addressed through further amendments.

As the BCEA was enacted prior to the ratification of ILO Conventions 138 and 182, it is not fully aligned with them in all respects. It does not reflect the provisions regarding light work undertaken by children between the ages of 13 and 15 years old as recognised by Convention 138. The BCEA also does not include entrepreneurship within its definitions of work that children undertake. By failing to legalise light work by children as legal, legislators have not recognised the necessity that some children to engage in work for survival and have failed to utilise this as an opportunity to protect more children under the banner of the law, giving them protection from exploitation. Additionally, the exclusion of these provisions conveys a disregard for the international standards set by Convention 138. South Africa, as a member state of Convention 138 is obligated to bring its legislation in line with the provisions enshrined in Convention 138 which reinforce the unified stance against child labour internationally.

Another loophole in South Africa's child labour laws can be found in the Children's Act, in terms of its use of the word 'employ' to include illicit activities.[659] This hinders the enforcement of these provisions to address child labour. The amendment to the Act also fails to correct this.

The amendments to the BCEA, which must still come into effect, use of the word 'work',[660] which now allows chores to be included in the definition of child labour. However, the amendment to the definition to child labour only considers the revised concept of child labour in terms of the law but there is no amendment regarding the implementation of the revised concept of child labour. Currently, labour inspectors do not have the authority to

[659] The Children's Act; s 141 (1)(*c*).
[660] 'Memorandum of Objects: Basic Conditions of Employment Amendment Bill, 2012' available at *www.labour.gov.za/DOL/downloads/legislation/bills/proposed-amendemnt-bills/bceamemorandum.pdf*, accessed on 12 July 2017.

enter private homes to inspect whether children are required to do chores that constitute child labour.

If there is no correlation between child labour laws and their implementation, the laws remain an ideal only and do not effect change. Thus, arguably the enactment of child labour law is futile if there is no practical means of enforcing and implementing this law. Labour inspectors are confronted by a number of challenges in enforcing child labour law. They also lack the necessary authority to enforce fines and have to refer child labour violations to the SAPS, which is often time consuming and bureaucratic. Labour inspectors are the key implementers of child labour laws, and more attention needs to be afforded to this area. Regulations are fundamental to ensure the implementation of legislation. The BCEA provides for children 15 to 17 year of age to lawfully engage in work but there are no adequate regulations of monitoring their work. As discussed in detail previously legislators have neglected to bring this category of children under the banner of the law to ensure their protection.

It is abundantly clear that legislators do not consider the reality of the context of child labour. The Children's Act requires that a child found to be in a situation of abuse that constitutes child labour be removed from the situation.[661] Arguably, this approach does not take into consideration that children are not always forced into child labour. Children may work willingly for their survival and that of their families.[662] Therefore, child labour law must consider the contextual factors that drive children to work, as the removal of children from their homes would be detrimental to their families. The implementation of child labour laws must be realistic and not overly ambitious as South Africa does not have the necessary manpower, finances or resources in various departments to assist every child engaged in child labour. Additionally, the policies implemented to assist in the eradication of child labour must have realistic time frames for their actualisation. This would ensure that departments can be held accountable when they do not perform. Additionally, this would reinforce a sense of urgency that Convention 182 endorses in eliminating child labour.[663]

[661] The Children's Act; s 150.
[662] MP Lambon-Quayefio & NS Owoo 'Investigating the long-term effects of child labor on household poverty and food insecurity in Ghana' (2021) 87(4) *Journal of Demographic Economics* 561-587, II Abdullahi et al 'Does poverty influence prevalence of child labor in developing countries?' (2016) 6(1) *International Journal of Economics and Financial Issues* 7-8.
[663] Convention 182; Article 6 & 7.

One of the major obstacles to eradicating child labour in South Africa is the lack of sufficient research on the complex nature of child labour in the country. This is especially evident for the informal agricultural sector.[664] The SAYP statistics indicate the l prevalence of child labour nationally, but do not give a breakdown for children engaged in child work and child labour in each province. Research conducted by the United States Department of Labour's Bureau of International Labour Affairs regarding the worst forms of child labour in South Africa was released in 2022 but without adequate data available.[665]

It is crucial that current statistics on child labour be available to assess the implementation of the legislative framework is achieving its aims.[666] There has been a call for regular surveys to be conducted to ensure that current statistics for child labour are available. It has also been countenanced that the preparation of follow up surveys should be initiated immediately so as to avoid unreasonable time periods where no statistics of the existing situation have been provided.[667] Without current data, it is difficult to make policy shifts to address child labour.[668]

5.6. CONCLUSION

The trajectory of any nation is dependent on the development of its children which, in turn, depends on their health and welfare.[669] Thus, the realisation of the fundamental rights of children is a major factor in eliminating child labour and ensuring that effective laws are drafted and implemented to guarantee that children are protected from child labour and that they are protected while they lawfully engage in work so that their welfare and health are not hindered.[670]

The South African government has developed a legislative framework to address child labour, but also acknowledges that legislation alone cannot ameliorate child labour but requires the concerted effort of all departments, NGOs and businesses through

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[664] D Budlender & D Bosch 'South Africa child domestic workers: A national report' (2002) 47.
[665] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2022) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html*, accessed 23 May 2024.
[666] K Nicolaou & M Durieux 'Addressing child rights and child labour – A poverty strategy for South Africa?' (IDASA, Children's Institute (UCT) and Save the Children Sweden seminar on research priorities in the area of the interface between child well-being and unemployment in South Africa) (2005) 8-9.
[667] Ibid.
[668] Ibid.
[669] DC Nanjunda *Child Labour and Human Rights: A Prospective* (2008) 15.
[670] A Kieta 'The implementation of the ILO child labour standards in Africa (Mali): An assessment from a socio-legal perspective' in G Nesi et al (eds) *Child Labour in a Globalized World* (2016) 349.

policy development to actualise the rights of children.[671] However, several weaknesses in South Africa's child labour law obstruct its aims from being achieved. Firstly, the inclusion of the word work creates difficulties in the monitoring of domestic chores in private homes. Secondly, South Africa has not taken the opportunity afforded by the ILO to developing countries to lower the minimum age of employment or to include the light work provision in legislation. Thirdly, legislation does not provide for the possibility of combining work and school which often leaves children with having to choose one over the other. Fourthly, the Children's Act does not provide adequate assistance to children who find themselves in situations of child labour but cannot be removed from their home. Lastly, the discussion on the PACOTIP illustrated that South Africa lacks trained personnel to effectively implement legislation. Further, that the lack of coordination between government departments hinders investigation and prosecution of offenders. Additionally, the lack of funding is a major issue in implementing all child labour laws as government funding is reduced.

Thus, this chapter highlighted that a more nuanced approach to combating child labour and implementing child labour laws are necessary. The possible key suggestions that have emerged from this chapter include: Lowering the minimum age of employment and including the light work provision as in accordance with the ILO's guidelines, allowing labour inspectors the right to enter private premises to investigate possible child labour contraventions, rearranging the school curriculum to provide for the possibility of work and school as well as increasing training of personnel responsible for implementing child labour laws. These suggestions are endorsed by the 5th global conference on the elimination of child labour which discussed different approaches to eliminate child labour that correlates with the suggestions submitted by this study. These suggestions will be fully explored in Chapter Ten.

[671] V Veeran 'Combating child labour - A South African challenge' (2003) 39(1) *Social Work* 88.

CHAPTER SIX: UGANDA

6.1. INTRODUCTION

6.2. PREVALENCE OF CHILD LABOUR IN UGANDA

6.3. LEGISLATION GOVERNING CHILD LABOUR IN UGANDA

6.3.1. CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

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6.4.1. NATIONAL POLICY ON THE ELIMINATION OF CHILD LABOUR.

6.5. COMPARATIVE ANALYSIS BETWEEN CHILD LABOUR LEGISLATION IN UGANDA AND SOUTH AFRICA

6.6. CONCLUSION

6.1. INTRODUCTION

The ILO estimates that approximately 96% of child labourers live in developing countries.[1] Uganda is a developing African country that experiences multiple socio-economic challenges; these include poverty, HIV/AIDS, lack of access to education, political instability, and cultural beliefs that encourage children to participate in work.[2] These factors contribute to the prevalence of child labour.[3] Although some progress has been made in terms of the enactment of legislation and development of policies directed at reducing child labour, it remains a major

[1] P Kechagia & M Theodore 'Are working children in developing countries hidden victims of pandemics?' (2021) 10(321) *Social Sciences* 1-2, EV Edmonds & C Theoharides 'Child labor and economic development' (2020) *Handbook of Labor, Human Resources and Population Economics* 2-4 , R Khanam & MM Rahman 'Child labour in developing countries: The role of education, poverty and birth order' (2008) 10(2) *Journal of Social and Economic Development* 1-3, P Roggero et al 'The health impact of child labor in developing countries: Evidence from cross-country data' (2007) 97(2) *American Journal of Public Health* 271.

[2] United Nations Development Programme 'Socio-economic update of Uganda' (2022) 2-3, SM Lofgren et al 'Barriers to HIV care in Uganda and implications for universal test-and-treat: A qualitative study' (2022) 34(5) *AIDS Care* 597–600, S Datzberger 'Why education is not helping the poor. Findings from Uganda' (2018) 110 *World Development* 124-139.

[3] Bureau of International Labor Affairs '2020 Findings on the Worst Forms of Child Labor: Uganda' (2020) 1-3, International Labour Office and United Nations Children's Fund 'Child Labour: Global Estimates 2020, Trends and the Road Forward' (2021) 21-28, L Kiss et al 'Violence against children and child labour in Uganda: What evidence exists?' (2022) *Policy Brief* 1-7.

concern.[4] This chapter reviews Uganda's child labour legislation to critically assess barriers to its implementation that bear relevance to the South African context.

6.2. PREVALENCE OF CHILD LABOUR IN UGANDA

Uganda's development has been impacted by war, conflict and violence. After gaining independence from British influence in 1962, the country experienced instability during the period of 1962 and 1985.[5] While the political environment has been relatively stable since President Museveni came into power in 1986, civil unrest has persisted in northern Uganda during this period.[6] Moreover, since 2007 the militant Allied Democratic Forces and National Army for Liberation have been active in the western region of the country.[7] Over the years Uganda has become rooted in a culture of violence that has manifested in the form of armed conflict, refugee challenges and displacements of citizens including children.[8]

Uganda's 2019/2020 census reported a population of 40.1 million citizens, of which approximately 54% were children under 18 years of age.[9] Uganda is the second largest country in the world to have children as the majority of its population.[10] In addition, in 2020 Uganda reported that 1.4 million refugees from various African countries resided in the country, 82% of whom were women and children.[11] Refugee children are vulnerable persons who are in precarious position that places them at risk of being illegally recruited into the

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[4] ILO 'Child Labour and Forced Labour in Uganda: Accelerating action for the elimination of child labour in Uganda's tea and coffee supply chain. ACCEL Africa Project' (2023) *ILO Brief* 1-6, M Kabasiita *Combating Child Labour in Uganda: Challenges and Prospects from a Development Perspective* (Unpublished Master's thesis, UNISA, 2009) 3.

[5] C Armitage 'The residuals of colonial rule and its impact on the process of racialisation in Uganda' (2015) *CERS Working Paper 2015* 1-10, H Tornberg *Ethnic Fragmentation and Political Instability in Post-Colonial Uganda: Understanding the Contribution of Colonial Rule to the Plights of the Acholi People in Northern Uganda* (Unpublished Master's thesis, Lunds University, 2012) 17-19, F Golooba-Mutebi 'Collapse, war and reconstruction in Uganda An analytical narrative on state-making' (2008) *Crisis States Working Papers Series No.2* 1-5, J De Berry 'Child soldiers and the Convention on the Rights of the Child' (2001) 575 *The Annals of the American Academy of Political and Social Science* 97.

[6] S Lindemann 'Just another change of guard? Broad-based politics and civil war in Museveni's Uganda' (2011) 110(440) *African Affairs* 387–416, AMN Renzaho et al 'Child rights and protection in slum settlements of Kampala, Uganda: A qualitative study' (2018) 17(3) *Journal of Human Rights* 305.

[7] S Esaku 'Political instability and informality in Uganda: An empirical analysis' (2021) 18(2) *European Journal of Applied Economics* 161-165, B Busey *Conflict and Tourism in Uganda* (Unpublished honours thesis, Portland State University, 2014) 3-6.

[8] P Schulz, EO Apio & RO Oryem 'Love and care in the Lord's Resistance Army (LRA) in Northern Uganda' (2024) 4 *Global Studies Quarterly* 2-3, Women's International Peace Centre *Election related conflict and violence in Uganda* (2019) *Research Report* 9-10, MH Swahn et al 'Serious violence victimization and perpetration among youth living in the slums of Kampala, Uganda' (2012) 13(3) *Western Journal of Emergency Medicine* 254.

[9] Uganda Bureau of Statistics '2024: The National Population and Housing Census 2024 – Preliminary Report' (2024).

[10] UN (United Nations) & DESA (Department of Economic and Social Affairs) 'World population Prospects: The 2015 Revision, Key Findings and Advance Tables' (2015) *Working Paper No. ESA/P/WP.241*.

[11] UNHCR 'Uganda Refugee Statistics Dashboard' (2020), available at *https://data2.unhcr.org/ en/ documents/details/76150*, accessed 2 May 2020.

military or exposed to myriads of abuses, including sexual exploitation, child labour and the denial of basic rights.[12] However, despite children comprising the majority of the country's population, their protection as vulnerable members of society has been inadequate: in 2018, UNICEF reported that over 56% of children in Uganda were denied essential basic rights such as healthcare, food, shelter and education.[13] One of the key contributors to this situation is the extreme levels of poverty which results in many Ugandans living below the poverty line.[14] While the population have progressed to barely meet their basic needs on a daily basis, they are liable to revert to their previous state of deprivation due to the economic instability of the country.[15]

Children in Uganda face several challenges to their well-being. Over half of children have lost both parents to AIDS. The HIV/AIDS pandemic has exacerbated poverty within households, depriving families of the earnings of the ill as well as their caregivers.[16] Families have resorted to child labour to absorb the economic shocks caused by poverty and HIV/AIDS.[17]

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[12] LA Ndimurwimo & MND Vundamina 'The protection of refugee children in Africa: Post-Convention on the Rights of the Child' (2021) 27(1) *Journal of Legal History* 33-40, A Abdullah et al 'Safeguarding the welfare of refugee children in Ghana: Perspectives of practitioners in refugee camps' (2023) 145 *Children and Youth Services Review* 0190-7409, L Magqibelo et al 'Challenges faced by unaccompanied minor-refugees in South Africa' (2016) 52(1) *Social Work* 75-77, UN General Assembly 2001; para 6.

[13] YA Adebisi et al 'Prevalence and Socio-economic impacts of malnutrition among children in Uganda' (2019) 12 *Nutrition and Metabolic Insights* doi: 10.1177/1178638819887398, R Anich et al 'Street children in Kampala and NGOs' actions: Understanding capabilities deprivation and expansion' in M Biggeri, J Ballet & F Comim (eds) *Children and the Capability Approach* 107–136.

[14] 'Poverty in Uganda: National and regional data and trends' (2020) *Factsheet* 3-16, C Lwanga-Ntalea and K McClean 'The face of chronic poverty in Uganda as seen by the poor themselves' (2007) *Chronic Poverty Research Centre – Uganda, and Development Research and Training* 177-194.

[15] Republic of Uganda Ministry of Finance, Planning and Economic Development 'Poverty Status Report 2014: Structural Change and Poverty Reduction in Uganda. Kampala, Uganda: Uganda Ministry of Finance, Planning and Economic Development' (2014).

[16] E Kimera et al 'Experiences and perceptions of youth living with HIV in Western Uganda on school attendance: Barriers and facilitators' (2020) 20(79) *BMC Public Health* 1-12, L Karimli et al Poverty, economic strengthening, and mental health among AIDS orphaned children in Uganda: Mediation model in a randomized clinical trial' (2019) 228 *Social Science & Medicine* 17-24, NT Nutlam et al 'The impact of family economic empowerment intervention on psychological difficulties and prosocial behavior among AIDS-orphaned children in Southern Uganda' (2023) 72 *Journal of Adolescent Health* S51-S58, DC Parker et al A qualitative study of the impact of HIV/AIDS on agricultural households in South eastern Uganda' (2009) 6 *International Journal of Environmental Research in Public Health* 2114.

[17] AC Schuyler et al 'Mobility among youth in Rakai, Uganda: Trends, characteristics, and associations with behavioural risk factors for HIV' (2017) 12(8) *Global Public Health* 1033–1050, B Fournier et al 'Hear our voices: A Photovoice project with children who are orphaned and living with HIV in a Ugandan group home' (2014) 45 *Child Youth Services Review* 55–63, F Satzinger, W Kipp & T Rubaale 'Ugandan HIV/AIDS orphans in charge of their households speak out: A study of their health-related worries' (2009) 7(4) *Global Public Health* 420–431, AMN Renzaho 'Child rights and protection in slum settlements of Kampala, Uganda: A qualitative study' (2018) 17(3) *Journal of Human Rights* 306.

The COVID-19 pandemic intensified the struggle of families for survival as many people lost their employment and had no source of income.[18] Parents were deprived of their ability to provide healthcare and basic needs for their children.[19] Schools and religious institutions were forced to close their doors, depriving destitute families of assistance.[20] In a survey conducted by Save the Children, 56% of those interviewed indicated that they observed an increase in the number working children during the COVID-19 pandemic.[21] Children were reported to have engaged in activities such as the selling of food, liquor and firewood, and working in the mines and in agriculture.[22] In some cases, children were reported to have stolen food for their survival; instances of girls engaging in relationships with older men to obtain basic necessities such as soap and sanitary pads were also reported.[23]

[18] Development Initiatives 'Socioeconomic impact of Covid-19 in Uganda: How has the government allocated public expenditure for FY 2020/21?' (2020) 8-10, MK Kansiime 'COVID-19 implications on household income and food security in Kenya and Uganda: findings from a rapid assessment' (2021) 137 *World Development* 105199, P Bukuluki 'The socio-economic and psychosocial impact of Covid-19 pandemic on urban refugees in Uganda' (2020) 2(1) *Social Science Human Open* 100045.

[19] R Nuwematsiko et al 'Unintended socio-economic and health consequences of COVID-19 among slum dwellers in Kampala, Uganda' (2022) 22(88) *BMC Public Health* 1-13, B Bose, SA Alam & CC Pörtner 'Impacts of the COVID-19 lockdown on healthcare inaccessibility and unaffordability in Uganda' (2023) 109(3) *American Journal of Tropical Medicine & Hygiene* 527-535,

[20] R Nakijoba, RM Ddungu & AO Awobamise 'COVID-19 school closures in Uganda and their impact on the well-being of teachers in private institutions in semi-urban districts' (2022) 10(1) *Advanced Journal of Social Science* 52– 62, R Ndejjo et al 'Consequences of school closures due to COVID-19 in DRC, Nigeria, Senegal, and Uganda' (2023) 3(10) *PLOS Glob Public Health* 1-15, JP Munyaneza et al 'Effect of Covid-19 crisis on spiritual formation in Uganda; A case of born-again churches in Kanyanya Parish Kawempe Division, Kampala City' (2024) 8(3) *International Journal of Academic Multidisciplinary Research* 14-16.

[21] RR Habib et al 'Child labor and associated risk factors in the wake of the COVID-19 pandemic: a scoping review' (2024) 11 *Frontiers in Public Health* DOI 10.3389/fpubh.2023.1240988, B Bakamutumaho et al 'Severe COVID-19 in Uganda across two epidemic phases: A prospective cohort study' (2021) 105(3) *American Journal of Tropical Medicine and Hygiene* 740-744.

[22] D Musoke et al 'The impact of the COVID-19 lockdown on social and economic welfare in Uganda' (2014) 82(117) *Archives of Public Health* DOI org/10.1186/s13690-024-01337-x, J Kizza et al 'The economic effects of the COVID-19 Pandemic on the market vendors in Kampala City in Uganda' (2023) 19(2) *Ethiopian Journal of the Social Sciences and Humanities* 27-51.

[23] BA Kawala et al 'Effect of COVID-19 response in Uganda on street children' (2020) 29(35) *Pan African Medical Journal DOI 10.11604/pamj.supp.2020.35.2.23545.*

6.3. LEGISLATION GOVERNING CHILD LABOUR IN UGANDA

Ugandan legislation addresses the rights of children through several instruments.[24] The country has different laws for child protection, as is the case in South Africa.[25]

6.3.1. CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

The Constitution of the Republic of Uganda, 1995 (hereafter referred to as the Ugandan Constitution) delineates the rights of children in Article 34; it endorses the principle of the best interests of a child and the right of every child to be cared for by their parents or guardians.[26] Article 34 (4) protects children under the age of 16 from economic exploitation and hazardous work.[27]

The Ugandan Constitution reflects the provisions of the United Nations Convention on the Rights of the Child, 1989 (CRC), as does the South African Constitution.[28] The Ugandan Constitution acknowledges that education is a pivotal aspect in the life of a child;[29] it identifies the interruption of education as a criterion for determining whether a child is engaged in child labour. It must be noted that this provision works contemporaneously with the entrenchment of the right to education as stipulated in the Ugandan Constitution in Article 30 and 34[30] as well as the Education Act 13 of 2008 (hereafter referred to as the Education

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[24] J Driscoll 'A long, long journey adopting a children's rights-based approach to child protection programming in rural communities in Uganda' (2022) 30 *International Journal of Children's Rights* 895-921, AMN Enzaho et al 'Child rights and protection in slum settlements of Kampala, Uganda: A qualitative study' (2017) 17(3) *Journal of Human Rights* 303–321, N Mugabi & IR Kamya 'Children as rights-holders in Uganda: Their knowledge and perception of rights protection structures' (2021) 27(1) *East African Journal of Peace & Human Rights* 38-45, UNICEF 'Situation analysis of child poverty and deprivation in Uganda' (June 2014) 106.

[25] South Africa has the Children's Act 38 of 2005 as amended by the Children's Amendment Act 41 of 2013 provides a comprehensive legal framework for child protection.

[26] Ugandan Constitution; Article 34. Article 34 (4) provides that "Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up," DM Chirwa 'Children's rights, domestic alternative care frameworks and judicial responses to restrictions on inter-country adoption: A case study of Malawi and Uganda' (2016) 16 *African Human Rights Law Journal* 117-144.

[27] Ugandan Constitution; Article 34 (4) states: "Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development", LE Vogt et al 'Human rights dimensions of food, health and care in children's homes in Kampala, Uganda – a qualitative study' (2016) 16(10) *BMC International Health and Human Rights* https://doi.org/10.1186/s12914-016-0086-y.

[28] Ibid.

[29] S Datzberger 'Education and empowerment: Voices from Ugandan youth' (2022) *ÖFSE Working Paper, No. 66 Austrian Foundation for Development Research (ÖFSE)* 1-20, AD Olanrewaju 'Access to education for orphans and vulnerable children in Uganda: A multi-district, cross-sectional study using lot quality assurance sampling from 2011 to 2013' (2015) 10(7) *PLoS One* 1-10, B Simpson, MG Nakabugo & R Sabates 'Understanding access to and learning outcomes from ECE among refugees and non-refugee populations in Uganda: A cross-cohort comparison' (2024) 38(1) *Journal of Research in Childhood Education* S112–S129.

[30] Ugandan Constitution; Article 30 & 34.

Act). Article 30 of the Ugandan Constitution provides that education is a basic human right.[31] Article 34 stipulates that every child has the right to basic education.[32]

The Education Act provides that education is a right that should be enjoyed by all persons.[33] The Education Act mandates free compulsory education through the end of primary school and requires that all children who are 6 years of age and older be enrolled in school until the age of 13.[34] As children are not permitted to work until the age of 15, this means that children between the age of 13 and 15 are not required to attend school but are not permitted to work. A child leaving school at the age of 13 may thus be vulnerable to seeking working unlawfully, making them vulnerable to exploitation by employers who could enforce illegal working conditions with no recourse for these children, who could not report their employers as their employment was unlawful.[35] The lawful age of compulsory education in Uganda falls short of the international requirement stated in ILO Convention 138 that the compulsory age of education must be aligned with the lawful age of entry into employment which, in Uganda, is 15 years of age.[36] Uganda urgently needs to address this discrepancy in the law to meet its international obligations as a party to ILO Convention 138 and to strengthen the protection of children 13 to 15 years of age.

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[31] Ugandan Constitution; Article 30, S Jones & K Manion 'Critical literacy: an approach to child rights education in Uganda and Canada' (2023) 57(2) *Literacy* 149- 153, M Mugerwa-Sekawabe 'Increasing access to education for refugees in Uganda' (2021) 25 *Law, Democracy and Development* 547-549, T Herman & G Ayeranga 'Re-Examining the right to education for children with disabilities in Uganda's 'new normal' (2022) 23 *ESR Review* 22-26.

[32] Ugandan Constitution; Article 34, S Kan & S Klasen 'Evaluating universal primary education in Uganda: School fee abolition and educational outcomes' (2021) 25(1) *Review of Development Economics* 116-147, EV Moore 'The negative health spillover effects of universal primary education policy: Ethnographic evidence from Uganda' (2023) 18(1) *Global Public Health* 1-13, MG Nakabugo et al 'Universalizing primary education in Uganda: Is it beneficial and sustainable?' *2nd International Conference on Teaching, learning and education 15-17 November 2019, Rotterdam, Netherlands* 1-7.

[33] The Education Act; 4 (3).

[34] The Education Act; s 10, The World Bank & Human Development Network 'Achieving universal primary education in Uganda: The 'big bang' approach' (2002) *Education Notes* 1-4, M Fredrick & CT Kazooba 'Universal primary education performance in Uganda: A critical analysis' (2017) 5(12) *Journal of Education* 3-14, TL Zuze & M Leibbrandt 'Free education and social inequality in Ugandan primary schools: A step backward or a step in the right direction?' (2011) 31(2) *International Journal of Educational Development* 169-178.

[35] F Aloo *Examining Child Protection against Exploitation of Child Domestic Workers (CDWs) A Case of Kampala, Uganda* (Unpublished Master's thesis, International Institute of Social Sciences, 2020) 2-5, RA Mavunga 'The prohibition of child slavery in South Africa, Uganda and Zimbabwe: Overcoming the challenges of implementation of legislation' (2018) 51(1) *The Comparative and International Law Journal of Southern Africa* 41, VF Namuggala 'Exploitation Or empowerment? Adolescent female domestic workers in Uganda' (2015) 6(4) *International Journal of Child, Youth and Family Studies* 561–580.

[36] ILO Convention 138; Article 3(1), OM Monica *Right to Education; A Comparative Analysis of the Implementation of Universal Primary Education in Rural Areas of Uganda's Eastern Region: Lessons From Similar Initiatives in Other African Countries* (Unpublished Master's thesis, Uganda Christian University, 2024) 26-30.

Section 3(*c*) of the Education Act further provides that, where children leave school before completing their primary education, then they must receive their primary education by an alternate manner.[37] However, it must be stressed that the Education Act itself does not provide precise mechanisms for how alternate primary education should be provided if a child leaves school before completing their primary education. Moreover, it must be underscored that initiatives to implement alternative education have not been successful due to a lack of resources.[38]

The inclusion of education as a determinant of child labour brings Uganda in line with international standards. Likewise, the reference to the term 'work' in Article 34(4) of the Ugandan Constitution is not only a reflection of the country's alignment with international standards[39] but reflects the understanding of legislators that in the African cultural context of Uganda children may engage in child labour in situations that do not involve an employment relationship with remuneration, such as in the informal economy or in the family home.[40] This extends the definition of child labour and the protection afforded to children to encompass any type of labour. This is significant as both South Africa and Uganda are rich in African cultural practices and cultural heritage.[41]

Similarly to the South Africa Constitution, the Ugandan Constitution does not use the term 'child labour.' Rather, it uses the term 'economic exploitation'; while this aligns with the language of the CRC, the Ugandan Constitution fails to define the term 'economic

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[37] The Education Act; s 10, S Datzberger 'Peacebuilding through non-formal education programmes: a case study from Karamoja, Uganda' (2017) 24(2) *International Peacekeeping* 326–349, W Ngaka, G Openjuru & RE Mazur 'Exploring formal and non-formal education practices for integrated and diverse learning environments in Uganda' (2012) 11(6) *International Journal of Diversity in Organizations, Communities and Nations* 100-112, RD Mugabi 'Formal and non-formal skills improvement for the marginalised youth in Uganda' (2021) 9(1) *Advanced Journal of Social Science* 10-26.

[38] GE Meyers & PF Haruna 'Exploring the quality of education reform policy a case study of Uganda's Education system' (2018) 26(2) *Administratio Publica* 236-238, K Sakaue, J Wokadala & K Ogawa 'Updates on private returns to education in Uganda: Evidence from universal primary education policy' (2024) 32(5) *Education Economics* 632-648, J Wokadala, St K Omala & K Ogawa 'Impact of school facilities grant on access and learning achievements in public primary schools in Uganda: A randomised experiment' (2022) 19(3) *Africa Education Review* 119–137, E Huntington 'Educating the forgotten: Non-formal education in urban Kampala' (2008) 31.

[39] ILO Convention 138; Article 3(1).

[40] S Shahid & REA Khan 'Informal sector economy, child labor and economic growth in developing economies: Exploring the interlinkages' (2020) 8(4) *Asian Development Policy Review* 277-287, E Webbink, J Smits & E De Jong 'Hidden child labor: Determinants of housework and family business work of children in 16 developing countries' (2012) 40(3) *World Development* 631-642, JA Bukenya *A Comparison between South Africa and Uganda in Respect of Child Labour as a Hinderance to the Right to Education* (Unpublished Master's thesis, University of Pretoria, 2014) 40.

[41] M Ohaja & A Chinemerem 'Rituals and embodied cultural practices at the beginning of life: African perspectives' (2021) 12 *Religions* 1-12, CM Sibani 'Impact of western culture on traditional African society: Problems and prospects' (2018) 10(1) *International Journal of Religion and Human Relations* 56-72, C Amone, AJ Okwir & D Akot 'Culture and girl-child education in Northern Uganda' (2013) 3(6) *Prime Research on Education* 570-578.

exploitation'.[42] In contrast, South Africa defines this term in the Children's Act 38 of 2005.[43] As the Ugandan Constitution does not delineate what constitutes exploitation, it is submitted that this creates ambiguity as to what constitutes child labour.

This lack of clarity can have serious implications in the Ugandan context, where societal values about child rearing may promote the involvement of children in work. In Uganda, as is common in African countries, legislation and customary law are not always congruent. In some instances, these parallel systems work contemporaneously for the benefit of children; in other cases, their incongruence can act to the detriment of children.[44] Customary laws take precedence when the right to culture conflicts with legislation.[45] However, some cultural practices may constitute child abuse under the provisions of the CRC and the ACRWC.[46]

Additionally, while Article 3 of ILO Convention 182 clearly stipulates that all worst forms of child labour are prohibited,[47] the Ugandan Constitution prohibits the worst forms of child labour, such as slavery, servitude,[48] and forced labour.[49] Similar to the South African Constitution, the Ugandan Constitution does not make special provisions for all the worst forms of child labour; such as trafficking of children but rather addresses all the worst forms of child labour in other pieces of legislation. The Ugandan Constitution approaches the

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[42] Ministry of Gender, Labour and Social Development 'The Ugandan National Culture Policy-A culturally vibrant, cohesive & progressive nation' (2006) 2.
[43] The Children's Act; s 1.
[44] SAL Dau 'International human rights standards versus cultural practices: a case against harmful cultural practices in Sub-Saharan Africa, with a specific reference to FGM' (2024) 2(21) *Discover Global Society* 1-19, M McDonald 'Should communities have rights? Refections on liberal individualism' (2015) 4(2) *Canadian Journal of Law & Jurisprudence* 17–23, PJ Magnarella 'Assessing the concept of human rights in Africa' (2000) 1 *Human Rights Human Welfare* 5p.
[45] JD Mujuzi 'Reconciling customary law and cultural practices with human rights in Uganda' (2020) 41 *Obiter* 239-244, GE Idang 'African culture and values' (2015) 16(2) *Phronimon* 97–111, S Awoniyi 'African cultural values: The past, present and future' (2015) 17(1) *Journal Of Sustainable Development in Africa* 1-13.
[46] SL Simbine & L le Roux 'Vatsonga People's perceptions of children's rights' (2021) 57(4) *Social Work* 472-475, BD Mezmur 'The African Children's Charter @ 30: A distinction without a difference?' (2020) 28 *International Journal of Children's Rights* 693-714, MM Maimela *Combating Traditional Practices Harmful to Girls: A Consideration of Legal and Community Based Approaches* (Unpublished Master's thesis, University of Pretoria, 2009) 18-30.
[47] Convention 182; Article 3 reads as follows "'(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;
(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.'
[48] Ugandan Constitution; Article 25 (1).
[49] Ugandan Constitution; Article 25 (2).

eradication of the worst forms of child labour in a piecemeal fashion that applies to everyone generally in Uganda and does not address the issue from a child-centred approach that highlights the sensitivity of these activities that specifically affect children.[50] Thus, both Uganda and South Africa fail to address the worst forms of child labour from a constitutional basis.

The ramifications of this is that it segregates some of the types of the worst forms of child labour from the others. This in turn creates the misconception that the prohibition against the worst forms indicated in the Ugandan Constitution is significantly greater than the types of worst forms that are not indicated in the Ugandan Constitution. Ugandan people engage in cultural practices such as forced marriages, child marriages, extremely dangerous child labour practices, forced military recruitment, mercy killings, human sacrifice, the removal and sale of body parts for traditional and witchcraft purposes as well as other harmful cultural rituals.[51] These activities can be classified under the worst forms of child labour yet there is no express prohibition of these practices. The Ugandan Constitution is the highest law of the land.[52] There is a greater cognisance and value attached to the rights that are endorsed in a constitution rather than subsequent legislation. Hence the exclusion of the other worst forms of child labour that are endorsed through international regulations[53] are not afforded the same worth of being prohibited by the Ugandan Constitution.[54]

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[50] C Muntaner et al 'Unemployment, informal work, precarious employment, child labor, slavery, and health inequalities: Pathways and mechanisms' (2010) 40(2) *International Journal of Health Services* 281-295.
[51] JD Mujuzi 'Reconciling customary law and cultural practices with human rights in Uganda' (2020) 41(2) *Obiter* 239-256, S Awoniyi 'African cultural values: The past, present and future' (2015) 17(1) *Journal of Sustainable Development in Africa* 1-13, AD Mwaka, J Achan & CG Orach 'Traditional health practices: A qualitative inquiry among traditional health practitioners in northern Uganda on becoming a healer, perceived causes of illnesses, and diagnostic approaches' (2023) 18(4) *PLoS ONE* 1-40, NH Msuya 'Advocating positive traditional culture to eradicate harmful aspects of traditional culture for gender equality in Africa' (2020) 41(1) *Obiter* 45-62, J Glover et al 'Persistence and resistance of harmful traditional practices (HTPs) perpetuated against girls in Africa and Asia' (2018) 19(2) *Journal of International Women's Studies* 44-64, PK Byansi 'Responses to child sacrifice in Uganda' (2014) 41 *International Letters of Social and Humanistic Sciences* 78–91, N Stella et al "'Trading daughters for livestock': An ethnographic study of facilitators of child marriage in Lira District, Northern Uganda' (2021) 25(3) *African Journal of Reproductive Health* 83–93, JR Quinn 'Tradition?! Traditional cultural institutions on customary practices in Uganda' (2014) 49(3) *Africa Spectrum* 34.
[52] J Muhindo *Compulsory Land Acquisition in Uganda-An Analysis of the Proposed Amendment of Article 26 of the Constitution* (2017) 9.
[53] Convention on the Worst Forms of Child Labour, 1999 No. 182.
[54] E Njieassam 'Child labour in artisanal and small-scale gold mines in Uganda: Are legal protections adequate?' (2023) 67 *Journal of African Law* 45–57, M Rapatsa 'Understanding trends in the worst forms of child labour and the state's legal responses: A descriptive analysis' (2017) 7 *Juridical Tribune* 186-194, A Stuckrath 'Child poverty and child labor in Cambodia and Uganda: Degree, impact and policies' (2023) 14(2) *Global Majority E-Journal* 106–118.

6.3.2. EMPLOYMENT ACT NO. 6 2006

The Ugandan Employment Act No. 6 2006 (hereafter referred to as 'the Employment Act') further endorses the protection of children against child labour. Section 32 of the Employment Act sets the legal admission of employment at 12 years old.[55] The Employment Act also prohibits any form of forced labour.[56] The Employment Act further provides that children below the age of 14 may undertake light work that does not harm them.[57] The Employment Act defines light work as 'work that is not physically, mentally and socially injurious to the child.'[58] The provision mandates conditions for the undertaking of light work: it must be performed under the supervision of an adult who is 18 years old or older, it must not hamper the child's education.[59]

Additionally, the Employment Act endorses the prohibition against any type of 'employment or work that is injurious to [the child's] health, dangerous or hazardous or otherwise unsuitable'.[60] Thus, while the Act allows a child to engage in paid light work, the well-being of the child must be given priority. However, the enforcement of this provision is problematic for two reasons. First, research into the application of this provision indicates that the light work given to children is, in some instance, beyond the capability of their age.[61] It is the duty of the labour officer to ascertain whether a type of work is harmful or not and inform the relevant parties of his decision.[62] However, this requirement exceeds the jurisdiction of labour law, requiring labour officers, who have not been trained to assess children's capabilities against their age, to perform this task. Thus, while the light work provision extends the protection of working children in Uganda, there is a risk of this being undermined by the impracticality of enforcement. This has relevance to the South African context. The inclusion of the light work provision is indicative of Uganda's adherence to Convention 138[63] as well as the cognisance of the poverty levels and the cultural context of the country that compel children to work to sustain themselves and their families.[64]

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[55] The Employment Act; s 34 (1).
[56] The Employment Act; s 8.
[57] The Employment Act; s 34 (2).
[58] The Employment Act; s 2.
[59] The Employment Act; s 32 (2).
[60] The Employment Act; s 32 (4).
[61] Ugandan Women Lawyers Association (FIDA) 'Report on the survey on children in domestic service in Kampala district' (1999) 17.
[62] The Employment Act; s 32 (3) & (4).
[63] Convention 138; Article 7 (1).
[64] II Abdullah et al 'Does poverty influence prevalence of child labor in developing countries?' (2016) 6(1) *International Journal of Economics and Financial Issues* 7-12, H Spitzer & JM Twikirize 'War-affected children

The ILO and the IPEC stipulate that a child between the ages of 12 and 14 years old engaging in light work may not perform work for more than 2 hours per day or 14 hours per week and a child between the ages of 15 and 17 years old may not work for more than 42 hours per week.[65] However, research indicates that children who perform domestic chores or work in rural or in mining are often expected to work more than 15 hours per day.[66] Children become tantamount to slaves as they are compelled to work around the clock and are called upon 24 hours a day to perform tasks for the family for whom they work.[67] Children may not be aware of their rights, as there are no explicit limits placed on the hours they can be required to work.

Additionally, there is no system in place to enable children to inform authorities anonymously if they are exploited. Arguably, the enforcement of the light work provision is unrealistic as a labour official visiting a home may not find evidence of exploitation unless the child makes a complaint. This is also unlikely as the child may risk being fired if they make a complaint against the employer. It is submitted that the disregard of legislator to adequately regulate the hours of working children illustrates a poor attempt to incorporate international standards into national legislation. This in fact nullifies the intention of legislation to protect children, as the legislation affords children the right to undertake light work but does not articulate the necessary limitations to protect them from exploitation at work.

6.3.3. THE PENAL CODE ACT (CAP120) 2007

in northern Uganda: No easy path to normality' (2013) 56(1) *International Social Work* 67-79, M Kibukamusoke *A Critical Analysis of Child Labour and Human Resource Development in Uganda* (Unpublished Doctoral thesis, Nelson Mandela Metropolitan University, 2010) 63, T Kaime, 'The Convention on the Rights of the Child and the cultural legitimacy of children's rights in Africa: Some reflections' (2005) 5(2) *African Human Rights Law Journal* 221-238.

[65] ILO and IPEC 2002 32; ILO 2006 4.

[66] I Schipper, E de Haan & S Turyahikayo *No Golden Future Use of Child Labour in Gold Mining in Uganda* (2016) 16-17, FW Schwartz, S Lee & TH Darrah 'A review of health issues related to child labor and violence within artisanal and small-scale mining' (2021) 51 *GeoHealth* 1-5, Global Fund to End Modern Slavery 'Decent Work for Ugandan Domestic Workers: Findings and Recommendations for Funders' (2023) 3.

[67] Z Trodd et al 'Beyond the walls: Patterns of child labour, forced labour, and exploitation in a new domestic workers dataset' (2024) 14(62) *Societies* 1-5, M Lotfi & N Pisa 'Child slavery in supply chains: Actors of the dirty scene' (2024) 18 *Journal of Transport and Supply Chain Management* 2, SJ McKinney, RJ Hill & H Hania 'Child slavery and child labour' (2015) 11(2) *Pastoral Review* 54–60.

The Penal Code Act (Cap 120) of 2007 (hereafter referred to as 'the Penal Code') also aims to prevent child labour by prohibiting the abandonment of children.[68] Children who are abandoned are vulnerable and may become easy targets for the worst forms of child labour, such as sexual exploitation, trafficking for forced labour, or servitude.[69] Children who are abandoned also lack the adequate provision from their parents or guardians to meet their basic needs; this may compel them to live on the streets and engage in begging, vending and child labour.[70] However section 156 of the Penal Code limits the protection of children from abandonment to children below the age of 14 years. This effectively disregards children 14 to 17 years of age.

Additionally, this provision contravenes the ILO Convention 182, which defines a child as being any person below the age of 18,[71] to be protected from the worst forms of child labour. Arguably, the assumption that this provision creates is that children between 14 and 17 years old do not require protection when they are abandoned and are able to protect themselves from becoming targets for the worst forms of child labour. Moreover, this provision leads to the supposition that children between 14 and 17 years old would be able to provide for themselves without the assistance of a parent or guardian. It is argued that this limitation of protection to only those children below 14 years of age provides no protection from potential exploitation of children between the ages of 14 and 17. This provision may also encourage children between 14 and 17 years old to engage in child labour to sustain themselves.

In addition, section 156 of the Penal Code permits a parent or guardian to desert a child if they do not have the ability to provide for that child. Considering that majority of Ugandans live in poverty, this provision allows the majority of parents and guardians to

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[68] The Penal Code; s 156 states: "any person who being a parent or guardian or other person having lawful care or charge of a child under the age of fourteen years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support commits a misdemeanour".
[69] JM Mbaku 'The rule of law and the exploitation of children in Africa' (2019) 42(2) *Hastings International & Comparative Law Review* 296, R Whetten et al 'Child work and labour among orphaned and abandoned children in five low and middle income countries' (2011) 11(1) *International Health and Human Rights* 1-10, S Thabane & M Kasiram 'Child abandonment and protection of abandoned children in Lesotho: Prevention strategies' (2015) 51(1) *Social Work* 45-47, EJ Walakira et al 'Residential care for abandoned children and their interaction into a family-based setting in Uganda: Lessons for policy and programming' (2014) 35(2) *Infant Mental Health Journal* 146.
[70] D Gebretsadik 'Street work and the perceptions of children: Perspectives from Dilla town, Southern Ethiopia' (2017) 7(1) *Global Studies of Childhood* 29-37, HW Alem & A Laha 'Socio-economic determinants of street children category and their occupational choice: Evidence from the regional state of Oromia, Ethiopia' (2021) 9(2) *African Journal of Economic Review* 173-175, SK Kebede 'The situation of street children in urban centers of Ethiopia and the role of NGO in addressing their socio-economic problems: the case of Hawassa City' (2015) 3(3) *International Journal Academic Research Educational Review* 45-57.
[71] Convention 182; Article 2.

abandon their children without being held accountable by the law.[72] This provision also contradicts the Ugandan Constitution, which states that it is the right of a child to know and be cared for by their parent or guardian.[73] If parents are absolved from their duty to care for their own children on the grounds of poverty, it would place an unsustainable burden on the state.[74]

The Penal Code also addresses the worst forms of child labour by determining that forced labour is a criminal offense.[75] Section 167(*b*) of the Penal Code Act criminalizes the use of children to beg.[76] However, this offense is punishable by a sentence of only 3 months in prison, the payment of a fine not in excess of three thousand shillings, or both.[77] This punishment may be too low to act as a deterrent. Chapter 24 of the Penal Code Act deals with offenses pertaining to a person's right to freedom.[78] Section 245 of the Penal Code Act prohibits the kidnapping or abduction of persons for the purpose of subjecting them to harm or slavery and imposes a punishment of 15 years of imprisonment for offenders.[79]

The Penal Code Act also prohibits slavery.[80] The Penal Code Act does not define the term 'slavery', but does provide for a sentence of imprisonment for a period of 10 years for

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[72] N Boothby et al 'Ugandan households: A study of parenting practices in three districts' (2017) 67 *Child Abuse & Neglect* 157-173, F Arinaitwe & ME Kateshumbwa 'Exploring the child protection system and child well-being in Nyumanzi Refugee Settlement in Uganda' (2020) 18(1) *Ugandan Journal of Management and Public Policy Studies* 54-68, EJ Walakira et al 'No place is safe: Violence against and among children and youth in street situations in Uganda' (2014) *Vulnerable Children and Youth Studies* 1-12, C Lwanga-Ntale & K McClean 'The face of chronic poverty in Uganda from the poor's perspective: Constraints and opportunities' (2004) 5(2) *Journal of Human Development* 177.

[73] Ugandan Constitution; Article 34 (1).

[74] F Mutenyo et al 'Multistage processes of identifying children at risk or out of family care: A case of DOVCU project methods in Uganda' (2020) 7 *Global Social Welfare* 201–213, T Fuller & M Niteto 'Child welfare services and risk of child maltreatment reports: do services ameliorate initial risk?' (2013) 47(1) *Children and Youth Services Review* 46-54, A Jud, B Fallon & N Trocme 'Who gets services and who does not? Multi-level approach to the decision for ongoing child welfare or referral to specialized services' (2012) 34(1) *Children and Youth Services Review* 983–988, A Bhukuth & J Ballet 'Children of the street: Why are they in the street? How do they live?' (2015) 8(4) *Economics and Sociology* 136-137.

[75] The Penal Code; s 252.

[76] The Penal Code Act; s 167(b), L Moton et al 'An exploration into the lived experiences of young people forced to beg and sell goods in Kampala, Uganda' (2023) *Journal of Human Trafficking* 1–19, O Okia 'Virtual abolition: The economic lattice of *luwalo* forced labor in the Uganda Protectorate' (2017) 45(2) *African Economic History* 54-84, RA Mavunga 'The prohibition of child slavery in South Africa, Uganda and Zimbabwe: Overcoming the challenges of implementation of legislation' (2017) 51(1) *The Comparative And International Law Journal Of Southern Africa* 19-43.

[77] The Penal Code Act; s 167(b).

[78] The Penal Code Act; Article 24.

[79] NS Pocock et al 'Labour trafficking among men and boys in the Greater Mekong Subregion: Exploitation, violence, occupational health risks and injuries' (2016) 11(12) *PLoS ONE* 1-21, K Mansi *How Violence Shaped the Next Generation: Intergenerational Impacts of Abduction in Northern Uganda* (Unpublished Master's thesis, University of San Francisco, 2023) 1-27, T Allen et al 'What happened to children who returned from the Lord's Resistance Army in Uganda?' (2020) 33(4) *Journal of Refugee Studies* 663–683, The Penal Code Act; s 245. Section 245 reads as follows, "Any person who kidnaps or abducts any person in order that such person may be subjected or may be so disposed of as to be put in danger of being subjected to … slavery, … commits a felony and is liable to imprisonment for fifteen years."

[80] The Penal Code; s 249.

any person who enslaves another.[81] Section 249 of the Penal Code Act extends the ambit of criminal liability to any person who plays a part in the commission of slavery. This serves as a deterrent to even assisting another in the enslavement of a person. This provision indicates the broad-mindedness of the legislature, as the worst forms of child labour involve activities that usually cannot be undertaken by an individual, alone, but require the assistance of other people. Hence, any law that is promulgated to eradicate the worst forms of labour must take cognisance of the context in which such activities take place and the logistical aspects involved in the commission of such crimes.[82] The Penal Code Act also endorses criminal liability against anyone who induces another person to become a slave, with a sentence of ten years' imprisonment.[83]

Section 131 of the Penal Code enforces criminal liability against any person who procures or attempts to procure a girl for the purpose of sexual exploitation.[84] As specific reference is made to girls, boys are excluded from the protection of the provision. Section 133 of the Penal Code seeks to protect girls from sexual harassment in the workplace.[85] Once again, boys are excluded from the ambit of protection under this legislation. In terms of the Penal Code Act, the boy child would be confined to using provisions in the Penal Code Act that criminalise defilement[86] and indecent assault, as any form of sexual abuse would not be defined as sexual harassment.[87]

Thus, boys and girls are not afforded the same protection from sexual exploitation and sexual harassment in the workplace. While the vast majority of victims of sexual exploitation are girls, there is developing trend of sexual exploitation of boys.[88] In

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[81] The Penal Code; s 249. S 249 reads as follows: "any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, commits a felony and is liable to imprisonment for ten years".

[82] PV Sellers & JG Kestenbaum 'Missing in action: The international crime of the slave trade' (2020) 18(2) *Journal of International Criminal Justice* 517–542, V Stoyanova 'United Nations against slavery: Unravelling concepts, institutions and obligations' (2017) 38 *Michigan Journal of International Law* 359-454, J Quirk & B Rossi 'Slavery and marriage in African societies' (2022) 43(2) *Slavery & Abolition* 245–284.

[83] The Penal Code; s 251.

[84] The Penal Code Act; s 131, PM Anderson et al 'An exploratory study of adolescent pimping relationships' (2014) 35(2) *Journal of Primary Prevention* 113–117.

[85] The Penal Code Act; s 133 states: "any person who, being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly suffers any girl under the age of eighteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, commits a felony and is liable to imprisonment for five years".

[86] The Penal Code Act; s 180.

[87] The Penal Code Act; s 190.

[88] JK Adjei & EM Saewyc 'Boys are not exempt: Sexual exploitation of adolescents in sub-Saharan Africa' (2017) 65 *Child Abuse & Neglect* 14-23, S Self-Brown et al 'Individual and parental risk factors for sexual exploitation among high-risk youth in Uganda' (2021) 36(5-6) *Journal of Interpersonal Violence* NP3263-NP3284 DOI

addition, the sexual exploitation of boys may be even more covert then sexual exploitation of girls due to the condemnation and stigma of society.[89] This differentiation between boys and girls under Ugandan law is not aligned with international law, which does not distinguish between boys and girls in the protection against the worst forms of child labour.[90] This differentiation may arise, in the African context, from a cultural perception that girls are more vulnerable than boys and require greater protection.[91] Boys are perceived to possess greater strength and ability, thus they are considered more valuable to Ugandan households as protectors of their homes and the heirs of their household.[92] The research, however, indicates that boys are also exposed to sexual exploitation and sexual harassment and need the same

org/10.1177/0886260518771685, SA Bell 'Young people and sexual agency in rural Uganda' (2012) 14(3) *Culture, Health & Sexuality* 283–296, JS Ssekiwanuka 'A study on child trafficking in Bugiri Town Council, Bugiri district by the National Forum of People Living with HIV/AIDS Networks in Uganda (NAFOPHANU) and Amalgamated Transport and General Workers Union (ATGWU) with support from GLIA through UAC' (2010).

[89] K Goessmann et al 'Characterizing the prevalence and contributing factors of sexual violence: A representative cross-sectional study among school-going adolescents in two East African countries' (2020) 109 *Child Abuse & Neglect DOI org/10.1016/j.chiabu.2020.104711*, H Apperley 'Hidden victims: A call to action on sexual violence against men in conflict' (2015) 31(2) *Medicine, Conflict and Survival* 92–99, GN Ndhlovu & M Mfoafo-M'carthy 'Exploring the culture of silence on child sexual abuse within the family in Zimbabwe: A review of the literature' (2022) 12(5) *African Journal of Social Work* 239-248, Uganda Youth Development Link 'Global Monitoring report on the status of action against CSEC in Uganda' (2011).

[90] Convention 182; Article 3 (a)-(d). The CRC; Article 19, reads as follows: "States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s), or any other person who has the care of the child", N Kyegombe, R Meiksin, S Namakula, J Mulindwa, R Muhumuza, J Wamoyi, L Heise & AM Buller 'Community perspectives on the extent to which transactional sex is viewed as sexual exploitation in Central Uganda' (2020) 20(11) *BMC International Health Human Rights* 1-16.

AK Johnson 'Grooming and child sexual abuse in organizational settings—an expanded role for international human rights law' (2024) 16(1) *Journal of Human Rights Practice* 355–373,

[91] J Parkes et al 'Addressing silences in research on girls' experiences of teacher sexual violence: Insights from Uganda' (2022) 59(2) *Comparative Education* 193–213, R Hanzi *Sexual Abuse and Exploitation of the Girl Child Through Cultural Practices in Zimbabwe: A Human Rights Perspective* (Unpublished Master's thesis, University of Pretoria, 2006) 20-26, E Badoe 'A critical review of child abuse and its management in Africa' (2017) 7 *African Journal of Emergency Medicine* s32-s35.

[92] ME Baloyi & MJ Manala 'Reflections on challenges of preferring the male child in an African marriage – A practical theological observation' (2019) 40(1) *Verbum et Ecclesia DOI org/10.4102/ve.v40i1.1852*, C Ammann & S Staudacher 'Masculinities in Africa beyond crisis: Complexity, fluidity, and intersectionality' (2020) 28(6) *Gender, Place & Culture* 759–768, CR Ezeugwu & O Ojedokun 'Masculine norms and mental health of African men: What can psychology do?' (2020) 6(12) *Heliyon DOI 10.1016/j.heliyon.2020.e05650*, J Beyeza-Kashesya et al 'Not a boy, not a child: A qualitative study on young people's views on childbearing in Uganda' (2010) 14(1) *African Journal of Reproductive Health* 78-79.

protection that is afforded to girls.[93] The unequal protection afforded to girls and not boys by Ugandan law thus impedes the intention of international regulations to protect all children.[94]

6.3.4. THE PREVENTION OF TRAFFICKING IN PERSONS ACT 7 OF 2009

Trafficking of children has been a concomitant to the worst forms of child labour which has resulted in children being abducted and trafficked for the commission of various crimes.[95] Section 2 (n) of the Prevention of Trafficking in Persons Act (hereafter referred to as 'the TIP Act') defines trafficking of persons.[96] The criminal liability is severe for the crime of trafficking as the TIP Act indicates a sentence of life imprisonment for offenders.[97] Section 5 of the TIP Act further indicates the punishment of a death sentence for acts of aggravated child trafficking, which include the utilisation of children in armed conflict, the removal of organs or body part of children for purposes of human sacrifice, the use of children in the commission of crimes, the abandonment of a child outside of Uganda, and the use of a child, their body or their organs for the practice of witchcraft.[98]

The TIP Act also criminalises the assistance and promotion of trafficking. This is indicated in section 6 of the Act, which sanctions 'any person who recruits, transports, harbours or receives a child' in the absence of the parent or guardian's permission.[99] The TIP Act reflects the requirements set out in the UN Trafficking Protocol, which states, in Article 3

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[93] EB Amponsah et al 'Risk and protective factors of commercial sexual exploitation of children and adolescents in sub-Saharan Africa: A systematic review' (2024) 25(4) *Trauma, Violence, & Abuse* 3177-3190, M Moynihan et al 'A systematic review of the state of the literature on sexually exploited boys internationally' (2018) 76 *Child Abuse & Neglect* 440-451, V Josenhans et al 'Gender, rights and responsibilities: The need for a global analysis of the sexual exploitation of boys' (2020) 110(1) *Child Abuse & Neglect* 104291 *DOI org/10.1016/j.chiabu.2019.104291*, EJ Walakira et al 'No place is safe: violence against and among children and youth in street situations in Uganda' (2014) 9(4) *Vulnerable Children and Youth Studies* 334.

[94] C Venkateswarlu & BR Ambedkar 'Protection of children from exploitation and human rights perspective' (2016) 5(12) *Research Journal of Social Science and Management* 138-144, GS Espino 'A new era for the rights of the child: The new "Rome strategy" (2022-2027) (2022) 12(4) *International Visual Culture Review* 1–14, OJ Singh 'International dynamics on the rights of the child' (2018) 22(1) *World Affairs: The Journal of International Issues* 136–151.

[95] A Gearon 'Child trafficking: Young people's experiences of front-line services in England' (2019) 59(2) *The British Journal of Criminology* 481–500, V Mabvurira, Fk Zengeni & R Chigevenga 'Child trafficking and child smuggling in Zimbabwe: Legislation and policy gaps' (2022) 12(1) *African Journal of Social Work* 50-57, JA Quas 'Successful criminal prosecutions of sex trafficking and sexual abuse of minors: A comparative analysis' (2023) 28(3) *Child Maltreatment* 500-516.

[96] The TIP Act; s 2 (n).

[97] The TIP Act; s 4 (n).

[98] The TIP Act; s 5, RE Klabbers 'Human trafficking risk factors, health impacts, and opportunities for intervention in Uganda: A qualitative analysis' (2023) 8(52) *Global Health Research and Policy* 1-19, K Johnson 'Supplying slaves: The disguise of greener pastures: An exploratory study of human trafficking in Uganda trafficking in Uganda' (2019) *SIT Graduate Institute/SIT Study Abroad* 1-46, S Demeke 'A human rights-based approach for effective criminal justice response to human trafficking' (2024) 9(4) *International Journal of Humanitarian Action* 1-13.

[99] The TIP Act; s 6, M Okorie & U Okeja 'Child trafficking in Africa: Reimagining the problem' (2023) 7(64) *Genealogy* 1-14.

(a), that the means utilised for the recruitment of the child is irrelevant for the conviction of trafficking.[100] The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol) goes on to specifically prohibit child trafficking.[101] Section 3 (1)(b) of the Ugandan TIP Act prohibits trafficking of persons generally.[102]

Section 3 (3) of the Act states: 'even if this does not involve any of the means set forth in subsection (1) of this Section', illustrating that it is not necessary to prove that the child was trafficked for the purposes listed in the general prohibition against trafficking in order to convict an offender. The reduced requirements for the conviction of child trafficking makes it easier to prove that child trafficking has occurred. The TIP Act views transport of a child from their home for the purpose of exploitation as adequate evidence of trafficking.[103]

Section 3 (4) of the TIP Act further states that the consent of the trafficked person or the child's parents or guardian is irrelevant.[104] Thus, even if the parents or guardian of the child wilfully consents to the child being trafficked and the child themself consents to be trafficked, it is still an offense constituting aggravating trafficking circumstances in terms of the TIP Act.[105] The TIP Act takes cognisance of the nefarious motives in which child trafficking takes place and recognises that trafficking can occur even if a child is moved to a friend or relative's home or any other person on the pretence of providing the child with care.[106]

Analogously to section 156 of the Penal Code Act, the TIP Act penalises the abandonment of children.[107] This provision seeks to ensure that children are not left vulnerable

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[100] Palermo Protocol; Article 3 (a). Article 3 (a) reads as follows, "…the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

[101] Palermo Protocol; Article 3 (c). Article 3 (c) makes specific reference to the prohibition of child trafficking, , P Olayiwola 'They just have to adopt these conventions': Anti-child trafficking policies and politics in Nigeria' (2022) *Journal of Human Trafficking* 1–11, JA Suchecki 'Remedies for victims of human trafficking under the Palermo Protocol and United Nations basic principles: A case study analysis' (2019) 9(1) *Notre Dame Journal of International & Comparative Law* 126-154, JN Ezeilo 'Achievements of the Trafficking Protocol: Perspectives from the former UN Special Rapporteur on Trafficking in Persons' (2015) 4 *Anti-Trafficking Review* 144-149.

[102] The TIP Act; s 3 (1)(b) states: "recruits, hires, maintains, confines, transports, transfers, harbours or receives a person or facilitates the aforementioned acts through force or other forms of coercion for the purpose of engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, death bondage, forced or arranged marriage".

[103] The TIP Act; s 3 (3).

[104] The TIP Act; s 3 (4).

[105] The TIP Act; s 4.

[106] The TIP Act; s 4 (b) & (c).

[107] The TIP Act; s 6 (i).

and without the protection of their parents or guardians that would render them susceptible to exploitation and harm. Ugandan law places emphasis on the consent of parents and guardians regarding the activities of children: even when a child reaches the lawful age of admission to employment, the TIP Act mandates that parents or guardians consent to the nature, terms and conditions of the employment of the child.[108]

In addition to the trafficking of children, the TIP Act addresses other worst forms of child labour. The TIP Act defines exploitation as including sexual exploitation, forced labour, harmful child labour, debt bondage, slavery or practices that are related to slavery or servitude.[109] While these terms reflect the language of the UN Trafficking Protocol, the definition of exploitation in the TIP Acts extends beyond that of the UN Trafficking Protocol to include acts of exploitation that are of concern in the Ugandan context, such as forced marriages, child marriages, harmful child labour, human sacrifices, the removal of organs or body parts for sale or witchcraft, and dangerous cultural rituals or practices.[110] Section 2 (c) of the TIP Act prohibits debt bondage,[111] while section 2 prohibits forced labour.[112] The TIP Act defines debt bondage and forced labour, which enables the enforcement of the Act against these worst forms of child labour. While the TIP Act does not define servitude or practices that are related to slavery or servitude, it does define and prohibit the act of slavery.[113]

The TIP Act's prohibition of the worst forms of child labour is congruent with international standards. However, the TIP Act has been criticised for failing to clearly define the activities it prohibits. For example, it does not define terms such as "sexual exploitation" and "harmful child labour". The term "harmful child labour" is not defined in subsequent

[108] The TIP Act; s 7(d). section 7 reads as follows: any person who recruits a person below 18 years in any form of employment without the prior knowledge and consent of the parent or guardian of that person about the nature, terms and conditions of the employment commits an offence and shall be liable to imprisonment for five years.'
[109] The TIP Act; s 2(c).
[110] The TIP Act; s 2(d), JD Mujuzi 'Reconciling customary law and cultural practices with human rights in Uganda' (2020) 41(2) *Obiter* 239-256, S Awoniyi 'African cultural values: The past, present and future' (2015) 17(1) *Journal of Sustainable Development in Africa* 1-13, AD Mwaka, J Achan & CG Orach 'Traditional health practices: A qualitative inquiry among traditional health practitioners in northern Uganda on becoming a healer, perceived causes of illnesses, and diagnostic approaches' (2023) 18(4) *PLoS ONE* 1-40, P Bogere & W Eddy 'Child sacrifice in Uganda: adequacy of existing legal provision' (2014) 41 *International Letters of Social and Humanistic Sciences* 92-101.
[111] The TIP Act; s 2(c). Section 2 (c) reads as follows, 'the status or condition arising from a pledge by the debtor of his or her personal services or labour, or those of a person under his or her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied towards the liquidation of the debt'.
[112] The TIP Act; s 2. Section 2 reads as follows, 'all work or service which is extracted from any person under the threat of a penalty, including the threat of any loss of rights or privileges and for which that person has not offered himself or herself voluntarily.'
[113] The TIP Act; s 2 (1). Section 2 (1) reads as follows, 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.

legislation either; however "sexual exploitation" is defined in the Children's Act, as previously discussed.[114] It is submitted that this lack of clarity impedes the identification of these activities and the enforcement of these prohibitions, as this is left to the subjective judgement of labour inspectors.

In addition, the Ugandan Constitution states in Article 28(12) that a person cannot be convicted of a crime unless it is defined. The lack of definition of criminal acts in the TIP Act could thus hamper the prosecution of these crimes.[115] Consequently, it is submitted that these terms that lack definitions would require interpretation to determine the meaning of these activities. This is an unnecessary legal route that has to be taken that creates a burden on the existing lack of resources that Uganda possesses.

6.3.5. THE CHILDREN'S ACT CAP. 59 2016

The Children's Act is considered Uganda's most comprehensive legislation addressing the rights of children.[116] The Children's Act gives effect to international standards by entrenching the principle of the 'best interests of a child'.[117] The Children's Act aligns with the Ugandan Constitution in its definition of a child as any person under 18 years of age.[118] The Act enumerates the rights to which children are entitled, providing a foundation on which the protection of children against child labour can be constructed.[119]

Section 8 of the Children's Act prohibits children from engaging in hazardous employment that could be harmful to their development or interfere with their education.[120] Section 8 (3) elucidates that harmful and hazardous employment includes 'slavery, trafficking in persons, debt bondage and other forms of forced labour, forced recruitment for use in armed

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[114] The Children's Act; s 8 (A).
[115] K Fitzgibbon 'Modern-day slavery? The scope of trafficking in persons in Africa' (2003) 12(1) *African Security Review* 81-89.
[116] Mugabi & Kamya (note 24 above; 38-58), Chirwa (note 25 above; 117-144), M Olafsen et al 'Examination of the roles and capacities of duty bearers responsible for protecting the human rights to adequate food, nutritional health and wellbeing in Ugandan children's homes' (2018) 18(17) *BMC International Health Human Rights* 1-14.
[117] The Children's Act; s 3, SN Mukasa *Applying the Principle of the Best Interests of the Child in Inter-Country Legal Guardianship and Adoption Matters: Experiences of the Family Court in Uganda* (Unpublished Master's thesis, International Institute of Social Sciences, 2013) 20-38, JM Pobjoy 'The Best Interests of the Child principle as an independent source of international protection' (2015) 64(2) *International and Comparative Law Quarterly* 327-363, Uganda Human Rights Commission 'Assessment of the compatibility of Ugandan legislation with the Convention on the Rights of the Child' (2017) 1-96.
[118] The Children's Act; s 5 (3).
[119] R Nahabwe *National Child Labour Policies and Child Development in Masindi District, Western Uganda* (Unpublished Master's thesis, Uganda Management Institute, 2019) 29.
[120] The Children's Act; s 8.

conflict, prostitution, pornography and illicit activities'.[121] However in terms of section 8 of the Employment of Children's Regulations the Minister of Labour is permitted to introduce regulations that would allow children 12 years and older who are enrolled in educational/apprenticeship programs to engage in hazardous work.[122] This vitiates the intention of legislation that seeks to protect children from hazardous work and violates ILO Convention 182, Article 3 which protects children from hazardous child labour.[123] It is submitted that this contradictory approach to the eradication of child labour contravenes the best interests of a child principle as upheld in the Ugandan Constitution, as the undertaking of hazardous child labour undermines the rights that the Ugandan Constitution and subsequent legislation afford children.

The Anti-Pornography Act of 2014 works contemporaneously with the Children's Act as it prohibits child pornography.[124] The Children's Act seeks to address the gaps created by the lack of definitions in other child legislation regarding terms related to child labour. Section 8 (A) of the Children's Act proscribes the sexual exploitation of children.[125] The clarity provided by the Act facilitates enforcement.[126] Section 8 imposes a punishment of 5 years imprisonment or a fine of 100 currency points for the offense of sexual exploitation of children.[127]

The Children's Act views child trafficking as a form of child exploitation.[128] However the definition of child trafficking proves problematic as it requires evidence of the

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[121] The Children's Act; s 8 (3).

[122] The Employment (Employment of Children's Regulations) Act 17 of 2012; s 8, US Department of Labor, Bureau of International Labor Affairs Findings on the Worst Forms of Child Labor – Uganda (2021) available at: *https://www.dol.gov/agencies/ilab/resources/reports/child-labor/uganda,* accessed 14 September 2024, A Businge et al 'The role of apprenticeship in improving the livelihood of HIV-positive adolescents who prematurely drop out of school: The Mildmay Uganda experience' (2016) 7(12) *Journal of AIDS & Clinical Research* 1-4, A Stuckrath 'Child poverty and child labor in Cambodia and Uganda: Degree, impact and policies' (2023) 14(2) *Global Majority E-Journal* 106–118.

[123] M Kibukamusoke *A Critical Analysis of Child Labour and Human Resource Development in Uganda* (Unpublished Doctoral thesis, Nelson Mandela Metropolitan University, 2010) 8–10, M Kabasiita *Combating Child Labour in Uganda: Challenges and Prospects from a Development Perspective Case Study, Kisenyi Slum, Kampala District* (Unpublished Master's thesis, University of South Africa, 2009) 3–14.

[124] The Anti-pornography Act 2014; s14.

[125] The Children's Act; s 8 (A) states: a "Inducement or coercion in the encouragement of a child to engage in any sexual activity; b. Children in prostitution or other unlawful sexual practices; and c. Children in pornographic performances or materials."

[126] R Solomon 'Intolerable acts: An analysis of the law relating to online child pornography in Uganda' (2016) 10 *Pretoria Student Law Review* 124-142.

[127] The Children's Act; s 8.

[128] The Children's Act; s 1 (i), O Favour 'Child trafficking in Uganda' (2020) *Policy Brief: Irish Centre for Human Rights* 8-10, L Kiss et al 'Violence, abuse and exploitation among trafficked women and girls: A mixed-methods study in Nigeria and Uganda' (2022) 22(1) *BMC Public Health* 1-15, J Nakaiza 'Surviving human trafficking: A case for strengthening the escape routes adopted by victims of trafficking in Uganda' (2021) 7(3) *African Human Mobility Review* 26-37.

means used to traffic the child.[129] Additionally, the Children's Act is silent on whether the consent of the victim or the parents or guardians nullifies the conviction of child trafficking. The requirement of the means used to traffic a child places a stringent burden to prove that child trafficking has occurred. This requirement is also contrary to the provisions promulgated by the Palermo Protocol and the TIP Act,[130] as previously discussed. The Children's Act and the TIP Act thus use different standards for determining whether child trafficking has occurred. This introduces uncertainty about which Act to follow in the prosecution of child trafficking. Additionally, the TIP Act indicates a life sentence for child trafficking and a death sentence in aggravated child trafficking circumstances,[131] while the Children's Act punishes sexual exploitation of children, which falls under child trafficking, with no more than 7 years imprisonment or a fine that does not exceed 168 currency points.[132] It is submitted that this results in the unequal enforcement of the laws that would result in some offenders being given lighter punishments as compared to other offenders.

Uganda's response to child trafficking is thus characterised by inconsistencies that introduce confusion in the prosecution of child trafficking.[133] Moreover, even though Uganda has signed the Palermo Protocol, it has yet to ratify and implement the Protocol on the national level. Without this, the Protocol plays merely an advisory role in Uganda's implementation of apply anti-trafficking laws: there is no obligation on Uganda's part to comply with all the provisions in the Protocol.[134] Consequently, children in Uganda are rendered vulnerable in the absence of an international framework that addresses the protection of children.[135] Moreover, Uganda has not ratified the East African Counter-Trafficking in

[129] The Children's Act; s 1 (o) states: "recruitment, transportation, transfer, harbouring or receipt of a child by means of threat or use of force or other forms of coercion, abduction or fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation."
[130] The TIP Act; s 7 (d).
[131] The TIP Act; s 4 & 5.
[132] The Children's Act; s 7(3).
[133] CH Vhumbunu 'Combating human trafficking in the Southern African Development Community: Strategies, challenges, and opportunities' (2020) 42(2) *Strategic Review for Southern Africa* 179-203, M Okorie & U Okeja 'Child trafficking in Africa: Reimagining the problem' (2023) 7(64) *Genealogy* 1-14, RA Mavunga 'Bring back our innocence'. Protecting children from commercial sexual exploitation: a case study of three African countries' (2020) 35(2) *South African Public Law DOI 10.25159/2522-6800/4515.*
[134] Ministry of Internal Affairs 'National Action Plan for Prevention of Trafficking in Persons in Uganda 2019-2024' (2020) 5-7.
[135] EJ Walakira, B Bukenya & I Dumba-Nyanzi 'Child trafficking in Kampala, Igangaand Moroto Districts' (2016) *IRACT Project Final Evaluation Report* 4-8, P Bradfield 'International criminal accountability for trafficking in persons' (2021) *Policy Brief: Irish Centre for Human Rights* 4-11, L Trampe 'Current international and transnational criminal law in Africa –Practice, challenges and prospects' (2023) 6(1) *East African Journal of Law and Ethics* 42-48.

Persons Bill that was approved in 2016 by the East African Legislative Assembly.[136] This impedes efforts at international, regional and national level to combat child trafficking.[137]

A key objective of this study is the assessment of the enforcement of child labour laws. In Uganda, the Ministry of Gender, Labor, and Social Development (MGLSD) is mandated to ensure the successful implementation of child labour laws. Labour officers and local councils are regarded as pivotal role players in the enforcement of child labour laws. However, the number of labour officers is inadequate to accommodate the needs of the entire labour force.[138] Uganda has employed more labour officers to cover its 135 districts, but they lack funding to regularly carry out child labour inspections[139] The capacity to monitor employment within the formal sector is limited due to this situation, and the informal economy cannot be easily monitored to prevent exploitation.[140] Having insufficient manpower to implement child labour law is a significant impediment to addressing child labour in the country.

Labour inspectors in Uganda are given the authority to enter private residences and farms in order to monitor child labour violations. This authority is seldom invoked, however.[141] Moreover, trade unions have reported that labour inspectors only investigate matters when they receive a complaint rather than conducting random investigations.[142] Considering that the restricted access of labour inspectors to private property has been a chief hurdle in conducting inspections that would secure convictions of child labour violators (as discussed in Chapter Five), it is unfortunate that the labour inspectors in Uganda neglect to utilise this authority for the benefit of children who engage in child labour. However, given the obstacle of a lack of manpower to conduct investigations, the authority of unrestricted access to enter private property and farms renders inconsequential as even if labour inspectors were willing to conduct random investigations there is simply insufficient inspectors to undertake this task.[143]

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[136] O Favour 'Human trafficking in Uganda: Law, policy and practice' (2019) *Policy Brief: Irish Centre for Human Rights* 1-21.
[137] RB Bernard 'The regional regulation of child labour laws through harmonisation within COMESA, the EAC and SADC' (2023) 23 *African Human Rights Law Journal* 48-74.
[138] Government of Uganda *Performance Report on Countering Trafficking in Persons in Uganda* (2018).
[139] US Department of labor *2021 Findings on the Worst Forms of Child Labor- Uganda* (2021) 6.
[140] K Robinah 'The informal economy and the law in Uganda' (2022) 24-25.
[141] US Department of labor 2022 Findings on the Worst Forms of Child Labor- Uganda (2022) 4-7.
[142] Ibid.
[143] Ibid.

In Uganda, labour inspectors do not fall under the MGLSD, in the way that, in South Africa, they fall under the Department of Labour, which oversees the enforcement of child labour laws across the entire country. Instead, labour inspectors in Uganda fall under the district government.[144] In 1997, Uganda implemented a decentralised process of governance which provides that the development and enforcement of services would be devolved to the district, municipal and sub-county levels. This ensures that local government plays a key role in the enforcement of law through operational plans.[145] Labour inspectors play an instrumental role in the monitoring and evaluation of labour compliance at the district level. While many provisions of the Children's Act are intended to be implemented by the MGLSD the departments under the MGLSD, these institutions do not have adequate resources and do not function efficiently.[146]

Again, conflict within the legislative framework impedes enforcement: while the Employment Act requires labour inspectors to submit monthly reports to the MGLSD, because the district government authorities and the MGLSD are separate entities, these reports are not sent to the MGLSD.[147] As a result of inadequate resources and funding, as well as poor investigative mechanisms, very few cases are brought before the Industrial Court, with the result that few child labour offenders are convicted.[148]

The MGLSD is not the only department that would benefit from review. In response to the prevalence of child rights violations, the government instituted a Child and Family Protection Unit (CFPU) as part of the police force. [149] Despite the good intentions behind the creation of the Unit, it is so inadequately resourced that its effectiveness is severely restricted.[150] This impedes the ability of the unit to investigate child labour complaints and to generate accurate statistics pertaining to child labour violations.[151]

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[144] S Nalubega *A Critical Analysis of the Causes of Child Paid Labour in Uganda. A Case Study of Kampala District* (Unpublished Master's thesis, University of Kampala International University, 2015) 53.
[145] International Labour Organization *Uganda: National Research Agenda: Building the Evidence Base for Informed Policy Action against Child Labour, Forced Labour, and Human Trafficking* (2022) 1-8.
[146] J Mendeloff 'Human resource practices for labor inspectorates in developing countries' (2014) *RAND Center for Health and Safety in the Workplace* 4-5.
[147] F Aloo *Examining Child Protection against Exploitation of Child Domestic Workers (CDWs) A case of Kampala, Uganda* (Unpublished Master's thesis, International Institute of Social Sciences, 2020) 2-4.
[148] Ministry of Gender, Labour and Social Development 'Labour Market Information Status Report for Uganda' (2006) *LMIS Project* 6-18.
[149] ML Munu 'Research on Informal Workers and Social Dialogue Uganda' (2019) 13-18.
[150] Makerere University Department of Social Work and Social Administration 'Systematic Review of Child Protection Case Management Data in Selected Districts in Uganda' (2020) *Final Report* 2-8.
[151] US Department of Labour (2012).

In an attempt to lessen the burden on inspectors and the formal judicial structure, Local Council Committees have been developed to assist in addressing children's rights pertaining to employment.[152] These committees serve as quasi-judicial bodies, however the effectiveness of these committees is questionable as they are informal committees without an expert understanding of child labour law.[153] Thus it is submitted that without precise definitions regarding concepts such as harmful child labour, hazardous work and the lawful age of employment the ability to enforce justice is limited.

6.4. POLICIES IMPLEMENTED TO ERADICATE CHILD LABOUR

6.4.1. NATIONAL POLICY ON THE ELIMINATION OF CHILD LABOUR.

The National Policy on The Elimination of Child Labour (hereafter referred to as 'the Child Labour Policy') was instituted in 2006 to support the eradication of child labour in Uganda.[154] The Child Labour Policy seeks to deal with the underlying issues that drive child labour through strategic programs, legislative structures and social initiatives aimed to inculcate an awareness of the harmfulness of child labour in society.[155]

One of the aims of the Child Labour Policy is raising community awareness about child labour, implementation of programs to reduce poverty with education being a pivotal aspect of the strategy, the cooperation between relevant role players such as NGOs, government departments and other agents to assist the MGLSD in combating child labour.[156] It also addresses the procurement of facilities to serve as temporary safe places that would also provide educational assistance to children who have been withdrawn from child labour.[157] The Child Labour Policy also endeavours to tackle areas of poor service delivery in terms of the basic rights afforded to citizens.[158]

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[152] AR Katahoire et al 'Improving child survival through a district management strengthening and community empowerment intervention: early implementation experiences from Uganda' (2015) 15:797 *BMC Public Health DOI 10.1186/s12889-015-2129-z*

[153] A Skelton & M Batley 'A comparative review of the incorporation of African traditional justice processes in restorative child justice systems in Uganda, Lesotho and Eswatini' in T Gavrielides (ed*) Comparative Restorative Justice* (2021) 245-264.

[154] Ministry of Gender, Labour and Social Development 'National Child Labour Policy' (November 2006) 23, available at *http://www.mglsd.go.ug.wp-content/uploads/2013/07/policies/National% 20CHILD%LABOUR% 20POLICY.pdf*, accessed 10 November 2020.

[155] Global March Against Child Labour 'Ending Child Labour and Ensuring Education in Uganda: A National Overview for Taking Action' (2017) 1-19.

[156] Ministry of Gender, Labour and Social Development 'Launch and operationalize the Uganda National Action Plan (NAP) for the elimination of child labour (2020/2021 – 2024/2025) (2021)' 2-3.

[157] Uganda Bureau of Statistics *Child Labour Report: The National Labour Force and Child Activities Survey 2011/12* (2013) 62-69.

[158] M Guloba, S Ssewanyana & E Birabwa 'A Pathway to Social Protection Development in Uganda: A Synthesis Report' (2017) 5-6.

The National Steering Committee on Child Labour and the Child Labour Unit have been established to facilitate programs in line with the Child Labour Policy.[159] The National Steering Committee on Child Labour works auxiliary to the MGSLD, while the Child Labour Unit operates under the authority of the MGSLD. Both committees are tasked with overseeing policies and their effective implementation.[160] While the Child Labour Policy is not legally binding, the MGSLD is mandated to ensure the successful implementation of the Child Labour Policy. Thus, the MGSLD is required to working toward the goals set out in the Child Labour Policy.[161]

6.5. COMPARATIVE ANALYSIS BETWEEN CHILD LABOUR LEGISLATION IN UGANDA AND SOUTH AFRICA

Child labour is prevalent in poorer countries due to the failure of these countries' governments to successfully address the issues that give rise to child labour—such as disease and poverty—and their failure to combat child labour through laws and enforcement mechanisms.[162] Uganda and South Africa face similar challenges, in this regard. Both experience high levels of poverty, disease and a lack of the necessary financial and other resources necessary to enforce child labour laws.[163]

The constitutions of both countries mandate the protection of children against child labour and invoke the principle of the best interests of a child,[164] which necessitates that all laws and the enforcement of these laws must afford children pre-eminence by adopting a child-centred approach in all matters pertaining to children.

At the same time, both countries are rich in African cultural heritage; with this comes traditions and practices that have their own perspectives on the roles and rights of children in society.[165] African culture typically views the undertaking of work by children as

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[159] R Nahabwe *National Child Labour Policies and Child Development in Masindi District, Western Uganda* (Unpublished Master's thesis, Uganda Management Institute, 2019) 17-32.
[160] Ibid.
[161] Ibid.
[162] WM Tarinyeba 'Poverty trade and child labour in the developing world: An analysis of efforts to combat child labour in Uganda' (2007) 31(2) *East African Journal of Peace and Human Rights* 299.
[163] L Guarcello et al 'Understanding children's work in Uganda: Country report' (2009) 13.
[164] Ugandan Constitution; Article 34; The South African Constitution; s 28(2).
[165] W Mucherah & T Mbogori 'Examining child development from an African cultural context' (2019) 1(1) *Global Journal of Transformative Education* 12, C Agulanna 'Community and human well-being in an African culture' (2010) 14(64/59) *TRAMES* 284, R Maconachie & G Hilson 'Re-thinking the child labor "problem" in rural sub-Saharan Africa: The case of Sierra Leone's "half shovels"' (2015) 78 *World Develoment Report* 136-147, A Murovhi et al 'Traditional child rearing practices in Vhavenda families South Africa' (2018) 7(1) *Jounral of Gender, Information & Development in Africa* 31.

important for socialisation and preparation for adulthood.[166] This differs significantly from western culture, that asserts that childhood is a period of time for a child to play and not undertake the responsibilities of adults.[167] In light of this backdrop, the child labour laws that are promulgated by Uganda and South Africa illustrate the cognisance of the values enshrined in the African culture by affording children more opportunity to undertake work in accordance with African societal norms. What is considered inappropriate child labour in African culture may differ significantly from western culture and from the definitions and understandings articulated in international laws.[168] The child labour legislation in Uganda and South Africa is indicative of this contrast.

Uganda and South Africa thus share the challenge of balancing cultural values concerning childhood with adherence to international law. Their response to this can be seen in the open-ended manner in which their legislation defines some concepts, allowing a more flexible approach to addressing child labour that allows children to engage in activities that are considered appropriate by their society. For example, both Uganda and South Africa refrain from strictly defining 'child labour'. The legislation of both countries only gives guidelines for what may constitute child labour. The lack of precise definition and barometers creates more room for interpretations of child labour that reflect African cultural traditions.

Labour inspectors and law enforcement cannot be expected to enforce laws that do not provide precise definitions for criminal offences. When guidelines alone are provided to evaluate whether activities constitute child labour, labour inspectors are required to not only enforce the law, but to interpret it. This ambiguity presents an obstacle to the eradication of child labour in Uganda and South Africa.[169] Uganda and South Africa have assimilated the

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[166] GH Graf, P Biroli & DW Belsky 'Critical periods in child development and the transition to adulthood' (2021) 4(1) *JAMA Network Open* 2-3, X Zhang & AM Hammersmith 'Children's transitions to adulthood and midlife parents' depressive symptoms and activities of daily living conditions in the United States' (2023) 20 *International Journal of Environmental Research Public Health* 2, M Bourdillon 'Child labour and education: A case study from South-Eastern Zimbabwe' (2000) 15(2) *Journal of Social Development in Africa* 6.

[167] KD Whitworth 'Western depictions of children and the new imperialism' (2010) *E-International Relations* 1-8, E Schraube & U Osterkamp 'The colonization of childhood: Psychological and psychoanalytical explanations of human development' in E Schraube & U Osterkamp (eds) *Psychology from the Standpoint of the Subject* (2003) 210–230, EA Faulkner & C Nyamutata 'The decolonisation of children's rights and the colonial contours of the Convention on the Rights of the Child' (2020) 28(1) *The International Journal of Children's Rights* 167-169, E Van Daalen & K Hanson 'The ILO's shifts in child labour policy: regulation and abolition' (2019) 11(11) *International Development Policy* 133–150.

[168] EA Faulkner & C Nyamutata 'The decolonisation of children's rights and the colonial contours of the Convention on the Rights of the Child' (2020) 28 *International Journal of Children's Rights* 66-88, A Quennerstedt, C Robinson & J I'Anson 'The UNCRC: The voice of global consensus on children's rights?' (2018) 36(1) *Nordic Journal of Human Rights* 39, F Adebisi 'Decolonising education in Africa: Implementing the right to education by re-appropriating culture and indigeneity' (2016) 67(4) *Northern Ireland Legal Quarterly* 435.

[169] US Department of labor *2022 Findings on the Worst Forms of Child Labor- Uganda* (2022) 6.

international term 'work' to incorporate informal work undertaken by children. This is notable as much of the work undertaken by children is within the informal economy.[170] However, the enforcement of child labour legislation pertaining to the informal economy and the monitoring and supervision of harmful domestic chores within private homes has been found to be inadequate in both countries.[171] A lack of funding to employ and train an adequate number of labour inspectors and law enforcement officers to deal specifically with child labour violations has impeded the enforcement of the law.[172]

In South Africa, labour inspectors do not have the authority to enter private premises of farms and homes.[173] In contrast, in Uganda labour inspectors have the authority to enter private farms and homes but, due to the lack of available manpower or a lack of willingness to do so, these labour inspectors typically do not exercise their authority.[174]

Furthermore, in Uganda labour inspectors are mandated to assess the appropriateness of work undertaken by children in terms of the light work provision without the necessary training to be able to make such an assessment.[175] In South Africa, labour inspectors are also not adequately trained to deal with children who are engaged in child labour.[176] All labour inspectors in Uganda and South Africa are expected to possess comprehensive understanding regarding children, their rights and child labour laws. It is submitted that this unfairly extends the requirements of labour inspectors to perform tasks that social workers are qualified to perform. This is especially unreasonable considering the lack of training that they have been given.

Both countries demonstrate a lack of child-centeredness in their approach to enforcing child labour laws. The lack of child-centeredness can also be noted in the drafting of child labour laws in both countries, where the worst forms of child labour are not engaged explicitly in their constitutions and legislation. Instead, both countries deal with the worst forms

US Department of labor *2021 Findings on the Worst Forms of Child Labor - South Africa* (2021) 4-8, ILO 'Covid-19 and child labour: A time of crisis, a time to act' (2020) 9.

[170] AO Taiwo et al 'Socio-economic, health and environmental aspects of child waste picking activity at Africa's largest dumpsite' (2022) 18(3) *American Journal of Environmental Sciences* 70, JN Ozoh & UM Chinecherem 'Child labour and its determinants in informal sector of Onitsha, Anambra State, Nigeria' (2017) 7(20) *Research on Humanities and Social Sciences* 104, J Arias 'Informal vendors in Johannesburg, South Africa' (2019) 2.

[171] The BCEA, s 65 (2), US Department of labor *2022 Findings on the Worst Forms of Child Labor - Uganda* (2022) 5.

[172] US Department of labor *2022 Findings on the Worst Forms of Child Labor - Uganda* (2022) 6, 4-8.

[173] The BCEA; s 64.

[174] US Department of labor *2023 Findings on the Worst Forms of Child Labor - Uganda* (2023) 3-8.

[175] Ibid.

[176] Ibid.

of child labour in a piecemeal manner.[177] The prohibitions create a general ban that applies to all persons in the country and does not apply to children specifically. They do not indicate that any of these activities constitute worst forms of child labour. By not specifically addressing the worst forms of child labour through the South African and Ugandan Constitutions the best interests of a child principle is not adequately enforced.[178] In terms of the best interests of a child principle as was discussed in detail in this chapter, children are regarded as vulnerable human beings in need of care and protection.[179] They are also regarded as a special class of people in need of special attention when laws are promulgated concerning them.[180] Thus, while Uganda and South Africa enshrine the principle of the best interests of the child in their constitutions, they vitiate the principle by failing to address the worst forms of child labour.[181]

Uganda provides compulsory free education for children and endorses compulsory education until the age of 13.[182] South Africa also affords free education to children but enforces compulsory education until the age of 15.[183] While both countries provide free education, the ancillary costs of attending school make it difficult for children to complete their education; some leave school.[184] Both countries have demonstrated high rate of school drop outs,[185] a lack of ancillary support to poor families to enable children to attend school and the persistence of child labour.[186] Neither country provides support for children to attend school in

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[177] Article 13 of the South African Constitution only refers to forced labour being prohibited but no specific reference is given to children; Ugandan Constitution; Article 25 does not include all the worst forms of child labour.

[178] Ugandan Constitution; Article 34; The South African Constitution; s 28(2), E Bonthuys 'The best interests of children in the South African Constitution' (2006) 20(1) *International Journal of Law, Policy and the Family* 23-43, A Skelton 'Too much of a good thing? Best interests of the child in South African jurisprudence' 2019 *De Jure Law Journal* 557-579, A Moyo 'Reconceptualising the 'paramountcy principle': Beyond the individualistic construction of the best interests of the child' (2012) 12 *African Human Rights Law Journal* 142-177.

[179] The South African Constitution; s 28(2).

[180] The South African Constitution; s 28(2), J Zermatten 'The best interest of the child: Literal analysis, function and interpretation' (2010) 18(4) *The International Journal of Children's Rights* 484-485, A Skelton 'Constitutional protection of children's rights' in E Boezaart (ed) *Child Law in South Africa* (2009) 280, J Tobin 'Justifying children's rights' (2013) 21 *International Journal of Children's Rights* 9, A Moyo 'Reconceptualising the 'paramountcy principle': Beyond the individualistic construction of the best interests of the child' (2012) 12 *African Human Rights Law Journal* 144.

[181] Article 13 of the South African Constitution only refers to forced labour being prohibited but no specific reference is given to children; Ugandan Constitution; Article 25.

[182] The Education Act; s 10.

[183] The South African Schools Act 84 of 1996; 3(1).

[184] S Coetzee & R Mienie 'The 'best interests of a child' standard in education: An overview of South African case law' (2014) 29(1) *Southern African Public Law* 93-95, see also JM Reyneke *The Best Interests of the Child in School Discipline in South Africa* (Unpublished Doctoral thesis, Tilburg University, 2013).

[185] J Nabugoomu 'School dropout in rural Uganda: Stakeholder perceptions on contributing factors and solutions' (2019) 8(5) *Education Journal* 185-195, R Desai et al 'Understanding why youth drop out of school in South Africa' (2024) 14(1) *Sage Open DOI 10.1177/21582440231219080*.

[186] V Chikoko & P Mthembu 'The impact of poverty on basic education in South Africa: A systematic review of literature' in F Maringe (ed) *Systematic Reviews of Research in Basic Education in South Africa* (2021) 74-75, BL Mmutle *Determinants of School Dropout in the North West Province* (Unpublished Doctoral thesis, North-

the form of transportation, uniforms and stationary. Children who are not in school and are confronted with the challenge of poverty may have no option but to seek work.[187] This, in turn, will exacerbate the prevalence of child labour and create opportunities for employers to exploit children. The constitutions of both Uganda and South Africa make explicit reference to participation in education as a factor that is used to determine whether a child is engaged in child labour. It is thus inadequate for a government to only provide free basic education if children do not have the physical or financial ability to attend school.

While Uganda has established institutions to which child labour and child rights violations can be reported, there is no explicit legal obligation for professionals or the general public to report violations.[188] South Africa, on the other hand, enforces mandatory reporting of sexual exploitation of children by health care professionals but does not make it mandatory for the general public to report such violations.[189] Although sexual exploitation falls into the category of the worst forms of child labour, the mandatory reporting does not apply to child labour generally and the other worst forms of child labour.

Thus, it can be concluded that neither South Africa nor Uganda have an adequate and mandatory reporting system for child labour violations. Given that both countries lack the manpower to conduct random inspections of workplaces, a robust reporting structure would assist these countries in the identification of child labour violations. Considering that Uganda and South Africa have defined the term 'work' as include domestic work that could constitute child labour, mandatory reporting could improve the detection of child labour violations.

The analysis of child labour law and enforcement in Uganda yields several pertinent lessons for South Africa. In Uganda, in terms of section 3(c) of the Education Act if a child leaves school before completing compulsory primary education at the age of 13, an alternate means of education must be provided to the child. Even though this initiative has not

West University, 2019) 3-4, AS Mambi *Implementation of the Child Labour Policy in South Africa* (Unpublished Master's thesis, University of Witwatersrand, 2016) 11.

[187] IB Omoniyi *The Impact of Household Poverty Trap on Learners' Academic Performance In Nongoma Secondary Schools in the Zululand District* (Unpublished Doctoral thesis, University of Zululand, 2021) 2 , M Bhat, J Joshi & I Wani 'Effect of socio economic status on academic performance of secondary school students' (2016) 3(4) *International Journal of Indian Psychology* 33, MJ Nortje 'The effect of poverty on education in South Africa' (2017) 1(1) *Educor Multidisciplinary Journal* 49.

[188] UNICEF 'The status of the child protection system in Uganda: Child protection system's mapping report' (2013) 6.

[189] Criminal Law (Sexual Offences and Related Matters) Act; s 54(1)(a) & (b) states: "(1) (a) A person who has knowledge that a sexual offence has been committed against a child must report such knowledge immediately to a police official. (b) A person who fails to report such knowledge as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment."

successfully been implemented in Uganda, it is submitted that South Africa can learn from the concept of alternative schooling and build on it. It is submitted that this approach to accommodate children who are compelled to leave school positively influences the sustainability of the country and encourages children to continue their basic education thus ensuring that more children are afforded the opportunity to study and that the value of education to advance the country is not impeded. This approach might benefit children in South Africa who are compelled to leave school to engage in work.

Another approach used in Uganda that could benefit South Africa is that the legal age for the admission of employment is set at 12 years in terms of section 32 of the Education Act. While I do not propose that South Africa lower the minimum age of employment to 12, I suggest that South Africa consider a lower age than the current minimum age of employment, which is 15. This suggestion has been discussed in Chapter Five and will be fully detailed in Chapter Ten. This correlates with Uganda's policy of allowing children below the age of 14 to undertake light work. South Africa has not included the possibility of children undertaking light work even though it is a possibility for developing countries. In South Africa, these approaches could help to accommodate children who are compelled to work while affording them the protection of the law as their work would be legally permitted.

South Africa could also draw valuable insight from the manner in which Uganda implements its child labour prohibitions. Uganda has a decentralised governance which entails that enforcement of child labour law is carried out at the municipal and district level. In South Africa, the Department of Labour could be decentralised in its operations with an office dedicated to child labour issues. In Uganda, labour inspectors are required to report on their investigations regarding child labour violations. This is a pivotal aspect of the enforcement of child labour prohibitions. Introducing mandatory reporting of investigations in South Africa would mandate that labour inspectors conduct investigations on child labour violations. Labour inspectors in Uganda are given the authority to enter into private dwellings of people to conduct investigations regarding child labour violations. Adopting this approach in South Africa would enhance the authority of labour inspectors to conduct investigations. This is pertinent to the success of the effective implementation of child labour prohibitions, particularly where domestic chores could encompass child labour.

Uganda implements child labour programs through the Child Labour Policy. This approach could be effective in South Africa to create awareness of child labour within communities, work places and children. As Uganda's Child Labour Policy has been successful,

it could serve as a model for South Africa to develop and implement policies on the eradication of child labour.

These recommendations are discussed in depth in Chapter Ten.

6.6. CONCLUSION

This chapter has provided a detailed analysis of the child labour laws in Uganda. It has also illustrated the differences between child labour legislation in Uganda and South Africa. The analysis has demonstrated that Uganda has promulgated copious legislation for the protection of children and, especially, for the prevention of child labour. It is, however, evident from current statistics that child labour continues to be a significant problem in Uganda. Cultural beliefs and practices in Uganda do not always align the western perceptions of childhood and child labour which impedes the implementation of universally accepted concepts pertaining to child labour. This suggests that a more pragmatic approach to child labour is needed that reflects the values and practices of African societies (as discussed in Chapter Three).

The lack of adequate monitoring by labour inspectors is an obstacle to the eradication of child labour. This requires intervention from government and is beyond the role of legislators. Legislation alone cannot eradicate child labour, as child labour is a result of socio-economic impediments that require the support of government and society to effectively implement and uphold child labour law. While national government is responsible for promulgating legislation, local government must implement and enforce the law. Irrespective of how comprehensive child labour law is, if the systems and resources required for the implementation of these laws are inadequate then the purpose of the laws will not be achieved.

While Uganda does not specifically address all worst forms of child labour in its legislation, it does deal specifically with child trafficking. There are loopholes in this legislation, however; this can provide a learning opportunity for South Africa.

Uganda has lowered of the legal age for employment which is aligned with the international standards endorsed by the Minimum Age Convention 138 of 1973. This indicates that Uganda recognises the reality that children undertake work from a younger age in African cultures.

The evaluation of Uganda's child labour legislation highlights areas that developing countries can take note to improve their own legislation and the enforcement of their legislation. The lessons that South Africa can extrapolate from Uganda's efforts to eradicate child labour are discussed in detail in Chapter Ten.

Chapter Seven will discuss the how the United States of America addresses child labour through its legislation.

CHAPTER SEVEN: CHILD LABOUR IN THE UNITED STATES OF AMERICA

7.1. INTRODUCTION

7.2. HISTORY OF CHILD LABOUR IN THE UNITED STATES OF AMERICA

7.3. FEDERAL LEGISLATION GOVERNING CHILD LABOUR IN THE USA

7.3.1. THE FAIR LABOUR STANDARDS ACT OF 1938 (FLSA)

7.3.2. CHILDREN'S ACT FOR RESPONSIBLE EMPLOYMENT OF 2013 (CARE ACT)

7.4. STATE LAW ON CHILD LABOUR IN THE USA

7.5. CONCLUSION

7.1. INTRODUCTION

This chapter provides a comprehensive understanding of the legislation that governs child labour in the United States of America (USA). Both federal law and state laws are in effect in the individual states of the USA.[1] This legal system is unique to the USA. Federal law provides national regulation; in addition, each state enacts state laws for its own jurisdiction.[2] This chapter discusses both federal and relevant state laws that pertain to the regulation of child labour. While there are a range of different regulations regarding child labour across the 50 states of the USA, and the South African context is different to that of the USA, a comparison allows legislative approaches used in the USA that are pertinent to South Africa to be identified. It is not the intention of this study to copy and paste the laws of the USA into South African legislation. Rather, the study makes practical and realistic suggestions to incorporate USA child labour laws into the South African context. The choice of the USA as a comparator was discussed in Chapters One and Two. While it is not possible to discuss the state laws on child labour of all 52 states in the USA within the scope of this dissertation, this chapter highlight aspects that could serve as a model to improve South African child labour legislation.

Additionally, this chapter does not discuss US legislation regarding trade with other countries that employ child labour, as this pertains to legislation that regulates child labour in these respective countries and not the legislation that limits child labour in the USA, which is the ambit of this dissertation.

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[1] A Benitez *An Introduction to the United States Legal System: Cases and Comments* (2006) 19.

[2] MNS Sellers 'The rule of law in the United States of America' (2022) 70(1) *The American Journal of Comparative Law* 29-30, JR Lampe & LR Deal 'Federal and State Courts: Structure and Interaction' (2023) 1-2, G Goelzhauser & DM Konisky 'The state of American federalism 2019–2020: Polarized and punitive intergovernmental relations' (2020) 50(3) *The Journal of Federalism* 311-312.

The researcher submits that one of the limitations in researching the USA is that there is a lack of literature regarding commentary and analysis of USA child labour legislation. Thus, the researcher has substantiated assertions about the USA child labour legislation where possible.

7.2. HISTORY OF CHILD LABOUR IN THE UNITED STATES OF AMERICA

The practice of child labour in the USA dates back to the 16th century, at which time Puritan values encouraged hard work as a religious obligation to God.[3] In 1640, the Great Court in Massachusetts instructed that children and servants work from morning to night to avoid illness.[4] Children were regarded as beneficial commodities for completing tasks such as cultivating and sowing seeds, ploughing and felling trees, spinning yarn, building houses, collecting water and feeding livestock.[5]

The Industrial Revolution drastically altered the concept of the child in American society.[6] During the 17th century, the USA engaged in a system called 'pauper apprenticeship' in which children learnt the value of hard work. This system entailed that children would be bound voluntarily by parents or by the courts to work as apprentices to wealthier families.[7] Additionally, the Industrial Revolution caused a surge in the demand for cheap labour to operate machines in mills and factories, which led to the employment of children as young as seven undertaking work for meagre wages under harsh conditions.[8] Before 1830, there was not adequate legislation regarding child labour; the regulations that did exist were not enforced effectively. Thus, child labour continued in line with cultural values that

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[3] L Guanghua 'The influence of Puritanism on the shaping of traditional American values' (2021) 6(4) *International Journal of English Literature and Social Sciences* 223, F Messaoudi *Exploring Puritan Hard Work Ethic in American Exceptionalism* (Unpublished Master's thesis, University Mohamed Khider of Biskra, 2012) 20, N Kang 'Puritanism and its impact upon American values' (2009) 1(2) *Review of European Studies* 150.

[4] R Allen *Holy Children are Happy Children: Jonathan Edwards and Puritan Childhood* (Unpublished Master's thesis, Liberty University, 2016) 6, CM Rosenberg *Child Labor in America: A History* (2013) 4.

[5] TD Warner *A New City upon a Hill: Puritans, Christian Reconstructionist, and Theocracy in America* (Unpublished Master's thesis, Humboldt State University, 2012) 13-14.

[6] PP Groumpos et al 'A critical historical and scientific overview of all industrial revolutions' (2021) 54(13) *IFAC PapersOnLine* 464-471, D Cipriani *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (2009) 5, J Atack, AR Margo & PW Rhode 'Industrialization and urbanization in nineteenth century America' (2022) 94 *Regional Science and Urban Economics* 166.

[7] M Haradhan 'The second Industrial Revolution has brought modern social and economic developments' (2020) 6(1) *Journal of Social Sciences and Humanities* 2, RW Herndon & JE Murray *Children Bound to Labour: The Pauper Apprenticeship in Early America* (2009) 3.

[8] T Jaworski 'World War II and the industrialization of the American South' (2017) 77(4) *The Journal of Economic History* 1050, C Hirschman & E Mogford 'Immigration and the American Industrial Revolution From 1880 to 1920' (2009) 38(4) *Social Sciences Research* 2-3, See also DR Meyer *The Roots of American Industrialization* (2003), J De Vries 'The Industrial Revolution and the industrious revolution' (1994) 54(2) *The Journal of Economic History* 252.

favoured children engaging in work.[9] Formal education was not considered necessary for a child; instead, participation in skilled work was considered to be an adequate education.[10]

Only towards the latter part of the 19th century did society begin to view child labour negatively, and a movement to protect children emerged.[11] In 1924, members of Congress proposed an amendment to the Constitution of the USA that would afford Congress the right to pass regulations on child labour to prevent the exploitation of children. However, this effort proved futile as only six of the 36 states at the time voted in favour of the amendment.[12]

During the Great Depression of the 1930s child labour burgeoned, resulting in children working under sweatshop conditions once again. Child labour activists mounted protests against these practices, which encouraged 14 other states to vote for the amendment to the Constitution to regulate child labour.[13] While the Senate passed the amendment, it could not be ratified due to a lack of consensus.[14]

The gap in legislation regulating child labour in the USA was filled in 1938 when the Fair Labour Standards Act of 1938 was passed. This remains the predominant legislation that governs child labour in the USA. As the Constitution of the USA makes no provision for the regulation of child labour, it will not be discussed in this chapter; rather the discussion will focus on the Fair Labour Standards Act of 1938.

7.3. FEDERAL LEGISLATION GOVERNING CHILD LABOUR IN THE USA

7.3.1. THE FAIR LABOUR STANDARDS ACT OF 1938 (FLSA)

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[9] A Radfar et al 'Challenges and perspectives of child labor' (2018) 27(1) *Industrial Psychiatry Journal* 17, M Schuman 'History of child labor in the United States—part 2: The reform movement' (2017) *January Monthly Labor Review* 1-24.

[10] ME Miller 'Child labor and protecting young workers around the world. An introduction to this issue' (2010) 16 *International Journal of Occupational Environmental Health* 104-105, CM Rosenberg *Child Labor in America: A History* (2013) 183.

[11] ME Wood *Emancipating the Child Laborer: Children, Freedom, and the Moral Boundaries of the Market in the United States, 1853–1938* (Unpublished Doctoral thesis, University of Chicago, 2011) 115, JD Schmidt *Industrial Violence and the Legal Origins of Child Labor* (2010) 170.

[12] B Gratton & J Moen 'Immigration, culture, and child labor in the United States, 1880-1920' (2004) 34(3) *The Journal of Interdisciplinary History* 358, HD Hindman *Child Labor: An American History* (2002) 25.

[13] HD Samuel 'Troubled passage: The labor movement and the Fair Labor Standards Act' (2000) December *Monthly Labor Review* 35-36.

[14] United States Department of State Bureau of International Information Programs *Outline of the U.S. Legal System* (2004) 7-8.

The Fair Labour Standards Act of 1938 (FLSA) is a federal child labour law and this applies to the entire USA.[15] In conjunction with the child labour regulations endorsed by the United States Department of Labour, the FLSA regulates child labour comprehensively across the USA. States are encouraged to enact additional legislation to govern child labour within their jurisdiction. In the event of state legislation and the FLSA conflicting, the law that affords child workers greater protection should always be prioritised.[16]

Scholars have asserted over the years that the main factor that contributed to the successful decrease of child labour during the period 1880 to 1940 was not only the enactment of FLSA, but economic factors such as increased family income due to economic growth that gave parents the option of not having to send their children to work to provide for the household.[17] The development of formal schooling also contributed to the decline in child labour as legislation making education compulsory began to take shape across the USA.[18] Industrialisation may have also led to a decline in the child labour rate as the demand for working children dropped as machinery required skilled labour.[19]

The primary aim of the FLSA was not to impose an outright ban on child labour but, rather, to regulate the conditions of work for working children and to afford them rights while they undertook work.[20] The FLSA contains four provisions that prohibit and discourage child labour.[21] Section 12 (a) contains two provisions that prohibit oppressive child labour.[22] Section 12 (c) contains two provisions that discourage the use of oppressive child labour in commerce in the non-agricultural sector.[23] Oppressive child labour, in terms of the FLSA,

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[15] JR Lampe & LR Deal 'Federal and State Courts: Structure and Interaction' (2023) 1-2, MS Zubrow 'Researching U.S. federal law: A primer' (2020) 20(3) *Legal Information Management* 158-175.

[16] 29 U.S.C. §218(a) provides, in relevant part, that "no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter."

[17] YM Tripathi 'Protection of child rights with special reference to child labour in India and United States of America: A comparative analysis of prevailing laws' (2023) 9(4) *International Journal of Legal Developments & Allied Issues* 49.

[18] M Beno *Implications of the Industrial Revolution for Higher Education* (*Conference paper, 2019, Conference Take 2019*) 1-13.

[19] Becker et al 'Education and catch-up in the Industrial Revolution' (2011) 3(3) *American Economic Journal: Macroeconomics* 93.

[20] F Fozia 'Comparative analysis of national and international approaches and acuities of child labour within UK, USA, India and Pakistan' (2016) 4(18*) American Journal of Educational Research* 1273.

[21] The FLSA; s 12(a) & (c).

[22] The FLSA; s 12 (a) states: "No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce."

[23] The FLSA; s 12(c) states that: "No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed."

constitutes the employment of youth under 16 years of age in any occupation, and the employment of youth under 18 years of age in any hazardous occupation.[24]

The FLSA distinguishes only between agricultural and non-agricultural employment and does not mention the formal sector, informal economy or domestic chores.[25] Accordingly, this discussion will follow the distinction between agricultural and non-agricultural sectors. The FLSA provides different regulations and minimum age requirements for children working in agricultural and non-agricultural employment.[26] The regulations for children working in agriculture are less stringent than those for children working in non-agricultural fields of employment: the FLSA permits children under 12 years of age engage lawfully in agricultural work for any number of hours or days. The Act thus fails to protect children of the most vulnerable ages.[27]

Section 12 (a) and (c) of the FLSA seek to discourage businesses from using child labour in their companies. Any shipment of goods manufactured in or about an establishment employing oppressive child labour is prohibited; such goods are referred to as 'hot goods'. The goods will be regarded as 'hot goods' even if no child was involved in the manufacturing or shipment of the goods. If the hot goods are shipped, they are considered to be permanently hot and may not be shipped out of the state. After 30 days the goods are considered to have 'cooled' and may be shipped as initially intended.[28]

This provision gives rise to several problems. First, it only relates goods transported outside the state by shipment. By default, this means that goods associated with child labour may be lawfully sold within the state.[29] This fails to curtail oppressive child labour in commerce, as it inadvertently legalises the sale and exchange of hot goods within the state where it is manufactured.[30] Second, the provision only concerns the trade of hot goods; it does

[24] 29 C.F.R. §570.33.
[25] J Luckstead, RM Nayga & HA Snell 'US domestic workers' willingness to accept agricultural field jobs' (2022) 45 *Applied Economic Perspectives & Policy* 1695.
[26] AM Kandilov & IT Kandilov 'The effect of legalization on wages and health insurance: Evidence from the National Agricultural Workers Survey' (2010) 32(4) *Applied Economic Perspectives & Policy* 604.
[27] L Iannacci-Manasia 'Unprotected youth workers in US agriculture' (2023) 11 *Frontiers in Public Health* 1-2, M Fan, M Houston & AA Pena 'Determinants of child labor in the modern United States: Evidence from agricultural workers and their children and concerns for ongoing public policy' (2014) 34 *Economics Bulletin* 287-306, P Hurst 'Health and child labor in agriculture' (2007) 28(2) *Food and Nutrition Bulletin* S366, TY Reeves 'Harvest of danger: The child farmworker in the United States' (2001) 8(2) *Human Rights Brief* 12-14.
[28] See § 33a02 of DOL *Wage and Hour Division Field Operations Handbook* 665, Chapter 33: Child Labor—FLSA, September 22, 2011, available at *http://www.dol.gov/whd/FOH/FOH_Ch33.pdf.*
[29] Ibid.
[30] D Winstanley, J Clark & H Leeson 'Approaches to child labour in the supply chain' (2002) 11(3) *Business Ethics: A European Review* 212.

not prohibit the actual manufacturing of goods produced through child labour or prescribe any legal consequences to the manufacturers of such goods.[31]

Third, the provisions in section 12 (a) and (c) apply to all children within the USA, and any enterprise that employs a child or produces goods using child labour. The application of the FLSA extends to all instances of oppressive child labour as well as enterprises that undertake foreign or interstate commerce, regardless of their yearly turnover. These enterprises include any business, hospital or medical facility, school or government agency that operates at either the federal or state level.[32] However, the protection of children under sections 12(a) and (c) of the FLSA is limited to situations where an employment relationship exists between the child and the employer in a commercial enterprise. This means that children who are entrepreneurs and volunteers do not fall within the ambit of the FLSA. Furthermore, the specific reference to the term 'employment' signifies that the FLSA does not consider that all forms of work can constitute child labour, but only instances where an employer employs a child through a contract of employment.[33]

The use of the term 'employment' in the FLSA thus does not comply with international law. Convention 138, in article 2(1), subsumes the term 'work' to indicate that child labour can exist in any setting, whether in domestic, informal work arrangements or formal work environments.[34] The language of the FLSA, however, excludes all children who undertake any form of work outside of a formal contract of employment for remuneration.[35] Thus, children who work outside of a formal contract of employment for remuneration have no legal protection.[36]

The use of the term 'employment' in the FLSA introduces several issues. First, it allows leeway for an employer to lawfully engage in child labour. However, if child labour

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[31] The FLSA; s 12(c), PU Nair & P Thankamony 'Social issues in supply chain sustainability –Focus areas for energy and manufacturing sectors in India and USA' (2021) 10(1) *European Journal of Sustainable Development* 495.

[32] 29 U.S.C. §203(s)(1).

[33] 29 U.S.C. §203(s)(1).

[34] M Bourdillon et al *Rights and Wrongs of Children's Work* (2010) 75, D Aufseeser et al 'Children's work and children's wellbeing: Implications for policy' (2018) 36 *Development Policy Review* 242-243, BE Wayoe 'Categories of child labour and its influence on the pupils' academic work' (2021) 1(1) *Open Journal of Educational Research* 56–78. Please see chapter 4 for the full discussion on the term 'work'.

[35] N Cassirer & L Addat *Expanding Women's Employment Opportunities: Informal Economy Workers and the Need for Childcare* (2007) 2-3.

[36] A Bhukuth 'Defining child labour: A controversial debate' (2008) 18(3) *Development in Practice* 386, K Koçali 'Perspective on child labor situation in terms of occupational health and safety: The case of Turkey' (2021) 5(2) *Journal of Human and Social Sciences* 126-151, AM Thi et al 'Child domestic work, violence, and health outcomes: A rapid systematic review' (2022) 19 *International Journal of Environmental Research & Public Health* 1-2.

is, in fact, unlawful, can an employer legally employ child labour for such activity to constitute employment under section 12 (a) and (c) of the FLSA? The terms 'employment' and 'commerce' lead to the conclusion that a lawful employment relationship exists between a child labourer and an employer. This raises the question whether a person who is not legally permitted to work can be employed. Hence, the terms of employment cannot be satisfied as a child labourer cannot lawfully be employed by any employer.

Second, the FLSA does not take cognisance of the possibility that child labour can exist in a relationship where a child is forced to undertake work, even for a few hours, that may be hazardous to the child's mental and physical health but does not fall within the definition of a commercial relationship between an employer and a child labourer.[37] It is submitted that the FLSA needs to recognise the concept of child labour and provide stronger protection for children. As the FLSA sets the federal standard for states to follow in their own legislation, if the protection offered children by the FLSA is weak, states are also likely to enact less stringent child labour laws.[38]

It is submitted that the standard of protection that the FLSA endorses to victims of child labour could be set higher in comparison with South Africa and Uganda in this research. Both South Africa and Uganda have substantial legal frameworks regulating child labour, as was discussed in Chapters Five and Six, while, in the USA, the FLSA only articulates two provisions that deal with the prevention of child labour which are limited to commercial relationships, leaving the vast majority of working children in the USA without the protection that they require from the law.[39] Work arrangements that do not meet the definition of employment as endorsed by section 12 (a) and (c) are not protected under the FLSA. Consequently, the door for exploitation and abuse is opened.[40]

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[37] DS DeGraff, AR Ferro & D Levison 'In harm's way: Children's work in risky occupations in Brazil' (2016) 28(4) *Journal of International Development* 447-9, S Feeny et al 'Child labor and psychosocial wellbeing: Findings from India' (2021) 30(4) *Health Economics* 877, R Maconachie, N Howard & R Bock 'Re-thinking 'harm' in relation to children's work: a 'situated,' multi- disciplinary perspective' (2021) 50(3) *Oxford Development Studies* 1-2.

[38] J Sherer & N Mast 'Child labor laws are under attack in states across the country' (2023) *Economic Policy Institute* 1-18, E Popp 'As child labor laws are weakened in other states, Maine reports rise in youth worker injuries' *Maine Beacon*, 10 August 2023, available at *https://mainebeacon.com/As child labor laws are weakened in other states, Maine reports rise in youth worker injuries - Maine Beacon,* accessed 14 August 2024.

[39] S Salinas 'The deadly cost of unregulated labor: How the United States Fair Labor Standards Act violates the International Labour Organization's ILO Convention No. 182 in failing to provide protections for children working in agriculture' (2021) *American University Washington College of Law* 8-20, J Defilippis et al 'On the character and organization of unregulated work in the cities of the United States' (2009) 3(1) *Urban Geography* 65-80, Iannacci-Manasia (note 27 above; 1-2).

[40] D Weil *"This Ancient Atrocity": The Return of Child Labour in the United States: Why Now? What Should be Done?* (2023) 2-3.

Section 203(1) of the FLSA also endorses certain exemptions from the application and protection. Children employed by a parent or a person who stands in place as a parent are exempt from the ambit and protection of the FLSA,[41] except in situations where the circumstances are hazardous or involve manufacturing and mining. In terms of the FLSA, any person may lawfully compel a child to undertake work that constitutes child labour.[42] Thus, a child's relative, adoptive parent, foster parent or even a stranger who satisfies the requirements of providing for the child in section 203(1) of the FLSA is lawfully entitled to compel a child at any age to undertake work, even if this constitutes exploitation of the child.

It is unconscionable that legislators did not envisage that exploitation could take place at the hands of the parent or caregiver of a child.[43] Unfortunately, there is no protection given to children in such an instance, considering that the majority of exploitation and abuse of children takes place in domestic settings.[44] Section 203(1) of the FLSA provides for further exemptions from the application of the FLSA, such as child performers,[45] newspaper delivery persons,[46] and evergreen wreath producers.[47]

Additionally, section 203(1) permits children as young as 14 years and even younger to undertake work in agriculture if it is performed outside of school hours.[48] The minimum employment age is permits youth from 16 years of age to work as scrap balers and compact paper boxes. The FLSA also permits children 17 years of age to be employed as drivers of trucks and cars. The FLSA allows children as young as 14 years of age to be exempt from compulsory schooling so that they can work in places that use power-driven woodworking

[41] The term "parent or person standing in place of a parent" includes "natural parents, or any other person, where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent." 29 C.F.R. § 570.126.
[42] 29 U.S.C. § 203(1).
[43] N Maxwell 'I'm trying to save my family: Parent experiences of child criminal exploitation' (2022) 23(2) *Youth Justice* 243-245, P Parmar & G Rathod 'Art of parenting vs parental child abuse – choose a right path' (2023) 1(1) *International Journal of Medical Justice* 23–26, see also S Brennan 'Exploitation, children and childhood, and parental responsibilities' in B Ferguson & M Zwolinski (eds) *Exploitation: Perspectives from Philosophy, Politics, and Economics* (2024) 187-202.
[44] G Lenzer *Violence Against Children: Making Human Rights Real* (2017), A Abdullah et al 'Social norms and family child labor: A systematic literature review' (2022) 19(7) *International Journal of Environmental Research in Public Health* 1-2, AR Oryoie, J Alwang & N Tideman 'Child labor and household land holding: Theory and empirical evidence from Zimbabwe' (2017) 100 *World Development* 46-47, see also ILO; UNICEF; World Bank *Understanding Children's Work: An Inter-Agency Research Cooperation Project* (2018).
[45] 29 U.S.C. § 203(1).
[46] 29 U.S.C. § 203(1).
[47] 29 U.S.C. § 203(1).
[48] 29 U.S.C. § 203(1).

machines. Even though children are prohibited from operating such machines, they can legally perform other types of work within these establishments.[49]

Thus, the implications of section 203(1) and the exemptions listed under the FLSA are in conflict with the definition of child labour, which states that oppressive child labour is the employment of a child under 16 years in any occupation and 18 years in a hazardous occupation. The actual definition of child labour is not specific and can be adapted and changed with regard to the child's age, varying school hours, the type of industry that the child intends to be employed in, and whether the parent of the child is the employer.[50] This degree of latitude and ambiguity weakens the USA's regulation of child labour. As previously mentioned, this is exacerbated by the distinct regulations governing child labour in the agricultural and non-agricultural sectors.

The FLSA does not impose restrictions on child work to prevent interference with compulsory school hours.[51] In contrast, in Uganda and South Africa the definitions of child labour recognise that schooling is compulsory for all children. The USA, conversely, makes no mention of compulsory education and even goes as far as to permit a child of any age to undertake non-hazardous employment and be exempt from schooling.[52]

Thus, the FLSA focuses more strongly on regulating the employment of children than preventing child labour. The approach that the USA adopts regarding child labour demonstrates that the USA promotes the employment of children and thus seeks to provide legal guidelines to protect children at work.[53] Hence, the focal point of legislation prohibiting child labour is not whether children should be employed, but rather when and how children should be employed.

The USA's approach to child labour deserves greater scrutiny considering that the USA, unlike Uganda and South Africa, is not a developing country and children's work is

[49] P.L. 104-174 amendment to the FLSA.
[50] 29 U.S.C. § 203(1).
[51] K Chaikin 'Child labor child labor, compulsory education, and education, and the women's movement' (2021) 7(1) *Binghamton University Undergraduate Journal* 1-5, E Rauscher & B Oh 'Going places: Effects of early U.S. compulsory schooling laws on internal migration' (2021) 40(2) *Population Research Policy Review* 1-8.
[52] 29 U.S.C. § 203(1).
[53] US Government Federal Accountability Office 'Working children: Federal injury data and compliance strategies could be strengthened' (2018) 17, L Christoffer et al 'How do parents teach their children about work? A qualitative exploration of household chores, employment, and entrepreneurial experiences' (2021) 42 *Journal of Family and Economic Issues* 74-75, M Houshmand, SL Marc-David & G Dennis 'Beneficial "child labor": The impact of adolescent work on future professional outcomes' (2014) *Sociology of Work* 1-3.

encouraged as a life skill that would teach children to become independent adults.[54] This is discussed further in this chapter. It is noteworthy that the types of work that the USA envisages that young children can perform are not out of necessity for their survival, such as fetching firewood, fresh water, or the worst forms of child labour found on the streets in developing countries such as Uganda and South Africa.[55] Although this differs significantly from Uganda and South Africa, these two countries must compare their attitude towards child labour with that of the USA, as it may provide some guidance on how to assist children, considering that many children are compelled to work in developing countries.[56]

The FLSA permits children from the ages of 14 to 15 years to be employed in non-hazardous industries that do not hinder the child's hours of schooling.[57] The Department of Labour is empowered to identify specific types of employment deemed acceptable for youth within this category and to undertake and endorse the regulations necessary for the governance of youth work. The complete list of permissible types of work can be found in s 213(c)(7) of the FLSA.[58] The extensive list of permissible youth employment provides considerable insight into the USA's perception of child employment. As evident from the jobs listed in s 213(c)(7) of the FLSA, these fields assimilate the work usually undertaken by adults in South Africa. It

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[54] D Wegmann 'Child labor in the US' (2003) 8(4) *Ciência & Saúde Coletiva* 1030, T Abebe 'Child labour in the global south: A review and critical commentary' (2009) 3-4 *Barn* 12-14, EJ Porfeli 'Work values system development during adolescence' (2007) 70(1) *Journal of Vocational Behavior* 42-60, S Bhalotra 'Is child work necessary?' (2000) (*Discussion Paper No. DEDPS 26*) 1-4.

[55] SB Rathebe *The Impact of Poverty Alleviation on the Eradication of Child Labour in South Africa* (Unpublished LLM, North-West University, 2016) 13, L Osment *Child labour; the effect on child, causes and remedies to the revolving menace* (Unpublished Batchelor's thesis, University of Lund, 2014) 14-15, II Abdullahi 'Does poverty influence prevalence of child labor in developing countries?' (2016) 6(1) *International Journal of Economics and Financial Issues* 8.

[56] S Sakamoto 'Parental attitudes toward children and child labor: Evidence from rural India' (2006) *Hitotsubashi University Research Unit for Statistical Analysis in Social Sciences A 21st-Century COE Program: Discussion Paper Series No.136 2-5.*

[57] The FLSA; s 203(1), "such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health or wellbeing."

[58] 29 C.F.R. §570.32; The FLSA; s 213(c)(7) provides the complete list of permissible types of work such as: Office and administrative work, creative work that is intellectual or artistic in nature (e.g., computer programming, teaching, graphic design); various sales, retail, and advertising work (e.g., cashier, advertising jobs, marking prices, assembling orders, packing and shelving); certain errand and delivery work performed by foot, bicycle, or public transport; building cleaning (e.g., vacuuming); maintenance of grounds without the use of power driven equipment; limited kitchen work, including the preparation and serving of food and beverages, cleaning and handling of fruits and vegetables, and cleaning of certain kitchen equipment; cooking, with some limitations concerning the equipment used and conditions of work (e.g., no cooking over an open flame); loading onto and unloading from motor vehicles of personal items (e.g., lunch box) and non-power tools (e.g., rake) or protective gear (e.g., work gloves) that the minor will use as part of his or her employment; dispensing gasoline and oil; cleaning cars by hand; certain work that may involve riding in motor vehicles subject to restrictions on activities, industry of work, and working conditions; and under limited circumstances, certain youth who are at least 14 years of age and excused from compulsory schooling may work in an establishment where machinery is used to process wood products (but may not operate machines."

also signifies that the USA views youth from 14 to 15 years as competent enough to undertake these tasks.[59]

The approach taken by the USA to child work could provide valuable lessons for South Africa about how to approach its problem of child labour. It has been demonstrated in previous chapters that children in South Africa seek work, even illegally, for many reasons.[60] In this context, it would be beneficial to the child if South African legislation supported the lawful employment of children, at the same wage as adults, while still being able to attend school. By excluding children from work opportunities that are not detrimental to them, current legislation pushes children into illegal work, where they are more likely to experience abuse as they do not have adequate employment rights.[61]

The USA may be criticised for only considering the employment of children to constitute oppressive child labour, as elaborated earlier in this chapter. However, the lawful employment of children in the USA affords children and adults equal employment rights, which mitigates the potential for abuse in the workplace.[62] Additionally, the limit to the hours that children may work in the USA protects their well-being while permitting them to obtain an income.

Under the FLSA, the Department of Labour enforces a set standard of regulations for hours of work subject to the school hours determined by each state. On a school day, a young person can perform a maximum of three hours of work outside of school; on a non-school day, they may undertake eight hours of work, not exceeding 18 hours per week.[63] When school is closed, youth may work up to 40 hours per week.[64] The working hours are limited to 7 am and 7 pm except in the summer, when permissible work hours extend to 9 pm. The Department of Labour regulations set further allowances for the exemption of youth from

[59] KJ Rauscher 'Adolescent work quality: A view from today's youth' (2012) 28(5) *Journal of Adolescent Research* 580-585.
[60] J Sloth-Nielsen & BD Mezmur 'A dutiful child: The implications of Article 31 of the African Children's Charter' (2008) 52(2) *Journal of African Law* 161-162, K Abdulkareem, SO Ehiane & NIS Nnamezie 'Reflecting on the trend of child labour in South Africa' (2021) 8(1&2) *African Journal of Democracy and Governance* 71.
[61] M Liebel 'Protecting the rights of working children instead of banning child labour' (2015) 23 *International Journal of Children's Rights* 533-534, O Bargain & D Boutin 'Minimum age regulation and child labor: New evidence from Brazil' (2017) LAREFI Working Paper N°2017-02 1-3, see also M Liebel 'Do children have a right to work? Working children's movements in the struggle for social justice' in K Hanson & O Nieuwenhuys (eds) *Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations* (2012) 225–249.
[62] R White 'Young people, waged work and exploitation' (1997) 40 *Journal of Australian Political Economy* 62, JT Mortimer 'The benefits and risks of adolescent employment' (2010) 17(2) *Prevention Researcher* 3.
[63] 29 C.F.R. §570.35(a) & (b).
[64] 29 C.F.R. §570.35(a) & (b).

these limitations on working hours; for example, children who work as sports attendants may work for any number of hours on condition it is outside of school hours. Youth may participate in career or work-related events for a maximum of 23 hours per week.[65]

Youths who engage in programmes for work-study are permitted to work 18 hours per week and may even work eight hours on some days, even when school is operational.[66] Graduates and children excused from school may work 8 hours per day and a maximum of 40 hours per week.[67] The Department of Labour thus provides detailed specifications of the types of work that youths are, and are not, permitted to perform.[68]

The Department of Labour has also published a list of prohibited forms of employment under the hazardous occupation categories found in Table 1 of the regulations.[69] This underscores the considered approach that the USA has taken towards legalising the employment of youth, with clear and unambiguous allowances and prohibitions with regard to the hours and types of work youth may be engage in. These regulations afford greater state control over work undertaken by youth. Ultimately, the state is the enforcer of children's rights even when they work, giving employers little opportunity to engage in unlawful dealings.[70] These regulations are beneficial to youth as they prevent them from engaging in illegal work where they may be abused by employers.

When states ban child labour, they are merely enforcing legislation to stop children from working. These bans do not resolve the issues that compel children to work, or prevent them from working illegally[71], where the authority and control of the state is not present to enforce the rights of the working child.[72] In illegal employment where a child is unregistered, an employer may exert excessive control over the child, while the child has little say because the arrangement is unlawful.[73] The USA take an unconventional approach to

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[65] 29 C.F.R. §570.36.
[66] 29 C.F.R. §570.37(c).
[67] 29 C.F.R. §570.35(c)(1).
[68] 29 C.F.R. §570.33.
[69] 29 C.F.R. §§570.50-570.68.
[70] T Abebe & AT Kjorholt 'Social actors and victims of exploitation: Working children in the cash economy of Ethiopia's south' (2009) 16(2) *Childhood* 176–177.
[71] Ibid.
[72] JK Taft 'Continually redefining protagonismo' (2017) 46(5) *Politics, Society and Culture in Post Conflict Peru* 6, I Jijon 'The priceless child talks back: How working children respond to global norms against child labor' (2020) 27(1) *Childhood* 66, see also W Myers 'Organization of working children' in H Hindman (ed) The *World of Child Labor* (2009) 158–162.
[73] C O'Kane, O Barros & N Meslaoui *It's Time to Talk! Children's Views on Children's Work* (2018) 15, E Van Daalen & N Mabillard 'Human rights in translation: Bolivia's law 548, working children's movements, and the global child labour regime' (2019) 23(4) *The International Journal of Human Rights* 7-9, Myers (note 72 above; 158–162).

dealing with child labour: instead of imposing prohibitions on working children, the FLSA dictates parameters for when and how a child may be employed while considering the child's education. This researcher's view is that this demonstrates forward thinking on the part of a developed country that South Africa could follow.

The South African legislators could give more attention to the plight of children in the country by being cognisant of their need to undertake work and schooling. In the United States, the FLSA and its regulations support children to simultaneously work and obtain an education. As South Africa doesn't have a solution for children who need income for their survival other than working, it may be appropriate to follow the example of the USA and provide more lawful opportunities for children to work, thereby deterring children from undertaking harmful unlawful work.[74] Implementing a ban on work only prevents children from working, it does not provide a solution to the problem that compels children to work.[75] Creating lawful parameters for when and how children may undertake work signifies that a country understands that children are obliged to work. If they must work, then there needs to be sufficient control over how they work so that they are not exploited.

The FLSA provides a separate set of regulations for the employment of children in agriculture. The threshold for the minimum employment age is lower in agriculture, and children as young as ten years old may be lawfully employed. Youth who are 16 years old are not limited in the number of hours they may hours in agriculture, irrespective of whether or not the work is deemed hazardous.[76] Youth who are 14 years old may undertake non-hazardous agricultural work outside of school hours. Youth who are 12 and 13 years old may also undertake non-hazardous agricultural work, but require the permission of a parent.[77] Children who are 10 and 11 years old are permitted to undertake non-hazardous agricultural work such as hand-harvesting of crops for up to eight weeks, with the consent of a parent and outside the required school hours.[78] A child of any age may undertake non-hazardous agricultural work on specific small farms outside of the required school hours, with a parent's consent; to qualify, a

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[74] A Mohammed & AS Achanso 'Problematising the dominant child rights discourses: Why we need a nuanced approach to combat child labour' (2021) 8(2) *Advances in Social Sciences Research Journal* 485, see also Y Ofosu-Kusi Y & P Mizen 'No longer willing to be dependent: Young people moving beyond learning' In Spittler, G & Bourdillon, M (eds) *African Children at Work: Working and Learning in Growing Up for Life* (2009) 279-302, Liebel (note 61 above; 225–249).

[75] S Lind *Child Work: Empowerment or Violation of Rights? Stories from Former Child Workers in Cochabamba, Bolivia* (Unpublished Batchelor's thesis, Jonkoping University, 2020) 37, Liebel (note 61 above; 534-536), K Leah et al 'Putting kids out of work: Unintended consequences of child labor legislation in Bolivia' (2022) 1-6.

[76] 29 U.S.C. §213(c)(1).

[77] 29 U.S.C. §213(c)(1)(C).

[78] 29 U.S.C. §213(c)(1)(B).

farm must obtain a waiver from the Department of Labour permitting it to employ children.[79] Additionally, a child who is employed on a farm that is owned by a parent is permitted to work on that farm with no restrictions on the type of work or number of hours that can be undertaken, as long as the work is undertaken outside of school hours.[80]

Thus, in terms of these broad restrictions, children may engage in any number of work hours during the night or day, provided that this is not within school hours. Children below the age of 16, with certain exceptions, are not permitted to undertake hazardous occupations, as set out in Table 2 of the Department of Labour regulations. This prohibition falls away if the owner of the farm is the parent of the child. In that case, there are no restrictions regarding the hours that the child may work.[81] Even though the USA has endorsed regulations protecting children from hazardous work, numerous instances of injuries and fatalities of children in the agricultural sector have been reported.[82]

The FLSA authorises the Secretary of Labour to carry out workplace investigations and inspections.[83] The actual implementation of this provision is by made by the Department of Labour Wage and Hour Division (WHD). This division is entitled to inspect workplaces for violations of federal law. There are two consequences for violating the provisions of the FLSA. First, employers are fined $11 000 for every child labourer who is subjected to a violation of child labour rights.[84] Additionally, an employer is fined $50 000 for any violation that results in the death or serious injury of a child employee; this fine may be doubled for repeat offenses.[85] The monies that are collected from the fining of violations are handed over to the general fund of the U.S. Treasury.[86] Second, criminal charges may be placed against any employer found to be in violation of the law. A federal court is authorised under the FLSA to enjoin violations of child labour, which entitles the court to cease its employment of child labour. The FLSA also imposes a $10 000 fine if an employer wilfully violates child labour provisions in terms of the FLSA; a conviction may result imprisonment for a period not

[79] 29 U.S.C. § 213(c)(4).
[80] 29 U.S.C. §213(c)(2).
[81] 29 U.S.C. Section 213(c)(3).
[82] BP Weichelt et al 'Agricultural youth injuries: An updated review of cases from U.S. news media reports, 2016–2021' (2022) 10 *Frontiers in Public Health* 1, KJ Hendricks, SA Hendricks & LA Layne 'A national overview of youth and injury trends on U.S. farms, 2001-2014' (2021) 27 *Journal of Agriculture Safety & Health* 121- 134.
[83] 29 U.S.C. §212(b) and (d).
[84] 29 U.S.C. §216(e) and 29 C.F.R. pt. 579.
[85] Section 216(e)(1)(B)
[86] 29 U.S.C. §216(e)(5).

exceeding six months imprisonment[87] if the employer has a previous violation for wilful child labour.[88]

These penalties imposed by the FLSA may be criticised for not being heavy enough. It is imperative to note that big businesses that employ child labour may not consider it an economic setback to pay these stipulated fines. The fines are thus merely a slap on the wrist for many employers, with no lasting impact on the employer or his business.[89]

The penalty of $50 000 for causing the severe injury or death of a child does not correspond to pain and suffering, or even death, endured by the child. The monies collected from fines are directed to the coffers of the US Treasury:[90] no compensation is made to the family of the child labourer or the child labourer. It is argued that if the money is just handed over to the state, then there is no incentive for the state to reduce child labour violations as it benefits financially every time there is a child labour violation.

It is submitted that this is simply a method for the state to get rich at the expense of families losing their children and child labourers endangering their lives. It is submitted that a more stringent method of preventing child labour violations would reduce violations. If employers were penalised through fines that were backed up by additional deterrent measures such as sanctions on their business or the products they produce, the consequences would carry more weight. Additionally, it is submitted that these fines should not simply go into the treasury but rather that these monies should be used to fund initiatives to decrease child labour in the country.[91]

States are constantly challenged by a lack of adequate funds to monitor and eradicate child labour. It is submitted that one way in which funds can be raised to increase the fight against child labour is to increase the fines employers pay for child labour violations and allocate that money to an established fund that can be used to provide additional support to investigations and monitoring of child labour violations. This recommendation will be discussed further in Chapter Ten. Moreover, the lax imprisonment penalty does not create any

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[87] 29 U.S.C. §216(a).
[88] 29 U.S.C. §216(a).
[89] K Rauscher et al 'US child labor violations in the retail and service industries: Findings from a national survey of working adolescents' (2008) 98(9) *American Journal of Public Health* 1698, W Yuhaeni 'The legal protection towards child labour in an attempt to improve their work safety and health' (2020) 2(1) *International Journal of Science and Society* 195.
[90] 29 U.S.C. §216(e)(5).
[91] T Gerstein 'Policies for states and localities to fight oppressive child labor' (2024) *Economic Policy Institute* 1-2.

fear for first-time offenders and is not an adequate deterrence method, as the death or serious injury of a child would be punished by a sentence of six months in prison, at most.

It is submitted that the wilful violation of children's rights by engaging a child in child labour that results in death or serious injury should be elevated to the level murder, attempted murder or culpable homicide. These unlawful actions should result in the same sentence and penalties that are applied under criminal law for actions that result in death and serious injury of a person. A prison sentence of only a maximum of six months for repeat wilful violators of child labour indicates that the USA has a low level of concern for the loss of children's lives or their endangerment. It is submitted that an increase in the prison term for all violators of child labour, whether it is a first-time violation or not, would be indicative of the USA's commitment to punish child labour violators.

7.3.2. CHILDREN'S ACT FOR RESPONSIBLE EMPLOYMENT OF 2013 (CARE ACT)

Numerous bills have been presented between the 108th Congress and the 113th Congress on the regulation of child labour, however, the committees to which these bills were referred did not action them and they did not go further.[92]

The most recent bill to be presented to Congress that seeks to increase the protection of child workers in the USA is the Children's Act for Responsible Employment of 2013 (hereafter referred to as 'the Care Act'). The Care Act is pertinent to the regulation of lawful child work as the most significant change that the Care Act would bring is to increase the minimum age of employment for youth for both agricultural and non-agricultural sectors.[93] Under current federal law (the FLSA), there is a discrepancy between the minimum age of employment in agricultural and non-agricultural occupations.[94]

The Care Act raises the minimum age of employment in both agricultural and non-agricultural occupations to 16. Currently, under the FLSA, a child under 12 years of age may, with the consent of a parent, be employed on a farm that is exempt from the minimum wage standards of the FLSA. The proposed Care Act seeks to remove these exceptions and unify the minimum employment age across all sectors. Additionally, the minimum age of employment in hazardous occupations in agricultural and non-agricultural occupations is

[92] SA Donovan & JO Shimabukuro 'The Fair Labor Standards Act (FLSA) child labor provisions' (2016).
[93] RG Barajas-Gonzales et al 'Weakening U.S. child labor protections stands to harm youth health and education outcomes' (2024) 1-8.
[94] 29 C.F.R. §570.35(a) & (b) and 29 U.S.C. Section 213(c)(3).

proposed to increase from 16 years to 18 years old.[95] This would bring the USA's child labour legislation in line with international standards which require 18 years old as the minimum employment age for hazardous employment.[96] Currently, under the FLSA, when a youth is employed in agriculture, the restrictions on the employment of youth in hazardous occupations do not apply if the farm is owned or operated by a parent.

It is pertinent to note that the policymakers envisage that a parent can be a person who is not biologically related to the child but rather stands in the place of a parent.[97] This could include a situation where an adult takes in a child and treats them as a member of the family, including providing for the emotional and financial needs of the child.[98] The Care Act would ensure that the same restrictions that apply in non-agricultural occupations pertaining to hazardous occupations would apply to agricultural occupations performed by youths. Additionally, the Care Act would require the Secretary of Labour to develop revised regulations on child labour that would prohibit any child below the age of 18 from being employed in occupations that require them to handle pesticides.[99]

The Care Act supports further changes to the punishment of violations of child labour provisions; for example, it increases the maximum civil penalty for each employee where a child labour law has been violated from $11 000 to $15 000 (with a minimum penalty of $500).[100] It also introduces criminal penalties such as a maximum incarceration period of five years where violators have repeatedly or intentionally violated child labour laws which led to the death, serious injury or illness of a child worker.[101]

The Care Act was referred to the Subcommittee on Workforce Protections of the House Education and the Workforce Committee and was introduced to the House of Representatives of the 117 Congress (2021 to 2022). However, to date, as with previous bills no action has been taken on the Care Act, which provides more stringent restrictions on when and how children can be employed.[102] The current provisions of the FLSA are still applicable and enforceable as federal law in the USA.

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[95] The Care Act; s 4(a).
[96] Minimum Age Convention, 1973 (No. 138), Eighth Meeting of the SRM TWG 'Examination of instruments concerning minimum age of employment' (11-16 September 2023) 4.
[97] The Care Act; s 4(a).
[98] 29 C.F.R. §570.126.
[99] The Care Act; s 4(a), 'The Children's Act for Responsible Employment (CARE Act)', available at *https://campaignforchildren.org/wp-content/uploads/sites/2/2011/06/CAREAct.pdf,* accessed 23 January 2022.
[100] The Care Act; s 5.
[101] The Care Act; s 5.
[102] The Care Act; s 5.

7.4. THE VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000

Prior to 2000 there was no legislation that addressed human trafficking as a criminal offense. The Victims of Trafficking and Violence Protection Act of 2000 (TVPA of 2000) is the first federal law to comprehensively combat human trafficking.[103] Even though the USA only ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) (2000) in 2005, the policy intentions of the TVPA of 2000 mirror the intentions of the Palermo Protocol as it sought to address human trafficking through three approaches namely; the prevention of human trafficking, the prosecution of traffickers and the protection of victims of human trafficking.[104] The TVPA of 2000 recognises sex trafficking and labour trafficking as severe forms of human trafficking.[105] Sex trafficking includes prostitution, military prostitution, pornography, stripping, live-sex performances, mail-order brides and sex tourism. Labour trafficking is deemed to take place in situations of domestic servitude, janitorial work or work in restaurants, sweatshops, construction, migrant agricultural work and peddling.[106]

However, one of the primary concerns regarding the TVPA of 2000 was that it focused on international human trafficking and neglected to adequately address domestic trafficking within the USA. The TVPA of 2000 also limited its applicability to the trafficking of children and women for commercial sexual exploitation.[107] The TVPA of 2000 enforced provisions that sought to keep a close watch on foreign nations' efforts or failure to address human trafficking in their respective countries through the publication of annual reports.[108] If a nation neglected to make efforts to address human trafficking, the President was entitled to stop certain types of foreign assistance to these nations.[109] The TVPA of 2000 afforded protection for victims that were under 18 years old or where victims committed commercial

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[103] Stephanie Richard, State Legislation and Human Trafficking: Helpful or Harmful? *University of Michigan Journal Law Reform* (2005) 447 451 (447-477).
[104] Palermo Protocol Preamble states: "The States Parties to this Protocol, Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking…".
[105] TVPA of 2000; §7102 (8). The TVPA of 2000 defines ''severe forms of trafficking in persons'' as: "(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."
[106] TVPA of 2000; § 110.
[107] TVPA of 2000; § 7101(b)(24).
[108] TVPA of 2000; § 110(b)(1) & § 7107(b)(1).
[109] TVPA of 2000; § 110(a) & § 7107(a).

sex acts under force or fraud that constituted "severe forms of trafficking in persons."[110] Additionally, the government afforded victims T-visas which permitted them to remain in the USA for a limited period of time if they agreed to assist law officials in investigating the trafficking or if they qualified to be exempt from this assistance.[111]

Since the enactment of the TVPA of 2000, the USA has made numerous reauthorisations of the legislation in 2003, 2005, 2008, 2013 and 2018. These reauthorisations have significantly improved the USA's legal framework on combating human trafficking. The most notable change of the Trafficking Victims Protection Reauthorization Act of 2003, P.L. 109-162 (TVPA of 2003) was that it introduced civil rights for victims of trafficking to sue their traffickers.[112] Additionally, it included human trafficking as a crime that could be prosecuted in terms of the Racketeer Influenced and Corrupt Organizations (RICO) statute.[113]

The Trafficking Victims Protection Reauthorization Act of 2005, P.L. 109-164 (TVPA of 2005) created a program for sheltering minors that survived human trafficking. The reauthorisation also enforced grant programs to assist local and state law enforcement to combat human trafficking.[114] These programmes were also enforced to create public awareness on human trafficking,[115] to provide economic prospects for potential victims such as ensuring that children completed their schooling and adults received training and counselling.[116] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, P.L. 110-457 (TVPA of 2008)[117] mandated government to supply information regarding worker's rights to people applying for visas for work and education.[118] The TVPA of 2008 enforced additional criminal sanctions and extended definitions of trafficking to facilitate the prosecution of traffickers.[119]

The TVPA of 2008 emphasised the protection of trafficking victims that could be achieved through adequate training of immigration and law enforcement officials.[120] One

[110] TVPA of 2000; §7102 (8).
[111] TVPA of 2000; § 107(c)(3), 22 U.S.C. § 7105(c)(3).
[112] Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4, 117 Stat. 2875 (2003) (codified as amended at 22 U.S.C. § 1595 (2012)).
[113] 18 U.S.C. §§ 1961-1968
[114] Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §§ 102, 119 Stat. 3569 (2005)
[115] TVPA of 2005; § 7104(b).
[116] TVPA of 2005; § 7104(a).
[117] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457.
[118] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, §§ 202-203 (codified as amended at 8 U.S.C. §§ 1375b-1375c (2012)).
[119] TVPA of 2005; §§ 221-22
[120] TVPA of 2005; §7106(b)(2).

of the most significant improvements of the reauthorisation was the extended protection afforded to victims of trafficking. One of the major challenges encountered by trafficking victims was that they were prosecuted for engaging in unlawful activities under the force from their traffickers. Consequently, they would be disqualified from obtaining visas. The TVPA of 2008 introduced the possibility of waiving the disqualification under good character provided that the disqualification was related or caused by trafficking.[121] The Secretary of Homeland Security was authorised to extend the period of time that trafficking victims could apply for immigration status. Thus, the certification of victims was made easier which increased the possibility of victims obtaining travel visas.[122] The Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (TVPA of 2013) amended the Violence Against Women Reauthorization Act of 2013 by adding provisions to prevent child marriage and enhanced protections for children exploited abroad by U.S. citizens and permanent residents.[123]

The TVPA was amended for the 9th time during the 115th Congress. The amendments of the TVPA of 2019 were passed in four separate bills over 2018 and early 2019.[124] The new provisions also relate to the coordination of interagency operations and enforce numerous directives on new measures to combat trafficking and extending the functions of the Interagency Task force to Monitor and Combat Trafficking in Persons, Senior Policy Operating Group and the Advisory Council on Human Trafficking.[125] The amended provisions also improve assistance provided to victims of trafficking by affording victims restitution or financial assistance to aid them in their recovery. Thus, victims may now apply for funding from the US government.[126]

In addition to the anti-trafficking legislation, the USA has various measures and policies to combat human trafficking in the USA. These include the National Security Presidential Directive on Combating Trafficking in Persons (NSPD-22).[127] This directive requires federal agencies to reinforce their combined attempts, abilities and coordination to assist the implementation of anti-trafficking in persons policies.[128] Some of the ways in which this can be achieved is through the directive's plan of action which consists of: Providing

[121] TVPA of 2008; §1255(I)(6).
[122] TVPA of 2008; §1255(I)(1)(B), (1)(6).
[123] TVPA of 2013; §103.
[124] TVPA of 2019.
[125] TVPA of 2019; §1862.
[126] TVPA of 2019; §114.
[127] President George W. Bush 'National Security Presidential Directive 22 (NSPD-22): Combating Trafficking in Persons' (2002) 4-6.
[128] Ibid.

training to law enforcement agencies, developing cooperation and collaboration between state and local law enforcement as well as integrating and directing international anti-trafficking programs.[129] Two interagency units, the Senior Policy Operating Group (SPOG) and the President's Interagency Task Force (PITF), were established to coordinate anti-trafficking policies in the USA.[130] The Office to Monitor and Combat Trafficking in Persons at the State Department was also established to coordinate international anti-trafficking efforts.[131]

One of the ways that the USA combats trafficking in persons internationally is through strengthening the efforts made by regional and international organisations. This requires the integration of numerous departments and agencies in the USA such as the Department of Justice, Homeland Security and Labor, Health and Human Services, Department of Labor, Agency for International Development (USAID) and the Senior Policy Advisory Group.[132] These departments work together with international institutions and organisations to coordinate strategies and measures to combat trafficking. Some of these institutions that the USA collaborate with include the United Nations, the African Union, the Association of Southeast Asian Nations, the Organization for Security and cooperation in Europe (OSeE) and the G-8.[133]

The Departments of State and Labor are required to provide regular reports on foreign countries regarding their policy responses to trafficking and forced labour, highlighting the countries that recruit child soldiers and assessing their efforts to eradicate the worst forms of child labour and child trafficking.[134] The State Department is mandated to provide an annual Trafficking in Persons Report (TIP Report) which evaluates the efforts of foreign countries in eliminating the severe forms of trafficking in persons. The TIP Report includes a supplementary additional list of countries engaged in recruiting and using child soldiers. Foreign countries are ranked according to these categories: Tier 1 (best), Tier 2 (watch list) and Tier 3 (worst). Worst performing countries may be subjected to restrictions on foreign assistance offered by the USA.[135] Other mandatory reports that the State's Department provides

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[129] President Barack Obama 'Executive Order 13627 of September 25, 2012: Strengthening Protections Against Trafficking in Persons in Federal Contracts' Federal Register Vol. 77 No. 191 (2012) 10.
[130] Ibid.
[131] Congressional Research Service Report *Trafficking in Persons: International Dimensions and Foreign Policy Issues for Congress* (2015) 6-8.
[132] Office of the Inspector General (OIG) 'Inspections and Evaluations: Evaluation of DOD Efforts to Combat Trafficking in Persons' Report No. IE-2007-002 (2006) 5-8.
[133] Ibid.
[134] Ibid.
[135] Ibid.

are the Findings of the Worst Forms of Child Labor (Worst Forms of Child Labor Report) and the Country Reports on Human Rights Practices (Human Rights Report).[136]

7.5. STATE LAW ON CHILD LABOUR IN THE USA

Prior to the enactment of the FLSA, some states in the USA had made attempts to regulate and govern child labour. These attempts proved unsuccessful due to lack of conformity across all states.[137] States were required to match the standards set in any federal legislation or exceed these standards in their own legislation which created discrepancies in state laws.[138] This led to the enactment of widely varying legislation across the states, which is beyond the ambit of this dissertation to discuss. However, the laws enacted by some states effectively regulated child labour in some areas but not others.[139] This section examines the legislation of some states that does provide satisfactory regulation of child labour, to assess its value to the South African legal framework.

In Article 5 of ILO Convention 138, member states are compelled to set the minimum age of employment at 15 for regular work and 18 for hazardous work; this applies to both non-agricultural and agricultural sectors. However, as the FLSA excludes agriculture from its ambit, the agricultural sector is not regulated under federal law. This gives states the freedom to determine their minimum age of employment for the agricultural sector.[140] While states are also free to set more stringent laws to regulate child labour within the agricultural sector, they may not because this allows for the employment of cheap child labour.[141]

Twelve states have enacted child labour law that is more stringent than the federal law. However, some of these states have weaknesses in other areas of their regulation of child labour. Florida is one of 16 states that introduced proposed legislation to lower state protection for child workers. Florida proposes eliminating the regulation of hours 16 and 17year olds are permitted to work, which would allow them to work unlimited hours, including working overnight on school nights.[142] This is unfortunate as violations of federal and state

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[136] Ibid.
[137] Sherer & Mast (note 38 above; 2).
[138] J DeFilippis et al 'On the character and organization of unregulated work in the cities of the United States' (2009) 30(1*) Urban Geography* 65-66.
[139] A Pandey & T Yadav 'A comparative analysis of child labour laws in US & India' (2021) 4(2) *International Journal of Law Management & Humanities* 585-586.
[140] B Marlenga 'Changing the child labor laws for agriculture: Impact on injury' (2007) 97(2) *American Journal of Public Health* 280.
[141] E Appelbaum, A Bernhardt & R Murnane *Low-Wage America: How Employers are Reshaping Opportunity in the Workplace* (2003), D Boutin & M Jouvin 'Child labour consequences on education and health: A Review of evidence and knowledge gaps' (2022) *Bordeaux Economics Working Papers* 7-8.
[142] Florida State Bill 1596/HB 49.

child labour laws are increasing in the USA and this proposed legislation reduces the protection afforded to children.[143]

In California, the minimum age of employment is 14 years old in the formal employment sector, although minors younger than 12 years of age may also engage in certain types of work in the non-agricultural sector.[144] California has the most rigorous protection in the USA for minors under 12 years old who engage in work in the agricultural sector. However, the state law does not dictate an age restriction for minors when they perform domestic chores, viticulture or horticulture, as opposed to restrictions on minors in the agricultural sector who undertake work on land owned by the family.[145] In another example, Massachusetts has imposed a ban prohibiting minors under 16 years of age from working in tobacco fields.

While these states have strengthened the protection of children in some circumstances, there is incongruence between different state laws that regulate the minimum age of employment in the non-agricultural and agricultural sectors.[146] This raises questions as to the rationale underlying the USA distinguishing between the non-agricultural and agricultural sectors in terms of age requirements. As previously highlighted in this study, child labour is more prevalent in the agricultural sector and the lack of regulation in this sector poses a great risk to children.[147]

The main cause of child labour in the agricultural sector, globally, is poverty, followed by lack of access to education, poor infrastructure, and socio-economic impediments.[148] There is much that can be learned from the USA's approach in lowering the minimum age of employment in the agricultural sector. First, the difference in age requirements

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[143] At least 16 states have introduced bills putting children at risk, available at *https:www.epi.org/blog-Florida legislature proposes dangerous rollback of child labor protections: At least 16 states have introduced bills putting children at risk | Economic Policy Institute (epi.org),* accessed 11 August 2024.
[144] California Labor Code 1293.1 and 1394 LAB.
[145] California Labor Code 1394 LAB.
[146] M Schuman 'History of child labor in the United States—part 1: Little children working' *Monthly Labor Review*, January 2017, available at *https://doi.org/10.21916/mlr.2017.1,* accessed 23 January 2023.
[147] SP John & KR Murugan 'The cause and impact of child labour on a child's short and long-term health' (2021) 13(4) *World Journal of Research and Review* 7–13, A Ibrahim et al 'Child labour and health: A systematic literature review of the impacts of child labour on child's health in low- and middle-income countries' (2018) 41(1) *Journal of Public Health (Oxf).* 18–26, OS Adeoye et al 'Analysis of child labour dimentions and causes in rural farm households of Ogun State, Nigeria' (2017) 17(3) *African Journal of Food, Agriculture, Nutrition, and Development* 12198–12213, M Schuman 'History of child labor in the United States—part 1: Little children working' *Monthly Labor Review*, January 2017, available at *https://doi.org/10.21916/mlr.2017.1,* accessed 23 January 2023.
[148] UNICEF 'Child labor' (June 2023), available at *https://www.unicef.org/protection/child-labour*, accessed 23 January 2023, D Milan & SK Moin 'The role of family behind child labour' (2022) 1(2) *The DNC Journal* 11-15, II Abdullahi 'Does poverty influence prevalence of child labor in developing countries? (2016) 6(1) *International Journal of Economics and Financial Issues* 7-12, Z Naeem, F Shaukat & Z Ahmed 'Child labor in relation to poverty' (2011) 5(2) *International Journal of Health Sciences (Qassim)* 48-49.

signifies that the needs of children working in the agricultural sector differ from those of children in the non-agricultural sector. By doing so, legislators acknowledge that there are socio-economic impediments that compel children to work, which can only be resolved as a long-term goal. By lowering the minimum employment age in the agricultural sector, children can undertake work for their survival within the ambit of legislative protection from exploitation.[149]

Second, the lowering of the minimum age of employment in the agricultural sector accommodates the cultural obligations of children that encourage and necessitate that they undertake work.[150] It is submitted that the approach the USA has taken in lowering age requirements in the agricultural sector could be a provide a solution for the South Africa context, given the cultural and socio-economic challenges that children experience. Preventing children under 15 years of age from undertaking work in the agricultural sector will not prevent these children from working, because as long as their socio-economic needs compel them to work, they will continue as a means of survival.[151]

The realisation of the goal of fulfilling the socio-economic needs of all South Africans, especially rural South Africans, is a long-term aspiration of the government. It is submitted that children must not lack protection while the government is making efforts to fulfil its responsibilities to South Africans. By lowering the minimum age of employment, children would be able to fulfil their cultural and economic duties that necessitate them to undertake work.[152] The lowering of the age requirement could this be a possible solution to two of the major issues that children encounter in South Africa.

Although the USA proposes to instil equality between all sectors for the minimum age of child employment, it must be questioned whether proposed legislation is

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[149] MA Ali, MV Ali & F Abbas 'Hidden hazardous child labor as a complex human rights phenomenon: A case study of child labor in Pakistan's brick-making industry' (2017) 3 1369486 *Cogent Social Sciences* 1-3, H Bhullar, A Singh & N Sabharwal 'The hidden workforce: A study on child labour in the garment industry in Delhi' (2015) *Save the Children* 2-4, M Bourdillon 'Children's work and stopping 'child labour'' (2014) *Conference: Workshop on Supporting Working Children called by Consortium for Street Children, CHETNA, Hope for Children, and Comic Relief* 1-5.

[150] B Lee & Dr E Porfeli 'Youths' socialization to work and school within the family' (2015) 15(2) *International Journal of Educational & Vocational Guidance* 1-2, EJ Porfeli, C Wang & PJ Hartung 'Family transmission of work affectivity and experiences to children' (2008) 73 *Journal of Vocational Behavior* 278–286, NM Putney & VL Bengtson 'Socialization and the family revisited' (2002) 7 *Advances in Life Course Research* 165–194.

[151] MP Lambon-Quayefio & NS Owoo 'Investigating the long-term effects of child labor on household poverty and food insecurity in Ghana' (2021) 87(4) *Journal of Demographic Economics* 561-587, MR Sevinç 'Poverty, child labor, and hope: The relationship between hope and perceived social support in children working in street markets in TRC2 Region of Turkey' (2020) 7(78) *Children* 1-3, Abdullahi et (note 114 above; 7-8).

[152] E Edmonds 'Does minimum age of employment regulation reduce child labor?' (2014) 73 *IZA World of Labor* 1.

viable, especially in the current economic condition of the USA. The typical approach to the eradication of child labour thus far has been to prohibit children from working by increasing the minimum age of employment. South Africa, Uganda and the USA have all employed this approach. However, it is doubtful whether prohibitions of child labour alone is effective without additional policies in place to address the determinants of child labour, thereby increasing the risks of exploitation and abuse.[153] Simply increasing the minimum age of employment to prevent child labour does not automatically result in children attending school or resolve the socio-economic and cultural factors that compel children to engage in work.[154]

Even though the researcher commends the USA for the manner in which it deals with the minimum age of employment within the agricultural sector, it must be highlighted that neither federal nor state law provide any regulations for children under the age of 15 who work in the agricultural sector. This is a colossal pitfall in the federal and state laws of the USA, and it is submitted that this oversight by legislators should be taken as cautionary lesson by South Africa.

The fundamental purpose of any decision pertaining to children should be to enhance their protection. By not providing proper regulations and guidelines for how children under 15 years of age may engage in work, adults are given free rein to implement any conditions of work or require any types of work from children that they choose. Consequently, adults may impose conditions that are harmful to children and involve abuse and exploitation. In the USA, there are more children that die within the agricultural sector than any other sector.[155] Perhaps if child labour was adequately regulated in this sector, these deaths could have been avoided.

In terms of hazardous work in the agricultural sector, there are no states in the USA that comply with the international regulations of 18 years old as the minimum age of employment in the agricultural sector.[156] Only one state provides extra protective measures for children 16 years of age, 11 states enforce 16 years with a limited framework of protective

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[153] S Bissell & B Sobhan 'Child labour and education programming in the garment industry of Bangladesh: Experiences and issues' (1996).
[154] SL Bachman 'A new economics of child labor: Searching for answers behind the headlines' (2000) 53(2) *Journal of International Affairs* 545-575.
[155] HRW 'How do states measure up on child rights?' fn 31, 3 September 2023, available at *https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights#_ftn31,* accessed 23 January 2023.
[156] 'Child labor in agriculture' ILO, [n.d.], available at *https://www.ilo.org/ipec/areas/Agriculture/lang--en/index.htm,* accessed 23 January 2023.

measures, and the 38 remaining states enforce the federal law standard of 16 years without any further measures to protect children who undertake hazardous employment.[157]

It is recommended that South African legislators maintain the minimum age for employment for hazardous work at 18. Reducing the minimum age requirement should only be a viable consideration if it does not endanger the life of the child. The decision of the USA to lower the age requirement for hazardous employment contravenes the age requirement of 18 specified by international standards. It is not the intention of the researcher to recommend that South Africa deviate from international standards and create divergence in the application of child labour provisions internationally. Rather, it is submitted that any consideration given to reducing the minimum age of employment be undertaken for the protection of children and in accordance with minimum age requirements of international standards.

The intention of the international instruments is not to completely prohibit children from working but, rather, ensure that their wellbeing is not compromised if they do work. This is evidenced by the light work provision in Convention 138 and the cultural references in the ACRWC that permit children to engage in work that will not endanger them.[158] Therefore, it is argued that any initiative to lower the minimum age must demonstrate that it is for the greater protection of children and not for their harm. Any initiative to allow children to engage in activities that are blatantly harmful to their health and well-being should not be entertained.[159]

The suggestion by the researcher of lowering the minimum age for work is intended to allow children greater scope to work within regulated parameters where they are protected. It is submitted that clear distinctions be made when drafting legislation and regulations to identify types of work that children may engage in and the conditions under which they may be carried out. Hazardous work activities and the conditions of work that are

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[157] HRW 'How do states measure up on child rights?' 3 September 2023, available at *https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights#,* accessed 23 January 2023.
[158] MA Weldeyesus & BA Alemu 'Profiles of child labour: Prevalence, activities, contexts, and children's harm extent in Raya-Kobo and Angot Districts, Ethiopia' (2024) 18(4) *International Journal of Child Care and Education Policy* 1-2, O Adonteng-Kissi 'Cultural responsiveness in child protection: Stakeholders and parental perceptions of working children and culture-appropriate assessment in Ghana' (2023) 53 *British Journal of Social Work* 118-119, YJ Amuda 'Working conditions and consequences of child labour in Nigeria'(2010) 1(7) *OIDA International Journal of Sustainable Development* 3–72.
[159] A Ahad et al 'Urban child labor in Bangladesh: Determinants and its possible impacts on health and education' (2021) 10(107) *Social Sciences* 11-14, HS Kayen 'The impact of child labor on children's development: A Case study of Afghanistan' (2023) 10(2) *Bhineka Tunggal Ika* 326-327, J Huisman & J Smits 'Keeping children in school: Effects on household and context characteristics on school dropout in 363 districts of 30 developing countries' (2015) 5 *SAGE Open* 1–16.

deemed hazardous should also be clearly specified so that children can be prevented from undertaking such activities and authorities can be able to clearly identify when an activity constitutes child labour.

In terms of the non-agricultural sector in the USA, child labour is monitored very closely by enforcing the legal parameters within which minors can engage in work. While federal law sets the national standard for compliance, states are permitted to enforce more stringent laws for various types of work and to require documentation to verify that the child is of a legal age to work.[160] It is not mandatory for a state to enforce age certification, and there are three positions that states can adopt regarding this issue: the state may decide that age certification is not required; the state may decide that a minor is required to have an age certification to work; or a state may impose the age certification to be determined by the specific work conditions.[161]

Fourteen states do not require age certification for minors; in these states, children may engage in any lawful area of work even if they do not provide proof of their age to verify that they meet the age requirements for specific types of employment.[162] Ten states enforce provisions for an age certification. In these states, children are required to have a certificate to verify their age to obtain employment. Twenty-six states require age certification for specific types of work and circumstances. In these states, the age requirements vary according to the job description and work conditions.[163] The requirement of age certification is a necessary safeguard as it ensures that minors are not engaged in employment that they are not physically capable of undertaking. This requirement is in line with ILO Convention 138, which enforces minimum age employment for minors. The USA models a practical approach to complying with Convention 138 while enhancing the protection of minors that could be followed by South Africa.

Additionally, states are entitled to impose employment certificates or work permits for minors to be employed. Six states do not issue employment certificates, which means that minors in these states do not require permission from the Department of Labour to engage in employment.[164] Four states require employment certificates across all types and

[160] HRW 'How do states measure up on child rights?' 3 September 2023, available at *https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights#,* accessed 23 January 2023.
[161] Ibid.
[162] Ibid.
[163] Ibid.
[164] Ibid.

conditions of work. The remaining forty-two states require employment certificates according to the specific age requirements, types of work, and conditions of employment minors may engage in.[165]

The requirement of employment certificates is thus beneficial to the state as it allows the Department of Labour to monitor the number of minors who are employed and the type of work that they are expected to engage in. This gives the labour inspectors insight into the areas of employment that they need to monitor. This is another safeguard that South Africa could consider to make the monitoring of child labour more effective by strengthening the record-keeping of employed minors. It would also assist with increasing the visibility of employed minors and providing statistics to improve the understanding of the prevalence of child employment in South Africa, which is currently lacking.

Moreover, states in the USA may enforce their requirements for the minimum hours minors may lawfully engage in work. It is pertinent to underscore that federal law imposes a maximum period of eight hours of work per day, 50 hours per week, or six days per week, for minors from 14 to 15 years old when school is out of session. When school is in session, the maximum work hours is three hours per day. However, under federal law, there is no maximum work hour limit for minors of 16 and 17 years of age. States in the USA are entitled to impose requirements for minors of 16 and 17 years of age. Consequently, the lack of a federal standard creates a loophole for states to impose maximum hours of employment that could potentially exploit minors of 16 and 17 years of age.

A possible reason for the federal law's lack of regulation pertaining to children aged 16 and 17 is that this age group is expected to have reached the mandatory age limit of 15 for formal education. State laws focus mainly on children who are enrolled in school, as the intention is to ensure that children complete the mandatory years of formal education. Thus, state laws regarding the maximum hours of employment are significantly more relaxed for minors of 16 and 17 years of age.

In Illinois, during school sessions, minors from 14 to 17 years old may work until 9 pm for 3 hours daily or longer but not exceeding 24 hours weekly. During periods when school is not in session, minors may work till 10 pm daily.[166] In Maine, when school is in session for less than three days, minors are permitted to work up 50 hours per week. In

[165] ILO 'Child labor in agriculture' [n.d.], available at *https://www.ilo.org/ipec/areas/Agriculture/lang--en/index.htm,* accessed 23 January 2023.
[166] Ibid.

Wisconsin, children aged 16 and 17 have no restriction placed on their work hours when school is not in session. Their employer is, however, required to pay them time and a half if they exceed 10 hours daily or 40 hours weekly. Additionally, Wisconsin requires such minors to have a rest period of 8 hours between shifts and supervision by an adult is mandatory if they work between 12:30 am and 5:00 am.[167]

There are several lessons that be taken from legislation of various states regarding work by children 14 to 17 years old. First, it is evident that states endeavour to enable children to work and attend school. This complies with international standards that require that 15 years old is the minimum school leaving age.[168] States place tighter restrictions on hours of work when school is in session for minors from 14 to 17 years old. This signifies that legislators are cognisant of the well-being of children who combine work with school and aim to ensure that they have sufficient time for homework and rest.[169]

Second, the possible reasons for flexible regulations incorporating work with school for children aged 16 and 17 could be that they are more psychologically and physically mature than younger children and thus have the capacity to work longer hours.[170] Furthermore, permitting children 16 and 17 years of age to work more hours per week helps to prepare them for the world of work as adults. This gives them the opportunity to take on more responsibility as they transition into adulthood.[171] This demonstrates that state legislators are interested in protecting the right of these minors to education while affording them the opportunity to work.

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[167] HRW 'How do states measure up on child rights?' fn 31, 3 September 2023, available at *https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights#_ftn31*, accessed 23 January 2023.

[168] D Boutin & M Jouvin 'Child labour consequences on education and health: A review of evidence and knowledge gaps' (2022) *Bordeaux Economics Working Papers, BxWP2022-14* 6, CY Kim 'Is combining child labour and school education the right approach? Investigating the Cambodian case' (2009) 29(1) *International Journal of Education Development* 30–38.

[169] AN Amedu & OV Ossai 'Influence of child labour on primary school pupil's enrolment and dropout: A Scoping review' (2023) 4(3) *Journal of Education and Teaching* 398, IB Anumaka 'Child labour: Impact on academic performance and social implication: A case of Northeast Uganda' (2013) 2(2) *Journal of Educational Science and Research* 56.

[170] A Cerino 'The importance of recognising and promoting independence in young children: the role of the environment and the Danish forest school approach' (2021) 51(4) *Education 3-13* 691, M Saleh et al 'A case study of culturing children's independence attitude through parent's role and teacher's role' (2022) 9(1) *JPPM* (Jurnal Pendidikan dan Pemberdayaan Masyarakat) 38-40.

[171] See G Betcherman & T Khan *Youth Employment in sub-Saharan Africa: Taking Stock of the Evidence and Knowledge Gaps* (2013), DM Hansen, JT Mortimer & H Krüger 'Adolescent part-time employment in the United States and Germany: Diverse outcomes, contexts and pathways' in P Mizen, C Pole & A Bollton (eds) *Hidden Hands: International Perspectives on Children's Work and Labour* (2001) 131.

Third, the pay rate for excess hours of work is significant as it indicates that when minors from 16- to 17-years work long hours, they should be given a higher wage. This is a possible safeguard against exploitation of such minors.

Fourth, the legalisation of child work for minors from 14 to 17 years of age encourages more minors to undertake some form of work while they acquire an education.[172] This is particularly beneficial to those minors who are dependent on work to assist with the financial burden at home.[173]

It is submitted that South Africa should draw from the USA's approach that allows children to both work and go to school, ensuring that children are not placed in the unfair position of having to choose between supporting themselves and their families or continuing their education.[174] The USA's perception of working children is evident in legislation that permits children to work rather than preventing them from working. It is suggested that South Africa could adopt this approach that would be more accommodating to working children and a flexible school curriculum. It is further submitted that this concept of work and school would benefit South Africa in the long term as it would ensure that the immediate needs of children are met through their employment while also ensuring that the development of children through education, which is necessary to advance the country, is not compromised.[175] The possibility of adopting this approach is discussed further in Chapter Ten.

While federal law does not impose standards of work for minors from 16- to 17-years, individual states have instituted their own parameters for work that may be undertaken lawfully. Thus, the USA not only legalises work for children 16 and 17 years of age across the board, but individual states also provide safeguards to monitor and protect these minors while they work. In contrast, while South Africa sets the same minimum school exit age of 15, South African legislation does not adequately provide for the monitoring of minors who decide to leave school at 15 years of age to work.

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[172] EK Ambetsa 'Children\s perspectives on involvement in housework and its effect on academic performance in early childhood at city primary schools, Nairobi, Kenya' (2016) 3(11) *Advances in Social Sciences Research Journal* 223-233, M Bourdillon 'Child labour and education: A case study from South-Eastern Zimbabwe' (2000) 15(2) *Journal of Social Development in Africa* 8-9.

[173] AL Kalleberg & PV Marsden 'Changing work values in the United States, 1973–2006' (2013) 42(2) *Social Science Research* 255–270.

[174] Dr DL Putnick & MH Bornstein 'Is child labor a barrier to school enrollment in low- and middle-income countries?' (2016) 1(41) *International Journal of Education Development* 112–120, EV Edmonds & M Shrestha 'You get what you pay for: Schooling incentives and child labor' (2014) 111 *Journal of Development Economics* 196–211, Y Tafere & A Pankhurst 'Can children in Ethiopian communities combine schooling with work?' (2015) *Working Paper 141: Young Lives* 6-7.

[175] Aufseeser et al (note 34 above; 244).

It is submitted that the approach that the USA has taken to lawful youth employment should set the trajectory for South Africa to follow. Perhaps South Africa should consider the differences between the USA, as a developed country, and South Africa, as a developing country. In the USA, child employment is encouraged through the adequate monitoring of youth employment enforced by legislation.[176] In South Africa, youth employment is not encouraged because there are no safeguards that guarantee the protection of minors through adequate monitoring regulations while they undertake work. When minors undertake work in the USA, they are protected through monitoring regulations, and the opportunity for exploitation is reduced. Thus, minors are able to experience the benefits of child employment while protected. On the contrary, South Africa legalises work for children 15 to 17 years of age without providing comprehensive monitoring regulations for lawful work, thereby increasing the possibility exploitation.

Minors that undertake employment in the USA are given the opportunity to acquire life skills and develop a sense of responsibility and maturity.[177] It is axiomatic that children are the future leaders of their country.[178] South Africa should consider that one of the possible reasons as to why the USA is progressive is because of the manner in which it trains and equips its children for the future.[179] It is submitted that children need to acquire a sense of responsibility to be accountable for their actions as adults. Lawful child employment that seeks to benefit the minor is possible if legislators implement lawful parameters for monitoring minors to undertake work.[180]

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[176] D Wegmann 'Child labor in the US' (2003) 8(4) *Ciência & Saúde Coletiva* 1030, T Abebe 'Child labour in the global south: A review and critical commentary' (2009) 3-4 *Barn* 12-14, EJ Porfeli 'Work values system development during adolescence' (2007) 70(1) *Journal of Vocational Behavior* 42-60, S Bhalotra 'Is child work necessary?' (2000) *Discussion Paper No. DEDPS 26* 1-4.

[177] A Paterson et al 'Assessing work-based values' (2021) 4(1) *Journal of Vocational, Adult and Continuing Education and Training* 43, S Siphai, S Siphai & J Sakulku 'The development of early childhood intellectual capacities in the child development centers of the local administrative organizations, Chaiyaphum' (2023) 3(5) *International Journal of Sociologies and Anthropologies Science Reviews (IJSASR)* 9-10, N Wahiddin 'Analysis of children's intellectual development: A study at Mawar Kindergarten' (2019) 337 *Advances in Social Science, Education and Humanities Research* 213, M Murshed 'Unraveling child labor and labor legislation' (2001) 55(1) *Journal of International Affairs* 173.

[178] E Mendelievich *Children at Work* (1979) 3.

[179] A De Lannoy et al 'Why is youth unemployment so intractable in South Africa? A synthesis of evidence at the micro-level' (2020) 3(2) *Journal of Applied Youth Studies* 115–131, L Emerson & K Lloyd 'Measuring children's experience of their right to participate in school and community: A rights-based approach' (2017) 31(2) *Children and Society* 120-133, S Eija, M Mustola & M Alasuutari 'Dilemmas related to young children's participation and rights: A discourse analysis study of present and future professionals working with children' (2024) 13 (27) *Social Sciences* 1-5.

[180] Bourdillon et al (note 34 above; 88-107).

Another pertinent aspect of the legal framework of the USA is its federal system. The federal laws and state laws of the USA pertaining to the regulation of child labour may seek to create more stringent governance of child labour, however it also creates a lack of uniformity across the country. All 50 states have different laws pertaining to child labour.[181] Even though the same work conditions are present in various states, there are different laws that govern how child workers should be treated. It is submitted that this inconsistency in the enforcement of child labour laws that leads to an injustice of the law thus it is submitted that South Africa should not conform to this approach.

The USA further endorses mandatory procedures to ensure awareness of child labour policies in the workplace.[182] It is suggested that South Africa draw from this approach in order to enhance the awareness of child labour so that communities, employers and children are educated on child labour and adhere to the laws regulating child labour policies.

The USA differentiates between child labour in the non-agricultural and the agricultural sectors. It is submitted that this differentiation would be beneficial in the South African context as different factors constitute child labour in the formal sector, informal economy and when children perform domestic chores, as discussed in Chapter 5. It is envisaged that South Africa could assimilate this approach in amending legislation to reflect the factors that could constitute child labour in the informal economy and when children perform domestic chores.

7.6. CONCLUSION

This chapter has examined child labour and child work law in the USA. The advantages and disadvantages of the legal framework for child labour law were discussed. A possible shortcoming of the American approach is its lack of protection for child workers in the agricultural sector as compared to the non-agricultural sector. This, together with the federal system, results in disparity in the application of child labour laws. As previously discussed, it should never be the case in any country that some children receive greater protection by the law than other children. While the FLSA imposes fines on the perpetrators of child labour, the

[181] US Department of Labor 'Selected state child labor standards affecting minors under 18 in non-farm employment as of 13 June 2024' (2024), available at *https://www.dol.gov/agencies/whd/state/child-labor,* accessed 25 June 2024.
[182] J Kimberly 'Awareness and knowledge of the U.S. child labor laws among a national sample of working adolescents and their parents' (2010) 47(4) *Journal of Adolescent Health* 414-417.

fines are too low to be a significant deterrent. Companies that use child labour do not face serious legal consequences.

Heavier penalties may serve as a more effective deterrent against employing child labour. It is submitted that instead of paying the fines into the states' funds, this money could be allocated to a special fund that would distribute compensation to families of children who have been injured while working. This would ensure that the government does not stand to gain when child labour violations occur and perpetuate child labour for its financial benefit.

American child labour law is not aligned with international standards[183] in terms of the lawful age of employment and compulsory schooling. This entails that the USA affords a lower level of protection to its children than other countries, such as South Africa and Uganda.

While many aspects of child labour law in the USA need development for the enhanced protection of children, there are also several approaches that the USA has used for dealing with child labour and child work that could be beneficial to South Africa. This will be discussed in greater detail in the recommendations in Chapter Ten. It is not the intention of the researcher to suggest that South Africa follow the child labour laws of the USA exactly, but rather incorporate those aspects that would be beneficial to South Africa and consider their method of enacting child labour legislation.

Chapter Eight will compare the regulation of child labour in South Africa, Uganda and the USA. This will allow the study to highlight the similarities and differences in each jurisdiction to identify how South Africa can improve its child labour laws.

[183] The Minimum Age Convention, 138.

CHAPTER EIGHT: COMPARATIVE ANALYSIS OF SOUTH AFRICA, UGANDA AND THE UNITED STATES OF AMERICA

8.1. INTRODUCTION

8.2. FACTORS OF COMPARISON

8.2.1. RATIFICATION OF INTERNATIONAL INSTRUMENTS PERTAINING TO CHILD LABOUR

8.2.2. THE DEFINITION OF A CHILD

8.2.3. THE DEFINITION OF CHILD LABOUR

8.2.4. DEFINITION OF HAZARDOUS WORK

8.2.5. MINIMUM AGE OF EMPLOYMENT AND MINIMUM SCHOOL LEAVING AGE

8.2.6. REGULATION AND MONITORING OF LAWFUL CHILD WORK

8.2.7. ENFORCEMENT OF CHILD LABOUR PROHIBITIONS

8.2.8. ALIGNING CHILD WORK AND EDUCATION

8.3 SUMMARY OF COMPARATIVE ANALYSIS

8.4. CONCLUSION

8.1. INTRODUCTION

This chapter presents an analysis of the differences and similarities between South Africa, Uganda and the United States of America (USA). The purpose of this analysis is to identify comparative relative strengths and weaknesses in each country's child labour laws. This will assist the researcher in identifying those aspects of the law that could be beneficial to South Africa and help improve our child labour regulations. It is envisaged that the comparative analysis will bring to focus the pertinent oversights in the current child labour legislation in South Africa. This would allow the researcher to draw from the legal framework of Uganda and the USA and evaluate whether aspects of the respective countries can be adopted into the South African legislative framework on child labour. Section 39 (2) of the South African Constitution provides that South Africa may examine the legislation of other countries as a means to improve its own legislation. This chapter presents key aspects within the child labour legislation in Uganda and the USA that South Africa could incorporate into South African legislation to enhance the protection of children against child labour.

8.2. FACTORS OF COMPARISON

8.2.1. RATIFICATION OF INTERNATIONAL INSTRUMENTS PERTAINING TO CHILD LABOUR

The United Nations Convention on the Rights of Children (CRC) was signed and ratified by South Africa in 1995[1] and Uganda in 1990.[2] While the USA has signed the United Nations CRC, it has not ratified it; the CRC thus does not have any binding effect on how domestic laws are enacted in the United States.[3]

The International Labour Organisation (ILO) Minimum Age Convention 138 of 1973 was ratified by South Africa in 2000 and Uganda in 2003. The United States has not ratified this convention.

The ILO Worst Forms of Child Labour Convention 182[4] of 1999 was ratified by the United States in 1999 and Uganda in 2001.[5] The USA was the first industrialised country to ratify this convention.[6]

The ratification of these conventions indicates not only these countries' like-mindedness and commitment to adhere to an international standard, but also incur an obligation for signatories to incorporate these standards into domestic legislation. This has been borne out by the child labour legislation that South Africa and Uganda have enacted that align with the United Nations CRC, Convention 138, and Convention 182 as discussed in this chapter. The refusal of the USA to ratify the United Nations CRC and Convention 138, however, reflects its disagreement with the provisions of these instruments; correspondingly, domestic legislation in the USA has not been brought in line with these standards.

8.2.2. THE DEFINITION OF A CHILD

The United Nations CRC in Article 1 and Convention 182 in Article 2 define a child as someone under the age of 18. South African[7] and Ugandan[8] legislation is aligned with this. In the USA, all states but three share this definition; the remaining three set a higher threshold for

[1] SA Parliament 'Promoting children's rights in South Africa: Fast facts: United Nations Convention on the Rights of Children' (20-?).
[2] 'Implementation of the Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography' (2002).
[3] The United Nations Convention on the Rights of the Child (2016) *Congressional Research Service* 4.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Children's Act; s 1.
[8] Children Act; chapter 59.

the age of majority.[9] Thus, these three countries share a standard for child labour legislation concerning children under the age of 18.

8.2.3. THE DEFINITION OF CHILD LABOUR

International law does not clearly define child labour. ILO Convention 138 encourages member states to abolish child labour but does not define it. Consequently, South Africa in the Constitution of South Africa, 1996 (The South African Constitution), in section 28 (1)(*e*) and (*f*) enforce the protection of children from exploitative labour practices. Additionally, the Basic Conditions of Employment Act 75 of 1997 (BCEA) in section 40 merely prohibits children under 15 from employment and work in terms of the proposed amendment to the BCEA. South Africa has thus drafted legislation in accordance with the obscurity of the term 'child labour' in Convention 138. Nowhere in South African law is the term 'child labour' used.

The United Nations CRC, in Article 38, makes reference to the protection of children from 'exploitative labour practices'. While the United Nations CRC does not define 'child labour' or 'exploitative labour practices', South Africa has incorporated the term 'exploitative labour practices' into the Constitution in sections 28 (1)(*e*) and (*f*). In addition, Article 28 of the United Nations CRC identifies factors that must be considered in protecting children from child labour as those that could compromise a child's access to education or 'be harmful to the child's health or physical, mental, spiritual, moral or social development.' South Africa endorses this by naming these factors in in section 40 (3)(*b*) of the BCEA, thus establishing a standard against which an activity may be determined to constitute child labour and be declared unlawful.

Thus, South Africa has aligned its child labour law with the United Nations CRC and the ILO Convention 138. However, as South Africa, like the United Nations CRC and Convention 138, does not define the term 'child labour', this leaves room for interpretation. This is particularly pertinent in the context of the cultural complexity of South Africa, where a rigid definition may not be appropriate.

In Uganda, Article 34 of the Constitution of the Republic of Uganda, 1995, endorses the factors enshrined in Article 28 of the United Nations CRC as the standard by which to determine whether an activity constitutes child labour, as is the case in South Africa. South Africa and Uganda also share the same approach to enacting the United Nations CRC

[9] In Alabama the age of majority is 19 years old (*Campbell v. Campbell*), in Nebraska the age of majority is 19 years old (§43-2101) and in Mississippi the age of majority is 21 years old (Mississippi Code title 1, S1-3-27).

by focusing on the effect an activity has on a child rather than enumerating prohibited activities. If the effect is considered detrimental to the child in terms of the standard, then the activity is considered to constitute child labour. However, unlike the South African Constitution, the Ugandan Constitution does not adopt the United Nations CRC's term 'exploitative labour practices' but rather refers to 'social and economic exploitation'[10] which recognises that child labour could entail commercial gain or be unpaid and informal in nature.

Additionally, the Ugandan Constitution uses the words 'employ' and 'work', thus including both formal employment, work in the informal economy and domestic chores. While the wording of the Ugandan Constitution differs from that in the United Nations CRC—and in South African legislation—it achieves the same purpose as the South African legislation as these terms broaden the ambit of what can constitute child labour to include informal, unpaid activities. In this way, both South Africa and Uganda have expanded the protection of children against child labour. Cultural practices in both countries include that expectation that children carry out domestic chores; this latitude in the legislation thus accommodates work in the informal sector that is culturally permissible while recognising domestic chores as an area where illegal child labour could, potentially, be practiced. Neither country, however, provides criteria for what constitutes child labour in the domestic environment.

Section 12(a) of the FLSA provides for the protection of children from 'oppressive child labour in commerce'. The United States, in contrast to South Africa and Uganda, uses the word 'employ', rather than 'work'. Consequently, the FLSA can only be applied to instances of child labour that place in the context of formal employment for remuneration. The FLSA does not address the protection of children against child labour in the context of domestic, unpaid activities. USA law, thus, severely limits the protection of children and places them in a precarious position where they are vulnerable to exploitation. Additionally, the explicit use of the words 'in commerce' reinforces the limitation of the protection of children against child labour to the contexts of trade and the manufacturing of goods. These child labour provisions thus offer no real protection to children. This represents a significant difference between the legislation of South Africa and Uganda, on the one hand, and the USA, on the other. While South African and Ugandan legislation demonstrate a commitment to the protection of children from child labour, the USA takes a nonchalant approach. The FLSA also does not address all forms of activity that may take place outside of domestic settings such as when children carry

[10] The Ugandan Constitution; Article 34.

on business in small, unregistered enterprises, when they work in family-owned enterprises that is unpaid or when they engage in begging, street vending, waste picking. It also includes situations where children work as entrepreneurs carrying on their own independent business that is unregistered.[11] Essentially the FLSA does not provide protection to children in the informal economy who engage in work that is not registered or strictly regulated by an employment contract. The types of work in the informal economy were discussed in great detail in Chapter 3. As mentioned previously, this study does not focus on child labour in the informal sector and the informal economy as that is beyond the scope of this thesis. The researcher has only provided explanations of child labour in the informal sector and informal economy where it was necessary to provide clarity on the concept of child labour. Although, a pivotal difference exists between South Africa, Uganda and the USA in terms of the manner in which these countries provide and regulate child labour protection within the informal economy, domestic settings and agricultural sector. As previously mentioned, South Africa and Uganda, in accordance with the United Nations CRC, provide for the protection of children against child labour in informal, unpaid settings such as domestic and rural contexts where child labour may take place. This protection is offered to children; however, there is no further clarity or provisions in the legislation of South Africa and Uganda to guide, regulate or enforce this protection in informal settings. Unlike South Africa and Uganda, the USA differentiates between agricultural and non-agricultural settings.[12] In doing so, the USA has endorsed an entire framework dedicated to the regulation and enforcement of child labour provisions in the agricultural sector, even though the FLSA explicitly limits the enforcement of protection against child labour to employment and commercial settings.

Furthermore, in the FLSA, the USA does not define oppressive child labour or even child labour. While this is also true of South Africa and Uganda, the use of the factors listed in Article 28 of the United Nations CRC as criteria for determining whether an activity constitutes child labour. The FLSA, however, does not refer to the factors listed in Article 28 of the United Nations CRC, and does not assert any other criteria for determining whether an activity constitutes child labour. The USA lacks the consistency of the application of the concept of child labour that South Africa and Uganda have endorsed through their legislation.

[11] ILO Recommendation 204, paragraph 4, OECD/International Labour Organization 'Definitions of informal economy, informal sector and informal employment' in *Tackling Vulnerability in the Informal Economy* (2019) 156.
[12] The FLSA; section 12 (a) & (c).

It is envisaged that South Africa can draw lessons from the manner in which the USA approaches child labour within the agricultural and non-agricultural sectors. As discussed above, the USA enforces different guidelines for how children should engage in work within these two sectors. This approach could be useful in the South African context, as it acknowledges that there is a difference between how child labour occurs in the formal sector, where employers employ children in exchange for remuneration, and child labour undertaken in the informal economy, or where domestic chores can constitute child labour (as discussed in Chapter Three). The differences between the forms which child labour can take in these areas requires different approaches to investigate, identify and address child labour.

As discussed in Chapter Five, in the formal sector in South Africa, Uganda and the USA, labour inspectors can freely enter employers' premises without consent from the employer. In the informal sector, labour inspectors require the permission of homeowners to enter their premises.[13] This limitation to the access afforded to labour inspectors can impede investigations as while an inspector is seeking permission to access the property the violators may conceal and remove evidence of child labour. Additionally, as mentioned above child labour in the informal economy and in domestic settings differs from what labour inspectors have been trained to identify within the formal working environment. In order to identify child labour when it occurs in the context of domestic chores and unpaid work, a set of guidelines is needed to enable labour inspectors to identify child labour specifically in informal settings. Moreover, in the formal sector, labour inspectors may impose fines and lay criminal charges against employers,[14] and remove children from the environment in which they are engaged in child labour.[15] In the informal economy and in domestic settings where children are living under the care of their parents this approach may not be appropriate, as it would entail imprisoning parents and removing children from their homes. This requires that legislation be drafted and implemented to address the differences between child labour in the formal, informal economy and domestic settings where domestic chores are carried out. The application of the approach used in the United States to the South African context is explored further in Chapter Ten.

8.2.4. DEFINITION OF HAZARDOUS WORK

[13] The BCEA; s 65 (2).
[14] The BCEA as amended by the BCEA Amendment Act; s 93.
[15] The Children's; s 150(2).

In terms of Article 3(1) of ILO Convention 138 and Article 3(1) of the United Nations CRC, children under 18 years of age are prohibited from performing hazardous work. However, as mentioned in Chapter Three, neither of these instruments define the term 'hazardous work', although ILO Convention 138 provides criteria for determining whether an activity is hazardous. South African legislation is aligned with the requirements of ILO Convention 138: section 28 (1) of the South African Constitution and section 40(1) of the BCEA prohibit children from performing work inappropriate to their age. While South African law does not explicitly prohibit children under 18 years of age from engaging in hazardous work, but the sections mentioned above encompasses the prohibition of hazardous work by those under 18 years old. Thus, South Africa complies with the minimum age requirement of 18 for hazardous work. South African law is also aligned with the ILO Minimum Age Recommendation 146, 1973 (hereafter referred to as 'Recommendation 146')[16] in the drafting of regulations on hazardous work as discussed in Chapter Five, that specify certain types of work as hazardous according to Recommendation 146.

In Uganda, Article 34 (4) of the Ugandan Constitution protects children from performing work that is hazardous. While neither the Constitution nor additional legislation define the term 'hazardous work', the Ugandan Employment (of children) Regulations, No.17 of 2001 subsumes the guidelines and factors enunciated by Article 3(1) of ILO Convention 138 and Article 3(1) of the United Nations CRC. Therefore, Uganda, like South Africa, adheres to a minimum age of employment for hazardous work set at 18.[17] Uganda, like South Africa, does not differentiate between hazardous work in agricultural work and non-agricultural work as in the USA. Thus, both South Africa and Uganda set the standard age for the undertaking of hazardous work at 18 years old in all sectors.

In the USA, section 203(1) of the FLSA and the exemptions under the FLSA provide that the minimum age of employment for non-agricultural employment is 18 and, for agricultural employment, 16. This is not aligned with Article 3(1) of Convention 138 and Article 3(1) of the United Nations CRC, which set the minimum age of employment at 18 for hazardous work. Furthermore, the approach of the USA to hazardous work differs significantly from that of South Africa and Uganda, which mandate that hazardous work can only be

[16] In terms of Recommendation 146, member states are supplied with a number of factors which should be considered when determining hazardous work. These are: the use or exposure to toxic or harmful elements, substances or procedures (as well as ionising radiation), the haulage or lifting of intense weights and all work that is conducted underground.

[17] Section 32(4) of the Employment Act; Regulation 5 of the Employment (Employment of Children) Regulations (42, 43).

undertaken from the age of 18 irrespective of whether it is formal or informal. The USA, therefore, unlike South Africa and Uganda, does not address the protection of children against hazardous work in informal settings. Hence, children who engage in hazardous work in informal settings in the USA are more vulnerable abuse and exploitation than children in South Africa and Uganda.

8.2.5. MINIMUM AGE OF EMPLOYMENT AND MINIMUM SCHOOL LEAVING AGE

Article 2(3) of ILO Convention 138 sets the minimum age of employment in congruence with the minimum age required for completing schooling, which is 15.[18] In South Africa, the BCEA sets a minimum age of 15 years for the lawful employment of children,[19] and prohibits children from undertaking work if they are under the minimum school leaving age of 15.[20] South Africa thus complies with the requirements of ILO Convention 138. In Uganda, the minimum age of employment stated in section 32 of the Employment Act sets the legal admission of employment at 12.[21] The Employment Act further provides that children below the age of 12 years may undertake light work if it does not compromise the wellbeing of the child.[22] The Education Act mandates free compulsory education from the age of 6 until the age of 13.[23] Thus, Uganda, in contrast to South Africa, does not comply with the international age requirements for admission to employment and minimum age for compulsory education. The conflicting age requirements for minimum employment and compulsory minimum education in Uganda results in inconsistent application of the law, as discussed in Chapter 3. South Africa does not experience this challenge as its minimum age for employment and compulsory education are aligned.

A key difference between Ugandan and South African legislation is that Uganda provides for children from 12 to 14 years of age to undertake light work. However, Uganda does not strictly adhere to Article 7 of ILO Convention 138, which provides that light work may be taken by children who are from 13 to 15 years old. The inclusion of the light work provision in section 32 of the Employment Act is indicative of Uganda's cognisance of the poverty levels and the cultural context of the country that compel children to work to sustain

[18] Convention 138; Article 2(3).
[19] The BCEA; s 43 (1)(*a*).
[20] The BCEA; s 43(1)(*b*).
[21] The Employment Act; s 34 (1).
[22] The Employment Act; s 34 (2).
[23] The Education Act; s 10.

themselves and their families.[24] In South Africa, however, the BCEA does not reflect the provision of Convention 138 allowing light work; although in the context of cultural norms and poverty that compel children to work in South Africa, this has bearing.

In the USA, the FLSA enforces a minimum age of employment of 14 at the federal level for employment in formal, non-hazardous industries, provided that it does not impede the child's hours of schooling.[25] The FLSA further enforces a minimum age of 12 for employment in the agricultural or informal sectors. Additionally, the FLSA permits minors below 12 years of age to undertake any type of non-hazardous agricultural employment on a small farm when school is not in session, provided parental consent has been obtained.[26] Moreover, a minor of any age may work on a farm that is owned by a parent or guardian.[27] The minimum school leaving age is set by state laws; in most states, the minimum age is 16, some allow children to leave school at 15, which is congruent with Convention 138.[28] Thus, while the USA does not mirror the age set by Convention 138, it either meets or exceeds the compulsory age for leaving school.

This is unlike South Africa and Uganda whose minimum compulsory age for education is 15 years old. This illustrates that there may be a distinction between the USA as a developed country and South Africa and Uganda as developing countries. The USA being a developed country has the financial resources to provide for compulsory education at a higher age,[29] whereas South Africa and Uganda as developing countries are financially limited and do not have the resources to impose higher age limits for compulsory education as enunciated by international instruments.[30]

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[24] 'Situation analysis of child poverty and deprivation in Uganda' (2014), available at *http://www.unicef.org.media.file...pdf,* accessed 12 February 2021.
[25] The FLSA; s 203(1), "such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health or wellbeing."
[26] The FLSA; s 203(1).
[27] The FLSA; 203.
[28] IES NCES 'State education practices' (Table 1.2) (2017), available at *https://nces.ed.gov/programs/statereform/tab5_1.asp*, accessed 12 February 2022.
[29] ML Stevens 'Financing higher education in America' (2024) 53(2) *Contemporary Sociology* 103-107, A Cooley 'Funding US higher education: Policy making theories reviewed' (2015) 37 *Journal of Higher Education Policy and Management* 1-9, S Allegretto, E García & E Weiss 'Public education funding in the U.S. needs an overhaul How a larger federal role would boost equity and shield children from disinvestment during downturns' (2022) *Economic Policy Institute* 1-47.
[30] S Liebenberg & B Slade 'Applying a human rights lens to poverty and economic inequality: The experience of the South African Human Rights Commission' (2023) 51(3) *Federal Law Review* 296-298, JC Mubangizi & BC Mubangizi 'Poverty, human rights law and socio-economic realities in South Africa' (2005) 22(2) *Development Southern Africa* 277-290, M Adato, MR Carter & J May 'Exploring poverty traps and social exclusion in South Africa using qualitative and quantitative data' (2006) 42(2) *The Journal of Development Studies* 226-247.

The USA contravenes the provisions as set by ILO Convention 138 in both agricultural and non-agricultural sectors of employment as there are differences in minimum age of employment in agricultural and non-agricultural sectors. Uganda's minimum age of employment in formal, non-hazardous work is 14, as in the United States. However, in the agricultural sector, which is regarded as largely unregulated by legislation, there are no similarities in hazardous work. The USA differs significantly from South Africa and Uganda as its minimum age of employment is not set at a standard age for all types of work in all sectors, whereas South Africa and Uganda have enforced the minimum age requirements in their respective countries. The ramification of the variation in age requirements is that the USA lacks uniformity in applying the age requirement, as compared to South Africa and Uganda. This implies that there are certain types of employment where the age requirement may be relaxed and certain types of employment in the agricultural sector that require a higher age limit.

The USA differs from South Africa and Uganda by acknowledging that there are differences in the capabilities of children that are not defined by chronological age and that there are differences in the types of work that can be performed, rather than implementing a 'one size fits all' approach to legislating child labour. The USA, unlike Uganda, does not make mention of the light work provision in Article 7 of the ILO Convention 138 in the FLSA; however, it alludes to the use of the provision by permitting children of a younger age to perform work that amounts to light work (as discussed in Chapter 7). It is pertinent to note that South Africa and Uganda do not make use of Article 2(4) in ILO Convention 138 which permits developing countries with insufficient educational and economic resources to set the minimum age of entrance to employment at 14, rather than 15. Additionally, member states may adopt a minimum age that is lower than 14 if they can motivate successfully for this.[31] While South Africa and Uganda are developing countries with limited educational and economic resources, they are eligible to meet the requirements as per Article 2(4) of Convention 138.

South Africa may benefit from studying Uganda's guidelines for the minimum age of employment and the light work provision. It is submitted that South Africa should consider lowering the minimum age of employment and including a light work provision that would allow children to lawfully undertake work that would not be harmful to them. It is submitted that by lowering the minimum age of employment and including the light work

[31] Convention 138; Article 2(4).

provision, South Africa would be able to give effect to the African culture that espouses work undertaken by children that is not harmful to them.[32]

This is pertinent as it may allow for the preservation of the values of the African culture in South Africa. Additionally, it would allow children who are compelled to work to sustain themselves and their families to undertake work that would ensure their survival. Lowering the minimum age of employment and the inclusion of the light work provision would also South African legislation with Article 2(3) of ILO Convention 138, which endorses the light work provision for countries that have socio-economic limitations. This would ensure that children younger than 15, which is currently the minimum age of employment in South Africa, to acquire legal protection while they work and eliminate possible exploitation by employers. Chapter 10 will discuss this in greater detail.

8.2.6. REGULATION AND MONITORING OF LAWFUL CHILD WORK

In South Africa, section 44(1) of the BCEA provides for the drafting of regulations to regulate work undertaken by children from 15 to 17 years of age. However, the regulations are not sufficiently specific to indicate what measures should be in place to monitor working children and how work can be incorporated with the child's schooling if the child works and still attends school. Neither South Africa nor Uganda provides a legal framework that adequately regulates working children. South Africa legalises child work at 15 years of age and Uganda at 14, but neither provide a framework that protects working children within the minimum age of employment until they are 18 years old.

The USA, however, provides a comprehensive framework for child work that details monitoring systems and how work and school attendance can both be accommodated compatibly. Thus, the USA affords greater protection to working children than do South Africa and Uganda. As in South Africa and Uganda, labour inspectors are the chief monitoring personnel for child labour violations in the USA. However, as discussed in Chapter Seven, the USA goes one step further than South Africa and Uganda by requiring the Department of Labour to keep a record of child workers. The Department of Labour is also required to keep a copy of the birth certificates of all child workers and provide work permits to those who wish to be lawfully employed. Employers are obliged to check the work permits of child workers before they employ them.

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[32] O Agbu *Child Labour in Contemporary Africa – Issues and Challenges* (2009) 11.

In this way, the USA provides a framework that facilitates the monitoring of lawful child work and allows authorities to have a fair understanding of the number of children who are employed in the country. It also holds employers that employ youth workers accountable to ensure that the rights of youth workers are upheld. Additionally, child workers are given more visibility and have the backing of the authority of the Department of Labour as a security that their rights will not be infringed.

In contrast, South Africa and Uganda do not maintain careful records of the number of child workers employed or require children to show proof that they are at least 15 years old; nor are employers required to check the work permits of child workers. As a result, in South Africa and Uganda, there are no safeguards to ensure the protection of child workers with the backing of the government. This also allows for the possibility of illegal employment relationships to go undetected by the Department of Labour and so enables employers to have the power to enforce their rules onto child workers. Thus, while South and Uganda have legalised the employment of children 15 years of age and older, they have not put into effect a structure for the monitoring of child work that ensure the protection of child workers.

In the USA, violations of child labour law tend to involve compliance with the laws that regulate the conditions of work that children undertake, rather than on the employment of children under the lawful age. In contrast, there is a deficit in the child labour laws in South Africa and Uganda in terms of measures to clearly monitor the implementation of regulations governing lawful child work.

In light of the above discussion, it is submitted that South Africa could possibly adopt the approach taken by the USA in the manner in which the country regulates lawful child work and the manner in which the USA monitors the work undertaken by child workers. It is envisaged that by assimilating the manner in which lawful child work is regulated and monitored in the USA it would enhance the protection afforded to children in South Africa while they work. South Africa could draw from this approach in how the USA encourages working children through the enforcement of detailed child work regulations. If children are aware that they are afforded protection they would be more willing to engage in work.

The study submits that by encouraging children to work it would develop their sense of self-worth and inculcate positive values in them such as responsibility, accountability, time management and effective financial management. It is submitted that these values are essential for the working world when children complete their schooling. Additionally, South

Africa can draw from the procedures in place in the USA for how child work is monitored. South Africa can learn from the mandatory requirements for record keeping for child workers in the country, verification of the age of children through birth certificates and work permits. It is further submitted that the enforcement of these requirements would enhance the protection of child workers from potential exploitation of their employers as it would oblige the Department of Labour to be actively involved in the regulation of child work. It is additionally submitted that it would ensure the accountability of the Department of Labour and employers to adhere to child labour laws. Chapter Ten will discuss in detail how this approach undertaken by the United States can be adopted in South Africa to enhance legislation.

8.2.7. ENFORCEMENT OF CHILD LABOUR PROHIBITIONS

In South Africa, section 65 (1)(*a*) of the BCEA empowers labour inspectors to monitor child labour laws by entering any workplace or private home on suspicion of child labour.[33] Labour inspectors work contemporaneously with other agencies, as discussed in Chapter Four. In Uganda, similarly, the only monitoring system in place for child labour violations is the carrying out of random inspections by labour inspectors. Hence, South Africa and Uganda experience the same limitations in enforcing child labour prohibitions. These limitations include lack of funds to employ and train labour inspectors, corruption within the enforcement agencies, lack of expertise of labour inspectors when handling child labour violations, inspections only being carried out when complaints are made and follow-up inspections not being undertaken due to lack of funding, and low conviction rates for child labour offenses due to impediments at the grassroots level.[34]

However, it must be noted that there are three pertinent differences in the enforcement mechanisms of South Africa and Uganda, as discussed in Chapters Five and Six. First, in Uganda, labour inspectors are authorised to enter the private homes or farms of individuals, but officials rarely invoke this authority.[35] South Africa, on the other hand, only entitles labour inspectors to enter places of employment without prior notice and a warrant;

[33] The BCEA; s 65 (2).
[34] US Department of Labor Bureau of International Labor Affairs 'Child labor and forced labor reports: Uganda' (2022), available at *https://www.dol.gov/agencies/ilab/resources/reports/child-labor/uganda,* accessed 23 January 2023.
[35] Ibid.

they require authorisation from the court to enter private homes or farms.[36] This often impedes the effective implementation of child labour prohibitions, as mentioned in Chapter Six.

The second difference is that Uganda allows for civil society organisations to train labour inspectors, due to lack of funding from government. In South Africa, labour inspectors rely solely on the Department of Employment and Labour to train and equip them to enforce child labour prohibitions. This puts a heavy burden on a single government entity to ensure training. Additionally, as a result, officials are insufficiently trained in dealing with child labour cases.[37]

The third difference is that Uganda enforces mandatory reporting by labour officers on a monthly basis. South Africa does not have any provision that compel labour inspectors or social workers to account for the inspections that they should be undertaking. Currently, labour inspectors and social workers have no mandatory obligation under the law to conduct inspections. There is no standard to determine whether, in fact, inspections are being carried out.

Although South Africa has implemented the Child Labour Program of Action (CLPA), the Phase 3 report does not indicate whether each government department has fulfilled their obligations under the CLPA; hence, it is uncertain whether the programme has been effective.[38] In contrast, in Uganda there has been notable progress under the implementation of the programmes instituted by the country, as demonstrated in Chapter Six.

In the USA, in terms of the FLSA, the Secretary of Labour is authorised to carry out investigations and inspections of workplaces which are enforced by the Wage and Hour Division (WHD) of the Department of Labour.[39] Similar to South Africa and Uganda, the USA utilises inspections to uncover possible violations of child labour. Unlike South Africa and Uganda, however, in the USA there are many instances where violations of child labour regulations have been decided by the court in favour of the child affected.[40] The civil fines imposed for child labour violations are much higher than the fines imposed by South Africa

[36] US Department of Labor Bureau of International Labor Affairs 'Findings on the worst form of child labor: South Africa' (2021), available at *https://www.dol.gov/sites/dolgov/files/ILAB/ child_labor_reports/ tda2021/ South-Africa.pdf*, accessed 23 January 2023.
[37] Ibid.
[38] Department of Labour 'The National Child Labour Programme of Action Phase Three: 2013 - 2017', (2013).
[39] 29 U.S.C. §212(b) and (d).
[40] Congressional Research service 'The Fair Labor Standards Act: An overview' (2023), available at *https://sgp.fas.org/crs/misc/R42713.pdf,* accessed 23 January 2023.

and Uganda, as discussed in Chapter Six. The findings of the empirical research presented in Chapter 9 indicated that some personnel do not even know of the recording of child labour violations in South Africa. Child labour violations in South Africa are not highlighted or made public through media. This, in turn, lowers society's awareness of the child labour laws in South Africa.

In light of the above discussion, it is submitted that South Africa could assimilate pertinent lessons from Uganda and the USA in their enforcement of child labour laws. In terms of Uganda, the authority of labour inspectors to enter private property to conduct possible child labour violations, the mandatory reporting of investigations conducted by labour inspectors and the training provided to labour inspectors by civil society organisations are pivotal in the success of the enforcement of child labour laws. It is thus submitted that South Africa adopt these mechanisms from Uganda to enhance the country's current legal framework. As previously discussed, access to private property is essential to conduct investigations by labour inspectors regarding domestic work or when children are working on family-owned farms. If labour inspectors are given such authority, it would ensure that more investigations in the informal sector could be conducted and delays in protecting children from child labour are ameliorated. The mandatory reporting of investigations by labour inspectors is submitted to instil accountability and transparency of the efforts taken to ensure compliance with child labour laws. Labour inspectors who carry out investigations in the informal sector will also be expected to enter workplaces that are not traditionally defined as a place of employment. The informal economy comprises all economic activities undertaken by workers, including economic units[41], which is inadequately covered or not covered by formal arrangements either in legislation or in practice. The informal economy excludes illicit activities.[42] The informal economy can be divided into employment in the informal sector and informal employment.

The informal sector comprises of economic units that are involved in producing goods or services whose aim is to produce an income through employment. The informal sector further consists of unregistered or unincorporated enterprises that are not regarded as separate legal entities.

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[41] ILO Recommendation 204, paragraph 3, An economic unit is defined as: "a) units that employ hired labour; b) units that are owned by individuals working on their own account, either alone or with the help of contributing family workers; and c) cooperatives and social and solidarity economy units".

[42] ILO 'Revision of the 15th ICLS resolution concerning statistics of employment in the informal sector and the 17th ICLS guidelines regarding the statistical definition of informal employment' *20th International Conference of Labour Statisticians Geneva, 1-19 October 2018* 9.

These could be small, unregistered enterprises on the premises of private residential property or even outside of private residential property such as on street corners or markets. It would also require investigations to be carried out in landfill sites, dumpsites and residential areas where waste pickers gather their waste from the community. A full discussion on work in the informal sector and informal economy is provided in Chapter 3. As previously mentioned in Chapter 3 and will be reiterated in Chapter 10, this thesis does not focus on work by children in the informal sector as it is beyond the scope of this study. Where necessary for the purpose of clarity the researcher has made reference to the informal sector and the informal economy.

Additionally, the training of labour inspectors by civil society organisations could improve the knowledge and understanding of child labour by labour inspectors. It is submitted that civil society organisations have greater experience in dealing with children rather than labour inspectors; thus, by allowing civil society organisations to train labour inspectors it would allow labour inspectors to approach child labour issues with greater understanding of the rights and vulnerabilities of children. These programmes have experienced success in Uganda, as discussed in Chapter Six, and could help South Africa develop and implement policies to combat child labour. Chapter Ten will discuss how these approaches used in Uganda could be assimilated into the South African child labour legislation.

South Africa could also draw valuable insights from the USA about how to create awareness of child labour violations through the enforcement of child labour laws through the court system. This would enhance the visibility of child labour violations and serve as a deterrent for potential child labour violations. It is submitted that South Africa could also follow the approach used by the USA of imposing higher fines and criminal sanctions for child labour violations. This would create a more stringent prevention mechanism of child labour violations. Chapter Ten will discuss in detail how South Africa could assimilate these provisions into its child labour legislation.

8.2.8. ALIGNING CHILD WORK AND EDUCATION

In terms of s 43 of the BCEA, South Africa lawfully permits children 15 years of age and older to engage in lawful employment. Unfortunately, the regulations drafted to enforce this right do not make allowance for the possibility that children could work and also attend school. Additionally, South Africa legislation and regulations do not provide for alternate pathways

for children who have left school to complete their basic education, which Uganda does.[43] Section 3 (c) of the Education Act 13 of 2008 in Uganda provides that alternate means of education must be made available to children if they drop out of school before they complete their primary education, but the Act does not detail what these alternate forms of education could be. While Uganda does not fully endorse the concept of alternate forms of education, it is submitted that this initiative could be beneficial to children in South Africa, as it would allow them to still pursue their education while sustaining themselves and their families.

As in the USA, Uganda provides for children to engage in work while continuing their schooling[44] As discussed in Chapter Seven, the regulations that govern lawful youth work in the USA provide a comprehensive framework for children to undertake work outside of school hours. This allows children to combine school with work. In doing so, the USA allows youths to gain experience in the working world so that when they complete their schooling, they understand the responsibilities that are required of them as employees and have experience that would increase their employability. This is valuable as many high school graduates cannot find employment because of their lack of experience. It is submitted that the approach that the USA has taken would benefit the children and the country of South Africa, in the long term, as it would ensure that more children are completing their schooling rather than increasing the drop-out rate in schools. It is suggested that the approach that Uganda and the USA have taken in providing complimentary schooling options that incorporates school, and work encourages children who are compelled to work to complete their schooling.

In light of this, it is submitted that South Africa could adopt the approach that Uganda and the USA have taken to integrate school and work for children. This is pertinent to this study that asserts that South Africa should consider lowering the minimum age of employment and including the light work provision in its legislation. If South Africa were to consider this possibility, children would require alternate pathways for completing their schooling while they engage in work. This would eliminate the unfair choice children currently have to make between education and survival. Chapter Ten will discuss this recommendation in greater detail and highlight the benefits of including this possibility into South African child labour legislation.

[43] Education Act 13 of 2008; s 3 (c).
[44] ILO 'Child labor in agriculture' [n.d.], *available at https://www.ilo.org/ipec/areas/Agriculture/lang--en/index.htm,* accessed 23 January 2023.

8.3 SUMMARY OF COMPARATIVE ANALYSIS

Table 4 Summary comparison of key aspects of child labour law in South Africa, Uganda and the United States

FACTOR OF COMPARISON	SOUTH AFRICA	UGANDA	UNITED STATES
1. Ratification of international instruments			
United Convention on the Rights of Children, 1989	Yes	Yes	No
Minimum Age Convention, 1973 (No. 138)	Yes	Yes	No
Worst Forms of Child Labour Convention, 1999 (No. 182)	Yes	Yes	Yes
African Charter on the Rights and Welfare of the Child, 1990	Yes	Yes	N/A
2. Defines a child as a minor under 18	Yes	Yes	Yes (47/50 states)
3. Defines child labour	No	No	No
4. Defines hazardous work	No	No	No
5. Aligns terms of child labour and hazardous work according to international instruments guidelines	Yes	Yes	No
6. Expands term of child labour to include paid/unpaid activities	Yes	Yes	No
7. Provides different regulations for agricultural and non-agricultural child work	No	No	Yes
8. Adheres to minimum age of 18 years for hazardous work	Yes	Yes	No
9. Congruence between minimum age of employment and schooling at 15 years	Yes	No	No
10. Enforcement of prohibitions through DOL	Yes	Yes	Yes
11. Access of labour inspectors to both private and employment premises	No	Yes	No
12. Child work is aligned with education	No	Yes	Yes

13. Includes light work provision in domestic legislation	No	Yes	No

8.4. CONCLUSION

This chapter has presented a comparative analysis of the most pertinent aspects of the legal framework governing child labour laws in South Africa, Uganda and the United States. This analysis has highlighted significant deficits in child labour law in South Africa. These include the lack of adequate systems for monitoring lawful child work, the disregard for the possibility of lowering the minimum age of employment to accommodate the needs of children who are compelled to work, the lack of the possibility of combining work and school for children who engage in work, the lack of free accessibility to private property by labour inspectors and the lack of stringent methods of creating awareness of child labour laws to children, society and employers. It is submitted that these deficits create loopholes in the eradication of child labour. It is further submitted that South Africa extricates from Uganda and the USA the approach that they have taken in addressing child labour thereby addressing these deficits that exist in the current legal framework. Chapter Nine presents recommendations in response to these findings.

CHAPTER NINE: PRESENTATION AND ANALYSIS OF EMPIRICAL DATA ON THE EXPERIENCES OF PROFESSIONALS WITH CHILD LABOUR

9.1. INTRODUCTION

9.2. DEMOGRAPHIC CHARACTERISTICS OF PARTICIPANTS

9.3. QUANTITATIVE DATA FINDINGS

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9.4. QUALITATIVE RESEARCH FINDINGS

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9.4.5. IMPEDIMENTS TO REMOVING A CHILD FROM A SITUATION OF CHILD LABOUR

9.4.6. MEASURES THAT WOULD ENABLE BETTER PROTECTION TO CHILDREN ENGAGED IN CHILD LABOUR

9.4.7. ADEQUACY OF CURRENT LABOUR LAWS FOR CONTROLLING CHILD LABOUR

9.4.8. RECOMMENDATIONS TO LEGISLATORS TO IMPROVE THE CURRENT LABOUR LAWS THAT CONTROL CHILD LABOUR

9.5. LIMITATIONS OF THE STUDY AND CONTRIBUTIONS OF THE EMPIRICAL RESEARCH TO THE STUDY

9.6. CONCLUSION

9.1. INTRODUCTION

This chapter presents the research findings of the survey conducted in Pietermaritzburg as described in Chapter Two. A questionnaire was given to 25 prospective participants which contained closed and open-ended questions. Sixteen questionnaires were completed and

returned. The questionnaire covered quantitative and qualitative research questions pertaining to child labour. The quantitative portion included closed-ended questions on the demographics of the participants and their personal experiences. Participants were asked to choose from a list of options provided for each question. The qualitative research included open-ended questions on the personal experience of participants with child labour. Participants were asked to elaborate and explain their personal experiences with child labour. This allowed participants to provide clarity and greater understanding on the closed-ended questions in the quantitative section of the questionnaire.

The chapter first presents the quantitative findings of the socio-demographic research followed by an analysis of these findings. Next, the chapter presents the results of the qualitative research findings followed by an analysis of these research results. Following this, the chapter brings together the findings of the quantitative and qualitative research results and highlights the main findings of the research that are relevant to this study. The purpose of this empirical research was to practically examine issues of child labour legislation and policy implementation in a South African setting as a pilot study for a future provincial and national study. The empirical study was designed to answer Research Question Five. The rationale for the choice of the city of Pietermaritzburg as the research site and the methodology was provided in sections 1.5.1-1.5.9; 2.5.3, and 2.5 – 2.14. The key findings are in bold in the text for easy identification.

9.2. DEMOGRAPHIC CHARACTERISTICS OF PARTICIPANTS

Table 5 below presents the demographic data of the 16 research participants in terms of gender, age, education level, work experience, characteristics of the organisations where they are employed, years of employment, jurisdiction of organisation, employment contribution to child labour and if working in a department that specifically dealt with child labour issues.

Table 5 Demographic characteristics of participants

Variable	Category	Frequency	Percentage
Gender	Female	12	75,0
	Male	4	25,0
Age	26-35	3	18,8
	36-45	7	43,8

	46-55	4	25,0
	56-65	1	6,3
	65+	1	6,3
Education Level	Secondary education	1	6,3
	Diploma or certificate	1	6,3
	Bachelor's degree	10	62,5
	Postgraduate degree	4	25,0
Work Experience	More than 1 year but less than 5 years	3	18,8
	More than 5 years but less than 10 years	2	12,5
	More than 10 years but less than 15 years	11	68,8
Characteristics of Organisation	Department of Labour	6	37,5
	Department of Development (DSD)	4	25,0
	Non-government Organisation	6	37,5
Years of employment	More than 1 year but less than 5 years	2	12,5
	More than 5 years but less than 10 years	3	18,8
	More than 10 years but less than 15 years	10	62,5
	More than 20 years	1	6,3

Jurisdiction of organisation	Entire region of PMB	2	12,5
	Specific region in PMB	7	43,8
	Entire region of PMB, an outer region	4	25,0
Employment contribution to child labour	Yes	1	6,3
	No	15	93,8
Specific department dealing with child labour issues	Yes	2	12,5
	No	13	81,3

Table 5 shows that 75% of the sample was female (12 respondents), while 25% was male (4 respondents). Of the sample, 18.8% were aged 26-35, 25% were 46-55, and the remaining 6.3% were aged 56+ and 65+. The 36-45 age group had the highest percentage (43,8%) of individuals. The second largest age group was the category of 46-55. This may suggest that a higher percentage of the sample are within the prime of their careers and at an age where they are more experienced, and productive and are able to contribute more constructively towards their field of employment.

Table 5 further shows that the majority of respondents, 62.5% (10 respondents), had completed a bachelor's degrees, while a smaller number (25%) had postgraduate degrees. One respondent each (6.3%) had a secondary education and tertiary degree or certificate respectively. The sample also had varying work experience. Of the total group, 18.8% (2 individuals) had worked 1-5 years, 12.5% (2 respondents) had worked 5-10 years, and the majority – 68,8% (10 respondents) – had 10-15 years of experience; one individual had over 20 years' experience. This indicated a highly experienced group of individuals. Each of the participants have direct experience with enforcing child labour laws as social workers are regulated by the Children's Act and the BCEA where it pertains to children. Labour inspectors have direct experience in enforcing the BCEA which regulates child labour.

The findings indicate that the majority of the sample were well-educated in their field of employment. This would suggest that the sample had adequate knowledge to effectively contribute to their employment and could adequately address matters within their field of employment. In terms of work experience, the results indicate that the majority of the sample (62.5%) had 10 to 15 years of experience. This may suggest that the majority possessed the skills to implement their knowledge into practice. Furthermore, it would suggest that the sample would have been exposed to various situations in their years of working that would have enhanced their understanding of child labour and positively contributed to their ability to assist those they seek to help within their field of employment. The analysis of the findings regarding the level of education and work experience suggests that the sample was adequately equipped to address matters within their field of employment.

Out of the sample, equal numbers – 37,5% (six respondents) each – were affiliated with the Department of Labour and with non-governmental organisations (NGOs). A smaller number, 25,0% (four respondents) were connected to the Department of Social Development (DSD). The difference between the sample group in the Department of Social Development, Department of Labour and the NGOs is not significant. This suggests that there is a fair representation of the three entities

In terms of the jurisdiction of the organisation, 12.5% (two respondents) represented their organisation across the entire Pietermaritzburg area. The findings indicated that 43.8% (7 respondents) were connected to a specific Pietermaritzburg region, and the remaining 25% (four respondents) fell under the organisation's jurisdiction, covering both the City of Pietermaritzburg and an adjacent area. The findings indicate that a greater percentage of the sample was limited to working in an area within the City of Pietermaritzburg – which is largely urban - and did not extend their assistance outside of this jurisdiction. Thus, child labour in rural areas would probably not have been within their jurisdiction. A minority of the sample worked across the city of Pietermaritzburg. This finding suggests that there is limited assistance being made available to all areas within the City of Pietermaritzburg. This highlights a deficit in the assistance that is being offered by these organisations and may suggest that more assistance is needed across all the areas in Pietermaritzburg.

Table 5 indicates that one participant (6,3%) believed that their employment in the organisation had not made a substantial impact on the lives of the people they assist. A

majority, 15 participants (98,3%), however, believed that their employment in the organisation made a substantial impact on the lives of the people they assisted. The following excerpts substantiate this:

Respondent 1: Yes, we bring change to the community

Respondent 2: In my whole life, I have worked to improve the standard of living of people. I have this calling to better the lives of the underprivileged.

Respondent 3: We have to uplift the lives of orphans, vulnerable children and the elderly. We have seen the visible and emotional changes as a result of our intervention.

Respondent 4: DSD has assisted many families in receiving help.

Respondent 5: There are many lives in the community that the department has assisted.

Respondent 6: We have assisted many children that have been in situations of neglect and abuse.

In terms of the above findings, an overwhelming majority of the sample indicated that the respondents believed that they made a meaningful contribution to the organisation that they worked in. This finding may suggest that the majority of respondents were motivated to assist those in need. It further suggests that the respondents were successful in positively affecting the communities they work with.

Table 5 indicates that a majority of 13 (81.3%) respondents gave a negative response when asked whether their organisation had a department that focused exclusively on addressing child labour issues. Only three or 12,5% of the sample responded positively. For instance, participants confirmed this finding in the following excerpts:

Respondent 1: We do not have a specific department, we doing statutory child protection which deal with children in need of care and protection…

Respondent 3: we holistically address the needs of children

Respondent 7: if a case of child labour is reported it is dealt with accordingly especially using a Children's Act no 38 of 2005.

The responses indicate that child labour issues fell within the general ambit of their employment. In terms of these responses, the research suggests that there were no employees within these organisations that addressed child labour specifically or who were specifically trained to specialise in child labour matters. Moreover, this finding suggests that

the organisations that participated in the study did not regard child labour as an issue that requires a separate department.

9.3 QUANTITATIVE DATA FINDINGS

This section presents quantitative data from the questionnaire concerning respondents' personal experience dealing with child labour.

9.3.1 REASONS FOR JOINING THE ORGANISATION

Respondents were asked to indicate their reasons for joining their organisation. Four statements/options were offered, and for each option, respondents were asked to indicate their level of agreement from seven possibilities: strongly disagree, disagree, slightly disagree, neutral, slightly agree, agree, and strongly agree. This comprised question 8 on the questionnaire. There were some participants who failed to provide an answer for this question thus a 100% response was not obtained for all sub-questions. For response options 8.1 and 8.2, there was an 87,6% response from the participants; for option 8.3 and 83,8% response and for option 8.4 a 100% response. Responses are indicated in Table 6 below.

Table 6 Descriptive statistics of construct one - motivation to join an organisation

Reason for joining the organisation		**Frequency Distribution**							
		Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Total
8.1 I found a suitable job opportunity	Count					5		9	14
	%					31,3%		**56,3%**	87,6%
8.2 I wanted to improve my career path	Count				1	5		8	14
	%				6,3%	31,5%		**50,0%**	87,6%
8.3 I wanted to improve the society that we live in	Count					5		10	15
	%					31,3%		**62,5%**	93,8%
8.4 I wanted to assist those that the organisation is directed to protect	Count				1	5		10	16
	%				6,3%	31,3%		**62,5%**	100%

For each of the four options provided, a majority of respondents indicated "strongly agree" (56.3%, 50%, 62.5% and 62.5% respectively for options 8.1 – 8.4) showing a strong positive motivation for joining their organisation. In terms of 'slightly agree', the percentage of responses was almost identical for each of the four options (31.3%, 31.5%, 31.3% and 31.3% respectively). There were no agree or negative responses. Only two respondents indicated 'neutral'. The same number of respondents (a majority, 10 or 62,5%) strongly agreed their motivation to be option 8.3: 'wanting to improve the society that we live in' and option 8.4: 'wanted to assist those that the organisation is directed to protect'.

9.3.2 PREPAREDNESS FOR HANDLING CHILD LABOUR CASES

In this section, respondents were asked to indicate how well they had been prepared to deal with child labour cases in terms of formal or informal training and understanding of the law. This corresponded to question 11 on the questionnaire. Seven statement options were provided for participants to rate their level of agreement: strongly disagree, disagree, slightly disagree, neutral, slightly agree, agree, and strongly agree. Only statement 11.1 had a 100% response rate. In terms of statement 11.2 there was an 81,4% response rate; for statement 11.3 t a 94,0% response rate; for statement 11.4 there was a 93,8% response rate; for statement 11.5 a 94,0% response rate; and for statement 11.6 there was a 93,8% response rate from the participants. The results are presented in Table 7 below.

Table 7 Descriptive statistics of construct two - preparation for child labour cases

Preparation steps for addressing child labour cases		**Frequency Distribution**							
		Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Total
11.1 I received formal education on the laws and policies on child labour	Count	2	5		1	**5**			5
	%	12,5%	31,3%		6,3%	31,3%	**37,5%**		93,8%
11.2 I received informal education on the laws and policies on child labour	Count	1	**8**		2	1		1	4
	%	6,3%	**50,0%**		12,5%	6,3%		6,3%	87,6%
11.3 I understand the laws and policies on child labour	Count	1	3	**5**		3	2	1	5
	%								

		6,3%	18,8%	**31,3%**		18,8%	12,5%	6,3%	93,8%
11.4 I can identify child labour cases due to training received	Count %	1 6,3%	2 12,5%	**5** **31,3%**		2 12,5%	4 25,0%	1 6,3%	5 93,8%
11.5 I understand steps needed when child labour has been identified	Count %	1 6,3%	3 18,8%		1 6,3%	3 18,8%	**5** **31,3%**	2 12,5%	5 93,8%
11.6 I have sufficient resources to deal with child labour cases identified	Count %	1 6,3%	**6** **37,5%**	1 6,3%	5 31,3%	2 12,5%			5 93,8%

From the table above, it can be seen that responses were spread across the options provided.

- An equal number of respondents (five; 31.3%) indicated they disagreed or slightly agreed with statement 11.1 'Received formal education on the laws and policies on child labour'. When combining all negative and all positive answer options, 43.8% responded in the negative (disagree), whilst 50% answered in the positive (agree), and 6.3% were neutral. The fewest responses were given for the 'strongly disagree' and 'strongly agree' options. This suggests that formal training on child labour legislation and policy is not an integral part of all respondents' experience.
- For statement 11.2 'Received informal education on the laws and policies on child labour', half (50%) of the respondents disagreed, with 56.3% answering as disagreeing for all these categories and 25% answering in the positive. This may indicate that informal education was not widespread. Informal education refers to education that is received outside of an educational institution.
- For statement 11.3 'I understand the laws and policies on child labour', a slight majority (56.4%) answered for the combined disagree options while a minority (37.6%) answered for the agree options combined. This possible lack of awareness / understanding of child law and policy could have a negative impact on the ability of respondents to effectively identify and negotiate matters of child labour. Of the three 'disagree' choices, 31.3% slightly disagreed.
- For statement 11.4 'I can identify child labour cases due to training received', the 'slightly disagree' response option garnered the most responses (31.3%) whilst a small majority of 50.1% collectively disagreed and a slight minority of 43.8% collectively

'agreed.' In terms of items 11.1 – 11.3 above, a lack of formal or informal education and understanding of child labour law and policy may affect respondents' ability to identify child labour cases.

- For statement 11.5 'I understand steps needed when child labour has been identified,' 31.3% agreed whilst 62.1% agreed for the combined agree categories. A combined 25.1% indicated they did not agree. Thus, the majority understood the steps to be taken upon identification of a child labour matter.
- For statement 11.6 'I have sufficient resources to deal with child labour cases identified', 46.1% disagreed for the combined disagree categories whilst 12.5% slightly agreed and 31.3% were neutral. It is unclear why there was such a large percentage of neutral responses but it is clear that resources were considered insufficient by a majority of respondents.

Summary: In terms of formal and informal training and being prepared to deal with child labour cases, the results indicate that formal and informal training was not widespread amongst participants (50% and 25% respectively). A minority selected the combined 'agree' options (37.6%) as understanding laws and policies regarding child labour and similarly; a minority of 48.3% collectively agreed that their training helped them identify child labour cases. This implies that more formal and informal training on child labour laws and policies is needed for employees to understand each of these laws and policies to help them to better identify child labour cases. A large majority agreed to varying degrees that they understood the steps that needed to be taken when child labour has been identified, but it is not clear how they came to know what these steps were without formal or informal training. Resources to deal with cases of child labour were deemed insufficient.

9.3.3 PERSONAL EXPERIENCE WITH CHILD LABOUR: ASSISTANCE PROVIDED TO CHILD LABOUR VICTIMS/FAMILIES

This topic was addressed in question 12 on the questionnaire. Respondents were asked to indicate their personal experience with child labour matters in terms of two scenarios. The two scenarios provided were intended to determine if respondents were able to assist children engaged in child labour. Again, respondents were asked to indicate their experience in terms of seven response options from strongly disagree to disagree, slightly disagree, neutral, slightly agree, agree and strongly agree. For statement 12.1 there was a 93.8% response rate; for 12.2 there was a 100% response rate. The responses are indicated in Table 8 below.

Table 8 Descriptive statistics of construct three - personal experience with child labour

Personal experience with child labour		**Frequency Distribution**							
		Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Total
12.3 Situations of child labour beyond my capacity to render assistance	Count	1	4	8			1	1	15
	%	6,3%	24,0%	**50,0%**			6,3%	6,3%	93,8%
12.4 Situations of child labour where assistance was not provided as children would be worse off	Count	2	8	1	1	2	1	1	16
	%	12,5%	**50,0%**	6,3%	6,3%	12,5%	6,3%	6,3%	100%

The responses indicated that:

- A large single majority (in terms of choice of individual response category) of 50% slightly disagreed with the scenario 'Situations of child labour beyond my capacity to render assistance'. In terms of the three 'disagree' categories combined, a majority of respondents, 56.3%, 'disagreed'. Only 12.6% 'agreed' and 'strongly agreed'. There were no responses for the options of 'disagree', 'neutral' or 'slightly agree'. This may indicate that at least half felt it was not beyond their capacity to render assistance.
- In terms of the second scenario, a large single majority of 50% 'disagreed' that assistance would make the child worse off while 25.1% 'agreed' / 'strongly agreed'. This could suggest that respondents believed their assistance had a positive impact and did not leave a child worse off. In terms of the combined 'disagree' and 'agree' categories of answers, 68.8% and 25.1% respectively disagreed and agreed.

Thus, just over half of the respondents (56.3%) believed that they were able to assist in child labour matters and half saw their help as benefitting the children they dealt with.

Some of the excerpts from participants to support these findings include:

Respondent 2: “Some children […] are forced to go out to collect scrap metal that are then sold to a scrap dealer for cash. Some children carry 25 litres of water every day before and after school.”

Respondent 3: “in the informal sector that we work, children are not at school because they have to fetch water from the community taps….they also stay away from school to take care of younger siblings and the elderly grandmother.”

Respondent 7: “parenting programme was rendered to the family to assist them with child labour and to stop it from happening in children they are aiding”.

9.3.4 EXPERIENCE INVESTIGATING CHILD LABOUR CASES

Question 13 on the questionnaire was designed to establish what challenges respondents faced when investigating child labour cases. Six challenges were offered, and respondents were asked to indicate their level of agreement with the challenges in terms of seven levels of agreement from strongly disagree, disagree, slightly disagree, neutral to slightly agree, agree, strongly agree. Option 13.1 received a 93.8% response from the participants whilst all the other options had a 100% response rate. Table 9 below presents the responses.

Table 9 Descriptive statistics of construct four - experience investigating child labour cases

Experience investigating child labour cases	**Frequency Distribution**								
		Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Total
13.1 Situations of child labour assistance prevented by corrupt law enforcement	Count %	4 **25,0%**	4 **25,0%**	4 **25,0%**		1 6,3%	1 6,3%	1 6,3%	15 93,8 %
13.2 Child labour cases: employers have made difficult to investigate	Count %	3 18,8%	2 12,5%	6 **37,5%**		2 12,5%	2 12,5%	1 6,3%	16 100 %

13.3 Child labour cases: parents have made difficult to investigate	Count %	3 18,8%	2 12,5%	6 **37,5%**		2 12,5%	2 12,5%	1 6,3%	16 100 %
13.4 Child labour cases with children unwilling to cooperate	Count %	3 18,8%	1 6,3%		1 6,3%	1 6,3%	8 **50,0 %**	1 6,3%	16 100 %
13.5 Child labour cases are known, but authorities are difficult to work with	Count %	4 25,0%				7 **43,8 %**	4 25,0%	1 6,3%	16 100 %
13.6 Child labour cases: lack of manpower to investigate	Count %	5 31,3%	7 **43,8%**			1 6,3%	3 18,8%		16 100 %

The table above indicates that:

- The largest single majority response was 50% who 'agreed' that 'children were unwilling to cooperate' in child labour cases. Some 62.6% of respondents collectively agreed to varying degrees that children were unwilling to cooperate when they investigated cases.
- Some 43.8% 'slightly agreed' that 'authorities are difficult to work' with in child labour cases. Authorities being difficult to work with was agreed with by 31,3% in terms of the combined 'agree' categories, whilst 25,0% disagreed collectively.
- Some 43.8% of respondents 'disagreed' that there was a 'lack of manpower to investigate' child labour cases and collectively 75.0% 'disagreed', implying that there was sufficient manpower to investigate child labour cases.
- Encounters with corrupt law enforcement received a 75% response rate across the three 'disagree' categories combined indicating that this was not experienced.
- An almost equal number of combined 'disagree' (31.5%) and 'agree' (31.3%) responses were received for the statement regarding employers as an impediment.
- In terms of parents as an impediment in child labour cases, a majority of 56.3% of respondents disagreed whilst 31.3% agreed parents were an impediment.

The overall results for this question indicated that when investigating child labour cases, children were unwilling to cooperate, and authorities were difficult to work with. Unwillingness of employers and parents to cooperate was not a dominant experience and neither was corrupt law enforcement or a lack of manpower to investigate. Children unwilling to cooperate may well affect successful interventions to assist in child labour cases rather than a lack of training on the part of respondents and this would have to be fleshed out in future research.

Two excepts from participants to support these findings include:

> Respondent 3: "it is difficult for us to intervene in cases of children being absent from school to help collect water for their families or those who stay home to take care of subbing or their sick grandmother."
>
> Respondent 8: "I have tried to engage with parent about child labour being a criminal offence, but the mother of the child and the child indicated that if they don't work, they would have nothing to eat. Some cases are difficult because children really do come from poverty…the only way for them to go to bed with a full stomach is to work for a plate of food."

9.3.5 ADEQUACY OF CHILD LABOUR LAWS AND POLICIES

Question 14 on the questionnaire solicited respondents' views about the adequacy of current child labour laws and policies with regard to the investigation, compliance, referral, and prosecution of cases of child labour. Four statements were provided for respondents to indicate their level of agreement with from seven answer options: strongly disagree, disagree, slightly disagree, neutral to slightly agree, agree and strongly agree. For statement 14.1 there was an 87,6% response rate from participants; for statement 14.2 a 93.8% response rate; statement 14.3 a 93.8% response rate; and for statement 14.4 there was a 93.8% response rate from the participants. There were some participants who failed to provide an answer for this question, thus a 100% response was not obtained. The responses are presented in Table 10 below.

Table 10 Descriptive statistics of construct five - adequacy of child labour laws and policies

Adequacy of child labour laws and policies	**Frequency Distribution**								
	Strongly disagree		Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Total
4.1 Laws and policies assist in investigating cases of child labour	Count	1 6,3%	4 25,0%	**5** **31,3%**	3 18,8%			1 6,3%	14 87,6%
4.2 Laws and policies adequate in obtaining compliance	Count	1 6,3%	3 18,8%	4 25,0%	1 6,3%	1 6,3%	**5** **31,3%**		15 93,8%
4.3 Laws and policies assist in referring child labour cases to higher authorities	Count	1 6,3%	1 6,3%	2 12,5%	2 12,5%	2 12,5%	**7** **43,8%**		15 93,8%

4.4 Laws and policies adequate in prosecuting labour offenders	Count	1 6,3%	1 6,3%	1 6,3%	5 31,3%	**7** **43,8%**			15 93,8%

The following findings can be derived from the table above:

- 14.1 received the largest number of combined 'disagrees' of the four statements with 62.6% of respondents indicating that laws and policies did not assist in investigating child labour cases.
- This was followed by a combined 51.1% who disagreed that laws and policies were adequate for obtaining compliance (option 14.2) indicating they believed laws and policies to be inadequate
- A majority of 56.3% (12.5% slightly agree and 43.8% agree) agreed that laws and policies assisted in referring child labour cases to higher authorities and
- A percentage of all the answer options, 43.8%, slightly agreed that laws and policies were adequate for prosecuting child labour offenders.

This was the only question where there was a relatively high number of 'neutral' responses. The overall responses seem to indicate that according to respondents, child laws and policies were inadequate for investigating and obtaining compliance but more adequate for referral to higher authorities and prosecution of offenders.

9.3.6. RELIABILITY TEST

The Cronbach's Alpha coefficient was used to determine the reliability of test results. Barbera et al[1] suggest a Cronbach's Alpha score of 0.7 or greater is acceptable. The researcher inputted and coded the data in SPSS to conduct a reliability test. The researcher selected "Analyse," then "Scale," and finally "Reliability Analysis." The relevant items were inserted into the

[1] J Barbera et al 'Clarity on Cronbach Alpha's use' (2020) 98(2) *Journal of Chemical Education* 257-258.

"Items" box, "Cronbach's Alpha" was as the model, and "Scale if item deleted" was checked under "Statistics." The analysis was then executed by selecting "OK." SPSS provided an item-total statistics table and Cronbach's alpha value, which helped identify and remove items with low consistency to improve reliability. The increased reliability indicates that the scores are more accurate and reflect the genuine perceptions and experiences of respondents. As a result, the questions for which a score of 7 was obtained can be considered more reliable and robust, providing a more solid foundation for the analysis and conclusions of this study.

The first construct, ***'motivation to join an organisation'***, comprised four items. This construct refers to reasons for joining the organisation. This construct was tested for reliability and generated an acceptable Cronbach's alpha value of 0.787. For more details about the reliability test of construct one, refer to Appendix Five.

The second construct labelled ***'preparation for child labour cases',*** consisted of six items indicating whether the organisation respondents worked for prepared them to deal with child labour issues. The second construct has a Cronbach's alpha value of 0.781, as presented in Appendix Five.

The third construct labelled ***'personal experience of child labour',*** comprised five items indicating participants' experience dealing with child labour cases. This construct was less reliable, with a Cronbach's alpha value of 0.441 (see Appendix 4a). This overall Cronbach's Alpha was improved to a value of 0.569 (see Appendix 4b), then to a value of 0.630 (see Appendix 4c) after deleting item 12.2 (I have assisted those that needed protection from child labour) and item 12.1 (have come across situations that deal with child labour), respectively. While Cronbach's alpha coefficient was still below the threshold of 0.7, it was further improved to 0.795 (see Appendix 4) after deleting item 12.5 (situations of child labour assistance prevented by corrupt law enforcement).

Thus, the study omitted items 12.1 (I have encountered situations related to child labour), 12.2 (I have assisted those who required protection from child labour), and 12.5 (Situation of child labour assistance that were impeded by corrupt law enforcement) due to their low quality. The reliability of construct three, ***personal experience of child labour***, was significantly improved. This change implies that the remaining items in the questionnaire became more consistent in measuring the underlying construct three, reducing the influence of context-specific responses, social desirability bias, and varied interpretations. The omission of these items is identified as a limitation and is discussed later in the chapter.

The fourth construct, labelled ***'experience investigating child labour cases',*** comprised six items outlining participants' experience in examining suspected child labour cases. This construct had a Cronbach's alpha of 0.808 (see Appendix Five). This confirms that the fourth construct was reliable.

Lastly, the fifth construct, labelled ***'adequacy of child labour laws and policies***', consisted of four items presenting participants' experience in the enforcement of laws and policies pertaining to child labour. This construct had a Cronbach's alpha 0.927 (see Appendix Five), confirming that the fifth construct was reliable.

9.3.7 SUMMARY OF QUANTITATIVE DATA FINDINGS

As previously mentioned in Chapter 2, the population consisted of all the organisations and entities that deal with children in Pietermaritzburg. The sample group that formed part of the study comprised of social workers from the various NGOs and the Department of Social Development as well as labour inspectors from the Department of Labour in Pietermaritzburg. The social workers who participated in the study should understand the laws dealing with children and child labour, such as the Children's Act, among the others discussed in Chapter 5. The labour inspectors who participated in the study should understand the provisions of the BCEA, including child labour provisions. Therefore, the researcher submits that the opinion of participants would be considered reliable as they have first-hand knowledge of how to implement child labour laws and about whether the law is adequately addressing child labour.

In terms of the demographic characteristics, the overall responses indicated that the majority of respondents were middle-aged and were suitably qualified and experienced in their field of work. The responses further indicated that there was a fair representation of respondents from the Department of Labour, Department of Social Development and the NGOs surveyed. The majority of respondents had worked in their respective organisations for a lengthy period of time and developed their skills in their area of work.

It was highlighted that the majority of the organisations did not cover the entire area of Pietermaritzburg in their work, which indicates that more assistance is required in Pietermaritzburg. This finding is significant as it highlights that from the small sample group that confirmed that they deal with child labour not all of these NGOs work across the entire city. Thus, the assistance that can be offered to children in child labour situations is limited to only the places that they cover. This supports the submission of this study that more NGOs are

required to address possible child labour that may exist and that further detailed studies need to be undertaken to evaluate the prevalence of child labour in the entire city of Pietermaritzburg.

The findings also indicated that the majority believed that their work positively contributed to society meaning that they felt they were productive in their field of work. In terms of the participants' personal experience with child labour, there was an equal number of respondents who strongly agreed (62,5%) that they joined their organisation because they wanted to assist those that the organisation is directed to protect and that they wanted to improve the society that they lived in. As indicated above, in terms of formal and informal training and being prepared to deal with child labour cases, the results indicate that formal and informal training was not widespread among participants (50% and 25%, respectively). Only 37.6% agreed they understood laws and policies regarding child labour and a minority of 48.3% collectively agreed that their training helped them identify child labour cases. This is significant as even though the participants indicated that they possessed the relevant qualifications in their field which pertains to children and labour, the majority did not understand laws and policies regarding child labour specifically

This implies that more formal and informal training on child labour laws and policies is needed for employees to better understand these laws and policies, and how to implement them. This possible lack of awareness / understanding of child law and policy could have a negative impact on the ability of respondents to effectively identify and negotiate matters of child labour. The results indicated that only 31,3% of the respondents understood the steps they should follow if child labour was identified. It is not clear how these steps were learnt if formal and informal education was lacking, although this data could reflect those respondents who had received training in some form. The overall majority of respondents (71.5%) indicated that they did not have the resources to assist those in situations of child labour, with only 12% agreeing they did. In question 13, a majority answered that manpower resources were sufficient; it is unclear what the resources are that were deemed insufficient (item 11.6, Table 9.3).

In terms of their personal experience with child labour, 50% of respondents slightly disagreed that there were situations beyond their capacity to assist. Some 50% of the respondents disagreed that if they intervened the children would be in a worse off position. A combined 56.3% believed they had the capacity to assist and an overall 68.8% disagreed that there were situations of child labour where assistance was not provided as children would be worse off. Thus, respondents believed positively in their ability and contribution to help in

situations of child labour. The findings thus highlight that there is a deficit in the capacity of all respondents to effectively address child labour cases.

In terms of participants' experiences investigating child labour cases, by far the most common problem identified was the unwillingness of children to cooperate (62% responses for combined categories of agree). Corrupt law enforcement officials were not seen as a problem by 75% respondents. Responses were divided about parents being an impediment to dealing with child labour cases: not an impediment: 56.3% vs 31.3% parents an impediment; and fairly even responses about employers: not an impediment: 31.5% vs 31.3% employers an impediment. The findings indicated that 25,0% disagreed that authorities were difficult to work with and 75,0% agreed to varying extents that authorities were difficult to work with.

In terms of adequacy of child labour laws and policies**, a majority of 62,3%** of participants disagreed that laws and policies assist in investigating cases of child labour. Approximately 50,1% of participants disagreed that laws and policies are adequate in obtaining compliance to investigate child labour cases, compared to 37,6% of participants who agreed with this statement. The findings further revealed that 56,3% of participants agreed to varying extents (12,5% slightly agreed and 43,8% agreed) that laws and policies assist in referring child labour cases to higher authorities. Only 43,8% of participants slightly agreed that laws and policies were adequate in prosecuting labour offenders, while a high percentage of 31,3% of participants remained neutral on this statement. These responses are of concern because if the law is deemed insufficient to deal with child labour matters, then implementation of laws and policies is unlikely to be satisfactory. It is not clear from the results if there is a mismatch between law / policy and implementation.

The overall quantitative results reveal little overall consensus among participants, possibly indicating their varying exposure to formal and informal training / education in child labour law and policy, exposure to and involvement in child labour cases given a lack of dedicated facilities for child labour cases, as well as years of experience. Respondents were not asked how many cases of child labour they had dealt with or to elaborate on their experiences with particular cases.

Despite the lack of formal and informal education or training in child law and policy which affects implementation, a majority of respondents indicated understanding the steps needed to be taken when a case of child labour arises. Steps to be taken implies implementation, yet these steps, whilst not described, are not seen in relation to law and policy.

It appears that factors outside of law and policy affect the ability to deal with child labour cases, most notably the unwillingness of children to cooperate and a lack of resources. Thus, it is suggested that counselling and psychological support be offered to children to encourage them to cooperate with social services.

9.4. QUALITATIVE RESEARCH FINDINGS

This section presents the findings of the qualitative research. Qualitative data was obtained through an individual interview session with each of the 16 participants. The interviews were conducted at the convenience of each participant. Each interview took approximately 20-30 minutes. Responses from participants were recorded on paper. The questions posed to the participants dealt with their personal experiences dealing with child labour regarding the obstacles encountered, the assistance provided to children engaged in child labour, and suggestions for how child labour laws and policies could be better improved. As mentioned in Chapter Two, thematic coding was used to analyse the data. The themes and their relevance to the questions in the quantitative research are discussed after the presentation of the results.

9.4.1. MOTIVATION FOR SEEKING EMPLOYMENT AS PERCEIVED BY CHILDREN

Question 15: Based on your personal experience with child labour cases, what do you think is the motivation for seeking employment as perceived by children?

Main theme: Children's reasons for seeking employment as child labourers

Sub-themes:

1. Poor family background and lack of education
2. Child-headed homes
3. Negligence from parents/caregivers

As presented above, there was one main theme and three sub-themes which arose from question 15 of the questionnaire. The main theme was **the reasons as to why children engage in child labour from children's viewpoints according to the respondents**. The theme highlights the causes of child labour that appear to compel children to engage in labour. The main reasons why children engage in child labour formed the three sub-themes, arising from the respondents' answers. The reason that this question was posed to the respondents, and not to children, is that children were not included in the study due to ethical

and other considerations (the potential difficulties of interviewing children are borne out by the respondents' themselves indicating unwillingness of children to cooperate).

Sub-theme 1 indicated that children perceived that poverty in the form of financial and educational constraints contributed to the reasons for child labour. Sub-theme 2 indicated that children perceived that child-headed households was also a cause of child labour. Sub-theme 3 highlighted that children perceived that negligent (including absent or sick) parents or caregivers propelled them into child labour.

The findings suggest that poverty and a lack of access to schooling was a dominant reason for children to engage in child labour. This correlates with the reasons for child labour identified in the literature review.[2] It underscores that children are often confronted with no alternate means of survival other than to work so that they can survive and provide for their families. It highlights that more needs to be done to address poverty to alleviate the burden on children to provide financial assistance to their homes. If this cannot be accomplished in the short-term then measures should be implemented to assist children to work to provide for their families while ensuring their best interests within the parameters of the law.

Additionally, the lack of access to schooling correlates with the reasons for child labour as discussed in the literature review.[3] It further highlights that even though universal education is implemented in South Africa, as discussed in Chapter 5, there are factors that prevent children from attending school, such as lack of uniforms and insufficient finances to pay for transport costs.[4] Sub-theme 2 and 3 highlight that there needs to be more attention given

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[2] See literature review in particular 3.3.2 and for example N De Wet & Jude Ewemade '"We are small, but we have jobs": A profile of the labour activities of children and youth in South Africa' (2018) 49(3-4) *South African Review of Sociology* 96-114, MP Lambon-Quayefio & NS Owoo 'Investigating the long-term effects of child labor on household poverty and food insecurity in Ghana' (2021) 87(4) *Journal of Demographic Economics* 561-587, MR Sevinç 'Poverty, child labor, and hope: The relationship between hope and perceived social support in children working in street markets in TRC2 Region of Turkey' (2020) 7(78) *Children* 1-3, II Abdullahi et al 'Does poverty influence prevalence of child labor in developing countries?' (2016) 6(1) *International Journal of Economics and Financial Issues* 7-8.

[3] H Murray *Is School Education Breaking the Cycle of Poverty for Children? Factors Shaping Education Inequalities in Ethiopia, India, Peru and Vietnam* (2012) 6-8, B Yıldırım, E Beydilib & M Görgülü 'The effects of education system on to the child labour: An evaluation from the social work perspective' (2015)174 *Procedia - Social and Behavioral Sciences* 519, M Kozhaya & FM Flores 'School attendance and child labor: Evidence from Mexico's Full-Time School program' (2022) 90 *Economics of Education Review* 24-25.

[4] V Chikoko & P Mthembu 'The impact of poverty on basic education in South Africa: A systematic review of literature' in F Maringe (ed) *Systematic Reviews of Research in Basic Education in South Africa* (2021) 69; P Jensen & HS Neilson 'Child labour or school attendance? Evidence from Zambia' (1997) 10(4) *Journal of Population Economics* 413, A Visser 'Child labour is a matter of national concern: What is the curriculum doing about it?' (2021) 85 *Journal of Education* 32, S Bessel 'Education, school, and learning: Dominant perspectives' in T Abebe & J Waters (eds) *Laboring and Learning* 91–100.

to improving parenting skills and equipping parents and caregivers to seek employment or support to prevent their children from working.

As discussed in the literature review, child-headed households are still an extant problem in society and some children are still bearing the burden of being the sole supporter of households and caregivers to younger siblings.[5] These are socio-economic issues that legislation alone cannot ameliorate. Thus, more assistance must be made available to these households that are in need.[6]

Respondents' answers (Numbers in brackets at end of responses indicate the sub themes)

R: The abuse they receive from their home, and poverty within household. (1, 3)

R: Lack of finances, ill parents, parents are deceased, too many siblings to take care of, not enough support at home to take care of household chores. (1, 2, 3)

R: Child headed houses. (2)

R: Lack of education and poverty propel children to look for employment in the formal or informal sector. Some children work in the farms looking after cattle or helping in the sugar cane farms. Some are forced to marry at young age so that families will get lobola money. (1, 3)

R: Poverty, no one to take care of the family, no birth certificates to register for school. (1)

R: Poverty, neglect and abuse at home, parents are absent from their lives or cannot provide. (1, 2, 3)

R: Financial distress, neglect at home, poor health of care givers. (1, 3)

R: Lack of finances, ill parents, not enough support at home to take care of household chores. (1, 3)

R: Lack of finances, no parental support at home. (1, 2, 3)

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[5] S Robson & SB Kanyanta 'Moving towards inclusive education policies and practices? Basic education for AIDS orphans and other vulnerable children in Zambia' (2007) 11(4) *International Journal of Inclusive Education* 23, V Chidziva & PJH Heeralal 'Circumstances leading to the establishment of child-headed households' (2016) 4(10) *International Journal for Innovation Education and Research* 91-92, KZN Human Settlements *Research on Child-Headed Households* (2010) 6-7.

[6] D Chirwa *Child Poverty and Children's Rights of Access to Food and Basic Nutrition in South Africa: A Contextual, Jurisprudential and Policy Analysis* (2009) 3.

R: Financial distress, neglect, child-headed households due to ill care givers. (1, 2, 3)

R: Poverty, no one to take care of younger siblings, no money to attend school to buy school clothes and for transport. (1)

9.4.2 MOTIVATION FOR CHILDREN SEEKING EMPLOYMENT PERCEIVED BY PARTICIPANT

Question 16: Based on your personal experience with child labour cases, what do you think is the motivation for seeking employment as perceived by yourself?

Main theme: Respondents' perceived causes and experiences of child labour

Sub-themes:

1. Poor family background and lack of education
2. Child headed homes
3. Negligence from parents/caregivers

There was one main theme and three sub-themes which arose from question 16 of the questionnaire. The main theme was the **causes of child labour from the personal experience of the respondents.** The three sub-themes provide the main reasons that the respondents identified as the causes for driving children into child labour. Sub-theme one indicated that the negligence of parents or caregivers was a cause of child labour. Sub-theme two highlighted that poverty was a cause of child labour. Sub-theme three identified that child-headed homes was another reason why children engaged in child labour.

Sub-themes 1, 2 and 3 indicate that the respondents' views on the reasons for child labour are the same that the respondents highlighted as being the views of children as discussed above. It underscores that these reasons are the dominant causes of child labour in society. It also highlights that there is still a deficit in the area of provision of assistance to vulnerable children with negligent parents or caregivers, who are solely responsible for their homes and those children who are compelled to work for survival.

The findings above alone may not be considered significant due to the small sample size, however, these findings correlate with the causes of child labour identified across

South Africa as a whole.[7] This signifies that the causes of child labour are not confined to a particular province, but rather that it is a reflection of the reality of child labour in the country as a whole. Thus, it is submitted that if the causes identified in this study are given careful consideration and possible suggestions are provided for combating these causes of child labour, then it would provide an understanding on how to eradicate child labour in South Africa as a whole.

Respondents' answers (Numbers in brackets at end of responses indicate the sub themes)

R: Poverty and lack of parental supervision from parents. Youth headed homes. (1,2,3)

R: Children are motivated to seek employment due to families not having enough financial income to support them in their needs. (1)

R: Poverty and financial distress, neglect and abuse at home, parents are absent from their lives or cannot take care of the children. (1,2)

R: Financial distress, neglect, child-headed households due to ill care givers. (1,2)

R: Child headed household and have some relatives to take care of…(1,2)

R: Financial distress, absent care givers and parents (1,3)

R: *poverty, neglect, child-headed households, lack of documents from home affairs*. (1,2,3)

R: Poverty, neglect, child-headed households, absent parents and care givers due to drug abuse and alcoholism. (1,2,3)

9.4.3 EXPERIENCE WITH REMOVING A CHILD FROM A CHILD LABOUR SITUATION

Question 17: Based on your personal experience with child labour cases, have you been successful in removing a child from a situation of child labour to a place of safety?

Main theme:

1. Successfully removed the child from a child labour situation

2. Did not remove the child from a child labour situation

Sub-themes:

1. Successfully intervened by putting the child in their place of safety

[7] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 11.

2. Child has no official documentation to support their [respondent] safety placement

There were two main themes and two sub-themes which arose from question 17 of the questionnaire about **respondents being successful in removing a child from a situation of child labour to a place of safety**. Theme 1 addressed instances where the respondents successfully removed a child from a situation of child labour. Sub-theme 1 was successful removal of children from situations of child labour as indicated by the respondents' personal experience in dealing with child labour. Theme 2 reflected instances were where the respondents did not successfully remove children from situations of child labour. Sub-theme 2 was that (from the personal experience of the respondents) there were situations where the respondents were unsuccessful in removing children from situations of child labour.

The findings thus indicate that there were situations where respondents had been successful in removing children from situations of child labour and others where they had not. The findings indicate that, in most instances, attempts to remove children from child labour was unsuccessful and the children were left in the same situation but were provided with various forms of assistance by the respondents. This highlights a pertinent issue in that there are situations where children are engaged in child labour but due to their circumstances they cannot be helped out of the situation. This suggests that perhaps more attention should be given to assisting, supporting and empowering children in the circumstances that they are in rather than merely preventing them from working.

Respondents' answers (Numbers in brackets at end of responses indicate the sub themes)

> *R: Yes, we have been successful in removing some children from their homes to our place of safety. These children are attending school under our care.* (1)
>
> *R: not successful. The child did not have documentation to place them in a place of safety*…(2)
>
> *R: We didn't intervene. I didn't see it as child labour until it was pointed out to me*. (2)
>
> *R: No, I have never removed a child from their home*. (2)
>
> *R: I have not removed a child from a situation of child labour. The child was assisted with government grants but not removed.* (2)

9.4.4 ASSISTANCE PROVIDED TO THE FAMILIES OR CHILDREN THAT WERE DEPENDENT ON THE INCOME DERIVED FROM THE CHILD LABOUR

Question 18: Based on your personal experience with child labour cases, what measure/s or help have you or the organisation you are employed at provided to the families or children that were dependent on the income derived from the child labour?

Main theme: Measures or help rendered to families of child labour victims

Sub-themes:

1. Providing food parcels and clothing to families / victims
2. Referred the case to the Department of Social Development for provision of social security for the child
3. Parenting programmes
4. Applying for social grants for the affected families

There was one main theme and four sub-themes which arose from question 18 of the questionnaire about **measure/s or help provided to the families or children that were dependent on the income derived from the child labour**. The main theme was the interventions that the respondents provided to the families and the children engaged in child labour. The four sub-themes highlighted the measures taken to assist families and children engaged in child labour. Sub-theme one was families and children received groceries and clothing to minimise the need for children to work. Sub-theme two was child labour cases that were referred to the Department of Social Development. Sub-theme three was parenting programmes that were implemented to assist parents on responsible upbringing of their children. Sub-theme four indicated that respondents assisted in the application for social grants to provide an income for the families and children.

The findings indicate that means were provided to families and children engaged in child labour to alleviate the need for children to work. This measure is in response to poverty as one of the causes of child labour. The findings further indicate that organisations refer matters of child labour to the Department of Social Development. This suggests that there are some organisations that do not address issues pertaining to child labour which further suggests

that the assistance provided to children in situations of child labour are limited or fragmented. This highlights that a gap in this area which will be further addressed in the recommendations.

The findings also indicate that parenting programmes have been implemented. However, the respondents indicated that these measures are not always successful, especially in child-headed households where no parents are present. Further, it would suggest that it would not assist in situations where parents are employed but the income received is insufficient. The findings further indicate that social grants are applied for to alleviate the financial burden of families. However, given the current economic climate this would suggest that social grants are insufficient, and families would require additional financial assistance.

The above findings are significant as they support the submission in Chapter Five on the Children's Act which asserts that the Children's Act does not provide for situations when a child is in a situation of child labour and cannot be removed from their home.[8] In situations of child-headed households, indigence, and inadequate socio-economic resources, removal of a child is not a viable option as the child's labour (either in the form of domestic chores or in obtaining an income) is essential to the sustenance of the home.[9] These findings, even though limited to only Pietermaritzburg, is a direct result of the inadequacy of the Children's Act and thus forms the basis for the submission that the national legislation does not realistically address the situation of child labour in South Africa.

Respondents' answers (Numbers in brackets at end of responses indicate the sub themes)

> *R: We do provide food parcels, clothes etc.* (1)
>
> *R: We currently do not have any programs to assist these children or their families. These matters are referred to Department of Social Development.* (2)
>
> *R: Parenting programs are initiated by the department to teach parents how to provide for their families and their children*. (3)

[8] The Children's Amendment Act; s 150.
[9] A Lloyd 'A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child' (2002) 2(1) *African Human Rights Law Journal* 11, S Pillay 'Implications of socio-economic issues on the practice of co-creation and governance in South Africa' (2019) 27(4) *Administratio Publica* 91-93, M Bourdillon 'Child labour and children's lives' in ATD Imoh, M Bourdillon & M Meishcner (eds) *Global Childhoods beyond the North-South Divide* (2016) 39.

R: Parenting programs. These have been slightly successful however there are situations where parents are absent from the children's lives, and these are then futile. (3)

R: Parenting programs are initiated but these only assist if the parents are present in the lives of children. It does not guarantee that the parents will be employed, and children will not be compelled to work. (3)

R: We currently do not have any programs to assist these children or their families. Our primary responsibility is the children. We do attempt to apply for social grants for the families however families do tend to abuse the grants and children do not benefit. (4)

9.4.5 IMPEDIMENTS TO REMOVING A CHILD FROM A SITUATION OF CHILD LABOUR

Question 19: Based on your personal experience with child labour cases, what in your personal opinion impedes your ability to remove a child from a situation of child labour?

Main theme: Challenges of removing a child from a child labour situation

Sub-themes:

1. Communities are ignorant about the minimum age requirements for employment

2. Extreme poverty in families of the victims and persistent social economic inequalities in society

There was one main theme and two sub-themes which arose from question 19 of the questionnaire. The main theme was the **difficulties (that the respondent's encountered) when attempting to remove children from child labour situations**. The two sub-themes indicate the respondents' challenges of removing children from situations of child labour. Sub-theme 1 was (indicated) that communities lack knowledge on the laws regulating the minimum age of employment of children. Sub-theme 2 was poverty and social inequalities require assistance that is beyond the resources of the respondents. In regard to the findings, there is a lack of knowledge in communities regarding what constitutes child labour. This finding correlates with the findings in question 18 which indicate that there were respondents who themselves were unaware that certain activities constituted child labour. This highlights

that there is a deficit in the area of understanding what is child labour. It further suggests that if communities are unaware that their actions are unlawful then such illegalities cannot be prevented. This finding supports the discussion in Chapter Five that highlighted that communities and society at large need to be made aware of child labour laws as there is a deficit in this area.[10] Additionally, the findings indicated that there were situations where socio-economic issues required greater assistance than what the organisations could provide. This may suggest that until the state intervenes to address these socio-economic restraints, children who are in situations of child labour are forced to remain in those circumstances.

Respondents' answers (Numbers in brackets at end of responses indicate the sub-themes)

> *R: Within our communities, people do not understand what child labour is. They could be continuing the crime without knowing it.* (1)
>
> *R: Families would be in a worse off position if the child stopped working.* (2)
>
> *R: Children find it easier to work rather than depend on government grants, so they decide to go back to work even after removed.* (2)
>
> *R: It is more difficult to remove or assist children in informal child labour as there are not enough resources to assist these families*. (2)
>
> *R: It is difficult to address child labour in the informal sector as the interventions needed are more socio-economic and beyond the available resources in the department*. (2)
>
> *R: The interventions needed are more socio-economic in informal child labour and beyond the available resources in the department.* (2)

9.4.6 MEASURES THAT WOULD ENABLE BETTER PROTECTION TO CHILDREN ENGAGED IN CHILD LABOUR

Question 20: Based on your personal experience with child labour cases, what in your personal opinion would assist you better in providing protection to children who are engaged in child labour?

Main theme: Perceptions on improving measures to existing child labour protection approaches

[10] TECL 'Supporting the time-bound programme to eliminate the worst forms of child labour in South Africa's Child Labour Action Programme and laying the basis for concerted action against worst forms of child labour in Botswana, Lesotho, Namibia and Swaziland (TECL 1)' (2005).

Sub-themes:

1. Awareness campaign on child labour and children's rights

2. Improved government support through child grant support

There was one main theme and two sub-themes that arose from question 20 of the questionnaire. The main theme was **what the respondents perceived would assist them in improving their assistance to child labour victims**. The two sub-themes highlight the suggestions made by respondents that could enhance the protection of child labour victims. Sub-theme 1 was awareness campaigns to educate people on the rights of children and child labour laws. Sub-theme 2 was government should improve the accessibility of social grants to more families and children to decrease the necessity of children engaging in child labour.

The findings indicate that communities must be made aware of the laws pertaining to child labour. This correlates with the findings for the previous question, where respondents highlighted that communities were unaware what activities constitute child labour. This underscores that there is a gap between legislation and its enforcement. This reinforces the discussion in Chapter Five which identified a deficit in the enforcement of legislation and the law.[11] Legislation cannot be effectively implemented within society if those entrusted to assist child labour victims as well as communities do not know the laws regulating child labour.

These findings above illustrate that there is a direct correlation between child labour legislation that is enforced at national level and the lack of understanding child labour laws as experienced by the participants in Pietermaritzburg. It is acknowledged that the lack of understanding could be on the fault of the individual who neglects to keep themselves informed on child labour laws. However, even though this may be plausible, it is submitted that the discussion in Chapter 5 highlighted that the amendment to the BCEA[12] does not include any reference to domestic chores that could constitute child labour if in excess or how labour inspectors are to monitor these activities if they are performed in private premises of the child's home.

It is thus argued that if national legislation – in particular, the BCEA – does not expressly make these inclusions in its amendment, then all personnel in South Africa dealing

[11] D Budlender & D Bosch 'South Africa: Child domestic workers: A national report' (2002) 47.
[12] Basic Conditions of Employment Amendment Act 20 of 2013; s 43.

with child labour cases will lack understanding on how to address these issues pertaining to child labour. This correlation leads to the submission that if the participants in Pietermaritzburg are challenged in their understanding of these laws, then other personnel in South Africa who enforce child labour laws may also be challenged in this area.

Furthermore, the findings indicate that an increase in the accessibility of government grants would lighten the financial burden on households. However, it must be noted that in some instances, as mentioned by the respondents, children lack proper documentation in order to be assisted by organisations and would therefore lack the ability to apply for social grants. This finding further suggests that there is a problem in accessibility to identification documents for which the Department of Home Affairs is responsible.

This finding further suggests that if there is an increase in the accessibility to social grants then there needs to be an increase in the funds to make these grants available to people. Unfortunately, the viability of increasing the accessibility of social grants as well as the amount paid to individuals needs to be considered in light of the unstable economic climate of the country.

Respondents' answers (Numbers in brackets at end of responses indicate the sub themes)

R: *Educate the community, social workers and parents as well as children on what is child labour. Government departments to provide more assistance to co-ordinate when resources are beyond our ability.* (1)

R: *I believe awareness campaigns are vital to educate communities and children on what is child labour.* (1)

R: *Educate communities on child labour.* (1)

R: it would be helpful for the Labour Dept to speak to communities. (1)

R: *We have sound labour laws to remove children from child labour and children's laws to provide social security to the children. These laws should be well published in electronic media.* (1)

R: Educate social workers and the community on the different forms of child labour more especially in the informal sector. (1)

R: Educate the community on child labour more especially in the informal sector. More resources to provide to families so that there are better water and housing

facilities to communities that would require less assistance from children for their families survival. (1)

R: More resources supplied by government to assist socio-economic needs of rural people. (2)

R: Educate the community, parents and children on child labour more especially in the informal sector. (1)

R: More resources by government to provide socio-economic needs of rural communities. (2)

9.4.7 ADEQUACY OF CURRENT LABOUR LAWS FOR CONTROLLING CHILD LABOUR

Question 21: In your personal opinion do you believe that our current labour laws are adequate in controlling child labour? Please explain your answer.

Main theme:

1. The current labour laws are inadequate
2. The current labour laws are adequate

Sub-themes:

1. No clear record of arrests on perpetuators of child labour
2. Insufficient guidelines or orientation on how to effectively assist a victim of child labour

There were two themes and two sub-themes that arose from question 21 of the questionnaire about **adequacy of current labour laws in controlling child labour**. Theme 1 was that current child labour laws are inadequate in regulating child labour. The two sub-themes provided the reasons the respondents perceived that the current child labour laws were inadequate. Sub-theme 1 was that there was no clear record that indicated the number of arrests made of child labour perpetrators. Theme 2 was that the laws were adequate in controlling child labour. Sub-theme 2 indicated that there are insufficient guidelines and training on how to assist child labour victims especially within the informal economy. The two themes are linked to construct 5 as per question 1 of the questionnaire which sought to provide a greater understanding on the respondents' experiences with the enforcement of child labour laws.

The findings indicate that there is dissatisfaction with the current laws controlling child labour. It was highlighted that there is no clarity regarding the arrests that have been made. This may suggest that even if arrests are made such information is not discussed and not made available to those personnel who address child labour. This may further suggest that there is a lack of communication amongst government departments. This has the potential to cause obstacles in the criminalisation of child labour as the progress of regulating child labour is unknown to those who have to implement the laws.

The findings further indicate that there is a need for training staff to identify child labour and assist child labour victims. It was also indicated in the questionnaire responses that not all respondents had received training in relevant law and policy (48.8% no formal training, 56.3% no informal training; 56.4% did not understand law and policy) and could not always identify cases of child labour as a result (50.1%). In light of the respondents' answers, it was indicated that especially within the informal sector such training is necessary.

This finding correlates with previous findings mentioned above which highlight that some respondents were unaware of what activities constitute child labour. This may suggest that they were not equipped with an adequate knowledge and understanding of child labour which may lead to the possibility that some instances of child labour may go undetected because it was not identified as child labour and thus regarded as unlawful. This will be further discussed in the recommendations.

The findings above illustrate that there was a deficit of skilled and trained personnel who deal with child labour cases in the City of Pietermaritzburg. This concurs with the findings of the literature discussed in Chapter Five that there is a lack of trained personnel dealing with child labour in South Africa as a whole.[13] The findings above, together with the findings in Chapter Five, validate the submission that there needs to be more training provided to those dealing with child labour cases in the country as a whole.

Respondents' answers (Numbers in brackets at end of responses indicate the sub-themes)

R: *No, because they are limitations within the law that is in place.* (2)

R: Current labour laws are inadequate in controlling child labour because they is no enforcement and arrest of those who committed this child labour. (2)

[13] United State Department of Labor's Bureau of International Labor Affairs 'Finding on the worst forms of the child labour in South Africa' (2022) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.html,* accessed 23 May 2024.

R: No, the current laws do not address informal child labour according to the amendments so there is a lack of understanding in this area. There are also no guidelines given on how to assist children in informal child labour where children cannot be removed. (2)

R: No, there is not enough training on informal child labour. There are little interventions available to assist in informal child labour. There is not enough guidelines on how to help children who lack social and economic rights and have to undertake chores at home. (2)

R: No, the current laws do not address informal child labour according to the amendments so there is a lack of understanding in this area and how to assist children in such situations. (2)

R: No, these laws do not say how to deal with child labour in informal rural areas where you cannot remove a child and it is beyond our resources to help the children. (2)

R: No, there is not enough training on the recent amendments on child labour. Practically we are limited in assisting child labour in the informal sector. (2)

R: Yes, children's Act number 38 of 2005 indicates what child labour is and what needs to be done if a case is reported. (1)

R: Yes, I believe our labour laws are adequate in controlling child labour as they criminalise employment of children and provision for the protection of children is made through the Department of Social Development which provides support grants and children's homes. (1)

9.4.8 RECOMMENDATIONS TO LEGISLATORS TO IMPROVE THE CURRENT LABOUR LAWS THAT CONTROL CHILD LABOUR

Question 22: In your personal opinion, what do you suggest legislators could do to improve the current labour laws that control child labour?

Main theme: Recommendation on improving legislative child labour laws

Sub-themes:

1. Introduce child labour laws in the school curriculum

2. Use a collective approach by government, civil society and families to prevent child labour
3. Awareness building on how to identify child labour practices in informal sector
4. Change current laws

As presented above, there was one theme and three sub-themes that arose from question 22 of the questionnaire about **suggestions for legislators to improve the current labour laws that control child labour.** The main theme was suggestions for what legislators could do to improving existing child labour laws. There were three sub-themes that reflected the respondents' suggestions for how child labour laws could be improved. Sub-theme 1 was that child labour laws should be included in the school curriculum to educate children on their rights. Sub-theme 2 was that a collective approach by government, society and families must be used to prevent child labour. Sub-theme 3 was that there needs to be improved understanding of how to identify and address child labour within the informal economy.

The findings highlighted that children should be taught the laws pertaining to their rights and they should also be informed about child labour laws. This suggests that children become aware of the lawful parameters of work so that, should they decide that they want to engage in lawful child work, they are better equipped to understand when their rights are infringed. It is argued that such education should be included in the school curriculum. The findings further indicate that preventing child labour requires collaboration between all role players. It is argued that this may suggest that legislation alone cannot eradicate child labour as child labour is interwoven with socio-economic constraints. This further suggests that there is a need for government, society, NGOs and families to have a cohesive relationship where departments work together and share information and assist when matters are referred to them.

The findings further indicate that there is a greater need to train personnel to understand what constitutes informal child labour and how to address these issues in the informal sector. This may suggest that there is currently a deficit in the understanding regarding informal child labour that has not been clarified by legislation or the training that respondents have already received. This highlights a crucial inconsistency as the amendments to the child labour laws include informal child labour yet there is no training or guidelines that have been given to equip personnel to implement these laws. This deficit in legislation will be further addressed in the recommendations.

Respondents' answers (Numbers in brackets at end of responses indicate the sub themes)

R: Change/amending laws (4)

R: Laws must be very strict in punishing the criminals perpetuating child labour. (4)

R: The laws need to be one the subject at school. Children should know their rights. (1)

R: Have other organisations deal with child labour as well. We only refer these matters to Department of Social Development and they have to deal with all the cases. Make it compulsory to assist children by providing basic services. (2)

R= Provide more training on how to deal with child labour in the informal sector. Provide more mandatory requirements for fulfilling socio-economic needs of children in rural areas. (3)

R= Provide more assistance to organisations that deal with child labour. Make it compulsory to educate those who work with children on what is child labour. (2)

R= Provide more training on how to deal with child labour in the informal sector. (3)

R= Make it mandatory to train and educate all role players on the current laws on child labour especially the amendments. (3)

R= Provide more clarity on child labour in the informal sector and how to identify it. (3)

R= Have training for social workers and assistants on child labour. (3)

9.5. LIMITATIONS OF THE STUDY AND CONTRIBUTIONS OF THE EMPIRICAL RESEARCH TO THE STUDY

Chapter Two detailed the limitations identified in conducting the theoretical and empirical research. The discussion on limitations of the study in this chapter will only focus on those that are relevant to the empirical research. One of the main limitations was the small sample size in the study. The population comprised of 23 NGOs and two government departments in Pietermaritzburg, however, only four of these NGOs indicated that they deal with child labour issues. Thus, the study was limited to only 26 participants from the four NGOs, the Department of Labour and the Department of Social Development. Moreover, from these 26 participants only 16 agreed to participate in the study. Therefore, the responses from participants were restrained to a small group of people who dealt with child labour issues in Pietermaritzburg.

There are implications that follow from the small sample size. First, it cannot be assumed that the findings are representative of the general situation – in this case, of child labour in South Africa as a whole. As previously mentioned in Chapter Two, the national legislation that regulates child labour is applicable to South Africa as a whole and is not limited to only one province. It must be emphasised that the discussion of the laws in this study is based on national legislation and not provincial or municipal laws. The responses from the participants are based on their experiences on national legislation that govern how they enforce child labour laws.

Additionally, as discussed in this chapter, this study found that the challenges that participants experienced with enforcing child labour laws were the same challenges highlighted in the literature in Chapter Five. As a result, the manner in which personnel from cities, such as Pietermaritzburg, address child labour within their region is dictated largely by the parameters of national legislation. Thus, the researcher asserts that there is a direct correlation between the national laws discussed, such as the BCEA and the Children's Act, and how the participants from the sample group of the study enforce child labour legislation. Thus, despite the small sample, it is reasonable to consider that the challenges experienced by the participants in the study provide insight into the effectiveness of the child labour laws that govern South Africa as a whole.

Moreover, the discussion in Chapter Two highlighted the causes of child labour in South Africa. These causes, also discussed in Chapter Three, include poverty,[14] lack of socio-economic resources,[15] HIV/AIDS,[16] child-headed households,[17] cost of schooling and limited

[14] Sevinç (note 2 above; 1-3), Abdullahi et al 7-8), Naeem, Shaukat & Ahmed (note 2 above; 48-9).
[15] S Liebenberg & B Slade 'Applying a Human Rights Lens to Poverty and Economic Inequality: The Experience of the South African Human Rights Commission' (2023) 51(3) *Federal Law Review* 296-298, JC Mubangizi & BC Mubangizi 'Poverty, human rights law and socio-economic realities in South Africa' (2005) 22(2) *Development Southern Africa* 277-290, M Adato, MR Carter & J May 'Exploring poverty traps and social exclusion in South Africa using qualitative and quantitative data' (2006) 42(2) *The Journal of Development Studies* 226-247.
[16] JP Bhengu *Challenges Experienced by Children in Child Headed Households (CHH) In South Africa* (Unpublished Doctoral thesis, University of KwaZulu-Natal, 2021) 14-15, MC Mothapo *Exploration of the Psychological Experiences of Learners from Childheaded Families in Mankweng Area, Limpopo Province.* (Unpublished Master's thesis, University of Limpopo, 2016) 5-11, H Meintjes et al 'Orphans of the AIDS epidemic? The extent, nature and circumstances of child-headed households in South Africa' (2010) 22(1) *AIDS Care* 40–49
[17] V Chidziva & PJH Heeralal 'Circumstances leading to the establishment of child-headed households' (2016) 4(10) *International Journal for Innovation Education and Research* 91-92, KZN Human Settlements *Research on Child-Headed Households* (2010) 6-7, J Pillay 'Problematising child-headed households: The need for children's participation in early childhood interventions' (2016) 6(1) *South African Journal of Childhood Education* a359.

access to schools[18], as well as the cultural requirements of the African people in South Africa[19]. These are not limited to a particular province but exist to varying degrees throughout South Africa. Further, as discussed in Chapter Five, the SAYP surveys identify KwaZulu-Natal as not only having the highest levels of child labour in South Africa but, more significantly, rank KwaZulu-Natal highest in terms of the incidence of these factors contributing to child labour.

The responses from the participants in the study identified the same factors contributing to child labour that are mentioned above as factors contributing to child labour that they have observed while addressing child labour in Pietermaritzburg. Thus, it is argued that there is a correlation between the causes of child labour that are evident in South Africa as a whole, the causes of child labour in KwaZulu-Natal identified by the SAYP surveys and the responses from the participants in Pietermaritzburg. Thus, the causes of child labour as those mentioned in South Africa and the SAYP surveys provide a basis for choosing Pietermaritzburg as an area of interest to conduct the empirical research. Therefore, any measures taken to address the causes of child labour or eradicate child labour in Pietermaritzburg would also apply to South Africa as a whole. The researcher submits that because of the correlation mentioned above that the findings from the empirical study it is sufficient to draw conclusions on the state of child labour laws in South Africa as a whole.

Another implication that emerges from the small sample size is that it indicates that there are few NGOs that include child labour cases as part of the scope of their work in the city of Pietermaritzburg. Moreover, of the few that do, their services are not necessarily available across the whole city of Pietermaritzburg. This illustrates that the assistance provided to victims of child labour is limited and that more can be done to improve in this area. Therefore, even though the small sample size can be considered as a limitation, it also serves as an indication of a deficit in addressing child labour. The researcher provides possible recommendations in this regard based on the discussion in Chapter 5 and the key findings highlighted in Chapter Nine.

Another pertinent limitation that was identified in this study is the lack of current available statistics on child labour. The SAYP's last survey was in 2019[20]; it thus has not yet

[18] Murray (note 3 above; 6-8), Yıldırım, Beydilib & Görgülü (note 3 above; 519), S Bessel 'Education, school, and learning: Dominant perspectives' in T Abebe & J Waters (eds) *Laboring and Learning* 91–100.
[19] AP Ndofirepi 'Philosophy for children: The quest for an African perspective' (2011) 31 *South African Journal of Education* 245-247, TI Waziri 'The impact of cultural norms on influencing child labour practices in Tanzania: The case study of small -scale mining in Morogoro District, Tanzania' (2019) 7(4) *The International Journal of Humanities & Social Studies* 145-146.
[20] StatsSA 'Survey on the Activities of Young People, 2019' (2021).

published statistics that assess child labour since the COVID-19 pandemic. This is a significant gap in current knowledge that, in the researcher's opinion, has important ramifications on child labour statistics in the country as a whole. The reason for this is that the economic climate of the country has drastically declined after the COVID-19 pandemic which has led to job losses, budget cuts in allocating funds to combat socio-economic inequalities and educational infrastructure.[21] Additionally, the deaths of many people did leave children either orphaned or in a precarious position.[22] It is argued that, in light of the instability of the economy child labour statistics can be expected to have increased, and the situation of children to have worsened. Thus, this limitation indicates that that there is a gap in knowledge that future studies and surveys need to address to provide a true reflection of child labour in the country.

A further limitation in the study was that the reliability test omitted items 12.2 (I have assisted those who required protection from child labour), 12.1 (I have encountered situations related to child labour), and 12.5 (Situation of child labour assistance that were impeded by corrupt law enforcement) due to their low quality. The reliability of construct three, ***personal experience of child labour***, was significantly improved after these questions were removed. Even though these questions above that were omitted are invertedly addressed under the themes of construct four and construct five, which also dealt with the participants' experiences with child labour, the researcher argues that further studies on child labour is necessary to determine the extent of child labour in Pietermaritzburg in regard to these questions.

The reason for this argument is that direct responses from 12.2 (I have assisted those who required protection from child labour) and 12.1 (I have encountered situations related to child labour), would have provided a better understanding on the prevalence of child labour in Pietermaritzburg and how such child labour victims were assisted. It is thus argued that future studies on child labour should consider addressing these areas that this study was unable to include in the findings of the empirical research.

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[21] E Mbunge 'Effects of COVID-19 in South African health system and society: An explanatory study' (2020) 14(6) *Diabetes Metabolism Syndrome* 1809-1814, T Khowa, A Cimi & T Mukasi 'Socio-economic impact of COVID-19 on rural livelihoods in Mbashe Municipality' (2022) 14(1) *Journal of Disaster Risk Studies* 1361, S Walby 'The COVID pandemic and social theory: Social democracy and public health in the crisis' (2021) 24(1) *European Journal of Social Theory* 22–43.

[22] S Schotte & R Zizzamia 'The livelihood impacts of COVID-19 in urban South Africa: A view from below' (2023) 165 *Social Indicators Research* 1–30, SD Hillis 'Global minimum estimates of children affected by COVID-19-associated orphanhood and deaths of caregivers: a modelling study' (2021) 31(398) *Lancet* 391-402, L Munongi & D Mawila 'Risk factors of orphan and vulnerable children in a children's home during the COVID-19 pandemic' (2023) 145 *Children and Youth Services Review* 1-8.

9.6. CONCLUSION

This chapter has presented the results of the empirical research undertaken in Pietermaritzburg and the analysis of these findings. There were two key findings. One was that there are children who are engaged in child labour in Pietermaritzburg. The main factors that were identified as contributing to the prevalence of child labour where the same as those identified in the literature review: poverty[23] and the phenomenon of child-headed households resulting from the absence of parents.[24] The organisations that were included in the study provided some assistance to child labour victims and their families, but there were circumstances that were beyond their resources to address. This finding supports the discourse in the literature review that identified socio-economic factors as being an obstacle to assisting child labourers.[25] The consequence of this was that children engaged in child labour continued in this situation.

The other key finding was that there was a lack of understanding of the definition and scope of child labour, especially in terms of identifying child labour in informal settings. Respondents were not aware that child labour can include domestic chores such as fetching firewood and water, as highlighted in the literature review. This indicates that there may have been situations where children were engaged in child labour but, due to the respondents' having inadequate knowledge to identify the child's activities as child labour, intervention was not provided. Also, there was a lack of training of any sort in child labour law and policy, which may well affect implementation of policy and law. None of the participating organisations had sections or departments dedicated to dealing with child labour.

It was indicated that training, the collaboration of government, civil society and the families of child labour victims are required to eradicate child labour. This underscores that while legislation is required to set lawful parameters to protect children from child labour, it is also essential that various role players assist as a unified force. The findings highlighted that there is a grave need for awareness regarding child labour laws. Organisations, communities,

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[23] Sevinç (note 2 above; 1-3), Abdullahi et al (note 2 above; 7-8), Naeem, Shaukat & Ahmed (note 2 above;48-9).

[24] B Ntuli, E Sebola & S Madiba 'Responding to maternal loss: A phenomenological study of older orphans in youth-headed households in impoverished areas of South Africa' (2020) 8 *Healthcare* 259-261 (1-3), HY Lim *Legally Recognising Child-Headed Households through a rights-based approach: the case of South Africa* (Unpublished Doctoral thesis, University of Pretoria, 2011)12, T Popoola & G Mchunu 'HIV orphanhood research and the representation of older orphans in Sub-Saharan Africa: A literature review' (2016) 27 *Journal of the Association of Nurses Aids Care* 57–65.

[25] EV Edmonds & C Theoharides 'Child labor and economic development' (2020*) Handbook of Labor, Human Resources and Population Economics* 1-5, O Bandiera et al 'Labor markets and poverty in village economies' (2017) 132(2) *Quarterly Journal of Economics* 811-870, GB Nkamleu 'Poverty and child farm labor in Africa: Wealth paradox or bad orthodoxy' (2006) 13(1) *African Journal of Economic Policy* 1-5.

and children need to be made aware of the rights of children and, specifically, their rights with regard to child labour.

These gaps will be addressed in the recommendations, in Chapter Ten. The researcher will provide recommendations and suggestions to policies and legislation on how to improve the deficits identified by the respondents in the research study above

CHAPTER TEN: SUMMARY, RECOMMENDATIONS AND CONCLUSIONS

10.1. INTRODUCTION

10.2. SUMMARY OF RESEARCH FINDINGS IN RESPONSE TO RESEARCH QUESTIONS

10.3. RECOMMENDATIONS

10.3.1. THE INCLUSION OF DOMESTIC CHORES IN THE DEFINITION OF 'WORK'

10.3.2. MONITORING OF WORK UNDERTAKEN BY 15- TO 17-YEAR-OLDS

10.3.3. MANDATORY REQUIREMENT OF NON-GOVERNMENT ORGANISATIONS TO DEAL WITH CHILD LABOUR CASES

10.3.4. EMPOWERING LABOUR INSPECTORS TO ENTER HOMES OF FAMILIES SUSPECTED OF ENGAGING IN CHILD LABOUR

10.3.5. CO-ORDINATION OF MORE SOCIAL PROGRAMMES TO ASSIST IN ERADICATING CHILD LABOUR

10.3.6. MANDATORY TRAINING AND SPECIALISATION FOR ORGANISATIONS AND PERSONNEL RESPONSIBLE FOR IMPLEMENTING CHILD LABOUR LAWS

10.3.7. MANDATORY KNOWLEDGE BUILDING AND AWARENESS CAMPAIGNS FOR CHILD LABOUR LAWS

10.4. CONCLUSION

10.1. INTRODUCTION

This chapter provides a summary of the work undertaken to answer the research questions and achieve the study's objectives. This is followed by drawing conclusions and presenting recommendations. The discussion on child labour throughout the thesis has highlighted a number of deficits that exist in South Africa's current legislation regarding the concept of child labour and the effective implementation of child labour legislation and policies. The researcher makes seven recommendations for revisions that could address these issues in child labour legislation. This thesis acknowledges that the needed improvements to existing South African child labour legislation are not only limited to the seven recommendations submitted in this chapter. Rather, the seven recommendations that are presented in this chapter are a direct response to the deficiencies highlighted in child labour legislation that was discussed throughout this thesis. This thesis does not consider the implications or provide recommendations for child labour undertaken by illegal immigrants or child trafficking as this aspect is beyond the scope of this research. The researcher, however, suggests that should labour inspectors and social workers encounter child labour undertaken by illegal immigrants then the matter should be referred to the Department of Home Affairs.

10.2. SUMMARY OF RESEARCH FINDINGS IN RESPONSE TO RESEARCH QUESTIONS

This study has undertaken an in-depth investigation into the concept of child labour and the laws and policies that govern this area. Chapter Two presented the methodology which discussed the manner in which the study was carried out in both the theoretical and empirical sections of the research. The discussion on child labour from Chapters One to Eight responded to Research Questions One to Four, as indicated in Chapter One.

Research Question One sought to determine how a child is defined and how this impacts the definition of child labour within the South Africa context. Chapter Three presented a discussion on the concept of a child and a comprehensive examination of the relevant issues pertaining to the perception of child labour. Chapter Four presented and critiqued the international laws and policies governing child labour. This chapter provided an understanding of the international standards that South Africa should adhere to in enforcing domestic legislation governing child labour. This allowed the researcher to evaluate whether South Africa meets international benchmarks and provided suggestions on how South Africa could improve its legislation. The researcher concluded from the discussion in Chapters Three and Four that South Africa defines a child according to the international standards of the United Nations Convention on the Rights of a Child (CRC), which contradicts the African cultural perception of a child in South Africa. Consequently, the researcher concluded that the definition of child labour does not reflect the African cultural context. The researcher suggested that the current South African child labour legislation be amended to give effect to the African culture in South Africa.

Research Question Two sought to determine how the protection of children's basic human rights and the best interests of children form the basis for their protection against child labour in terms of the South African Constitution. Chapter Five presented a detailed analysis of South Africa's child labour laws and policies. This analysis allowed the researcher to examine the effectiveness of labour legislation in governing child labour. The researcher concluded that the provisions in the Constitution give effect to the enhanced protection of children from child labour and that the best interests of a child principle reinforces the protection that should be afforded to children from child labour.

Research Question Three sought to determine and analyse the nature of the South African legal framework that protects children from child labour and how the

implementation of these laws is enforced. Chapter Five presented the findings that South Africa has an extensive legal framework that protects children from child labour, but there are gaps in this framework that hamper the successful implementation of these laws. The researcher concluded that the current child labour legislation should be amended to improve the implementation of child labour laws.

Research Question Four sought to determine what relevant laws are enacted in Uganda and the USA to prohibit child labour, how they compare with South African legislation, and what South Africa could learn from these cases. Chapter Six examined in detail the child labour laws of Uganda. The researcher evaluated Ugandan law to identify those areas that are successful in governing child labour in Uganda and that could possibly be assimilated into South African legislation. The study highlighted that Uganda includes the light work provision endorsed in Article 7 of the ILO Convention 138 in its child labour laws. Uganda also makes use of the reduction of the minimum age of employment for developing countries endorsed in Article 2(4) of ILO Convention 138. Uganda provides for alternate schooling for children who have to leave school before they complete the minimum age of schooling at 15 years of age to complete their basic education.[1] The researcher found that Uganda's commitment to ensure children obtained their basic education was pertinent in eradicating child labour. Uganda also demonstrated some success in its strategies to eradicate child labour which targeted specific areas that give rise to child labour such as poverty, lack of education and awareness campaigns.

Chapter Seven examined in some detail the child labour laws in the USA, with cognisance of the variance between individual state laws. The researcher analysed USA child labour laws to identify those areas that are effective in governing child labour. This enabled the researcher to draw from the positive aspects and provide possible recommendations on how South Africa could benefit from USA child labour legislation. The researcher found that the USA encouraged lawful child work through its legislation. Thus, the USA created more lawful ways in which child work could be carried out such incorporating work and school to be compatible so that children still obtain an education even when they work. The researcher also found that the USA has an elaborate monitoring system of lawful child work. Effective monitoring is vital in implementing legislation to ensure an eradication of child labour violations.

[1] Education Act 13 of 2008, s 3(c).

The researcher found that there were several aspects of the child labour legislation in both Uganda and the USA that could be used as a model to improve South African legislation. Chapter Eight presented a comparative analysis on the key aspects of child labour laws and policies in South Africa, Uganda and the USA. This analysis highlighted the differences and similarities in how the three countries addressed child labour.

Research Question Five sought to determine and examine the existence of child labour in the city of Pietermaritzburg, the causes of child labour in this city, and how the law regarding child labour is being implemented. Chapter Nine presented the empirical research that was conducted to answer this question. The evidence showed that child labour exists in Pietermaritzburg and participants working in organisations enforcing child labour law identified factors that contribute to child labour. The study found that were inconsistencies in the implementation of child labour law that prevented the effective eradication of child labour.

Research question 6 sought to advance recommendations that could be made to South Africa's existing child labour laws to improve their implementation and ensure the protection of children. The findings of this study point to several key recommendations in this regard, which are presented in the next section.

A number of pertinent findings were highlighted in the study. The most significant was that child labour still exists in South Africa.[2] The main causes of child labour in South Africa are poverty, HIV/AIDS, child-headed households, lack of access to formal education, inadequate fulfilment of socio-economic rights and limited social assistance, and these causes are extant in all nine provinces but are more prevalent in KwaZulu-Natal.[3] The empirical study in Pietermaritzburg highlighted that the factors that contribute to child labour in Pietermaritzburg, correlate with the factors that contribute to child labour in South Africa as a whole. This indicates that the child labour laws are not successful in eradicating child labour. If national legislation governs child labour in Pietermaritzburg and it has been shown that child labour exists in Pietermaritzburg, then it follows that national legislation is probably inadequate in regulating child labour in the country as a whole.

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[2] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 6-30.

[3] StatsSA 'Survey on the Activities of Young People, 2015' (2017) at 16, A Visser 'Child labour is a matter of national concern: What is the curriculum doing about it?' (2021) 85 *Journal of Education* 29-54, K Abdulkareem, SO Ehiane & NI Nnamezie 'Reflecting on the trend of child labour in South Africa' (2021) 8(1-2) *African Journal of Democracy and Governance* 69, N De Wet & J Ewemade '"We are small, but we have jobs": A profile of the labour activities of children and youth in South Africa' (2018) 49(3-4) *South African Review of Sociology* 98.

The examination of the legislation regulating child labour highlighted that even though the proposed Basic Conditions of Employment Amendment Act[4] seeks to include the term 'work' to bring domestic legislation in line with international standards,[5] the legislature has not provided for the practical enforcement of this amendment in the current BCEA or the proposed BCEA Amendment Act. One oversight is that the amendment should extend to activities such as domestic chores, which, in excess, may constitute child labour.[6] Nor does this amendment take into consideration the cultural and socio-economic factors that compel children to engage in child labour in South Africa, as discussed in Chapters Three and Five.

A second oversight in the proposed amendment to the BCEA is the practical monitoring of domestic chores in private homes. The current BCEA has also been found to be lacking in an adequate monitoring framework for lawful child work. Additional findings of the research indicate that legislation does not adequately provide for the monitoring of the work of children between 15 and 17 years old. The findings in this regard highlighted that there is a deficit in the child labour legislation and that legislation needs to be amended to accommodate the practical considerations of the inclusion of the word 'work'.

In addition, it was found that South Africa is, in fact, not taking advantage of all the lawful opportunities it has to assist children when they are compelled to work. The study discovered that South Africa has not adhered to the International Labour Organisation's (ILO) requests to include the light work provision in legislation that would allow children below 15 years old to undertake light work.[7] South Africa has also not taken the opportunity afforded by the ILO to reduce the minimum age of employment to 14 years old as permitted for developing countries.[8] South Africa has also not considered that school and work could be incorporated for the benefit of children, which was highlighted in the comparative analysis with the USA and Uganda.

The findings of the empirical research in Chapter Nine highlighted significant challenges regarding the existence of child labour in Pietermaritzburg and approaches taken to address it. The challenges which were noted are inadequate resources to assist in addressing situations of child labour, lack of trained and skilled personnel to deal with child labour cases

[4] The proposed Basic Conditions of Employment Amendment Act 20 of 2013.
[5] Convention 138; Art 3.
[6] The proposed Basic Conditions of Employment Amendment Act 20 of 2013; s 43.
[7] Convention 138; Art 7.
[7] Convention 138; Art 2(4).

and the lack of awareness of what constitutes child labour in communities. These findings alone would have been insignificant statistically, but they correlate with the examination of South African legislation and literature as discussed in Chapter Five. The findings may be applicable to South Africa as a whole because national legislation dictates how personnel address child labour cases in Pietermaritzburg and all other locations. Thus, if personnel enforcing child labour laws in Pietermaritzburg are challenged, then personnel in South Africa as a whole are also challenged, which validates that this is possibly a national problem that must be addressed.

The small sample group of the empirical study indicated a significant finding in this research which is that not all Non-Government Organisations (NGOs) that deal with children address issues of child labour. This is a pertinent deficit as it indicates that there are few resources dedicated to assisting children who are in situations of child labour. Child labour is thus sidelined and not afforded the same significance as abuse, neglect and abandonment that the majority of the NGOs focus their attention on.[9] This finding illustrates that South Africa does not give adequate attention to child labour and the plight of children in situations of child labour. In response to these key findings, recommendations are presented below for the possible improvement to South African child labour laws and policies.

10.3. RECOMMENDATIONS

The following recommendations are made.

10.3.1. THE INCLUSION OF DOMESTIC CHORES IN THE DEFINITION OF 'WORK'

The recommendations discussed in this section refer only to domestic chores and do not include the informal economy, which is beyond the ambit of this study. South Africa seeks to amend the current BCEA by replacing the word 'employ' with the word 'work'.[10] The proposed BCEA Amendment Act is commended for aligning domestic legislation with ILO Convention 138.[11] It is recommended that legislature finalise the proposed amendment and effect its speedy implementation. However, this proposed amendment fails to consider two key issues, with the result that it may have negative consequences.

First, the proposed amendment does not take cognisance of the African cultural context, which espouses the notion of children undertaking work. Children within African communities are encouraged to undertake work as a means of socialisation and preparation for

[9] The Constitution; Section 28(1)(*d*).
[10] The proposed BCEA Amendment Act; s 43.
[11] Convention 138; Article 3.

adulthood.[12] The inclusion of the term 'work' in the proposed amendment creates a complete ban on any activity that a child under the age of 15 years might undertake, including domestic chores in excess which could be considered child labour.

Second, the proposed amendment does not acknowledge the socio-economic impediments that children encounter in their daily lives that compel them to undertake tasks for their survival and that of their families. This study found that children under the age of 15 in a rural community (Ezinketheni, just beyond Copesville) in the city of Pietermaritzburg were engaging in work. The sustenance of their families depended on these children performing domestic chores and even undertaking light work in exchange for remuneration given by those who employ them. These conditions were more prevalent when there were child-headed households and children were the breadwinners of their families. Unfortunately, the BCEA does not provide any allowance children under 15 years of age who are in such a situation to undertake some form of work that is not detrimental to their physical or psychological well-being or their educational development.

In light of this, it is recommended that the minimum age of employment should be reduced. It must be highlighted that a suggestion to reduce the minimum age of employment is in accordance with international standards. Article 7 of ILO Convention 138 provides for light work: stipulates that children from 13 years old to 15 years old may be permitted to undertake light work. Additionally, Article 2(4) of Convention 138[13] provides that member states who are economically challenged or regarded as having a developing economy may be permitted to set the minimum age of employment at 14 years old. Uganda and the USA, as mentioned in the comparative analysis, have made use of this provision.

As Uganda and South Africa share the same cultural and socio-economic challenges, it is pertinent for South Africa to consider Uganda's reduction of the minimum age of employment and assimilation of the light work provision in its legislation to make allowances for children younger than 15 who engage in work for economic or cultural reasons. A negative consequence of these measures may be that children of this age are hindered from completing their schooling.[14] A further recommendation, below, addresses the possibility of aligning work and schooling.

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[12] R Serpell & D Adamson-Holley 'African socialization values and nonformal educational practices: Child development, parental beliefs, and educational innovation in rural Zambia' in T Abebe, Waters & A Skelton (eds) *Labouring and Learning* (2017) 10.

[13] Article 7; Convention 138.

[14] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 6-30.

Article 2(4) of Convention 138 states that if member states lower the minimum age below 14 reasons must be provided. South Africa is a developing country that is confronted by obstacles in terms of its social, economic and educational infrastructure needs.[15] While government is committed to alleviating the plight of the poor in rural communities, these good intentions have not yet been adequately realised.[16] Corruption, including the mismanagement of funds by senior officials, is one issue that has hampered progress.[17] Moreover, the worsening economy puts a greater burden on the funds available to assist those in need.[18] While the long-term aims of government to fulfil the socio-economic and educational needs of rural communities is to be commended, there are children who currently are experiencing the burden of not having their basic socio-economic and educational rights fulfilled. Preventing such children from undertaking work necessary for their survival only serves to worsen the situation that they are in.[19] It is submitted that the socio-economic climate of South Africa serves as a sufficient reason to consider lowering the minimum age of employment to 14 years old as is envisaged by Article 2(4) of Convention 138.

African values and cultural practices constitute an additional reason for lowering the minimum age of employment to 14 years old. The culture of the majority of the people of South Africa is what defines people as Africans. The rituals that children perform in their rite of passage to adulthood is intrinsic to their cultural heritage.[20] The traditional views of the African community in encouraging children to undertake work have been countenanced in many other cultures as well.[21] It is thus submitted that to prevent children under 15 years old from working would be tantamount to denying them the right to follow and practice their own culture. Therefore, Convention 138 in Article 2(4) and Article 7 provide the basis for children at younger ages to perform work.

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[15] Visser (note 3 above; 29-54), Abdulkareem, Ehiane & Nnamezie (note 3 above; 69).
[16] RC Nnadozie 'Access to basic services in post-apartheid South Africa: What has changed? Measuring on a relative basis' (2013) 16 *The African Statistical Journal* 84.
[17] Ibid.
[18] MA Matjeke 'Infrastructure-led growth and youth entrepreneurial development support - urgent socio-economic priorities for South Africa's economic recovery' (2022).
[19] Ibid.
[20] T Siweya, T Sodi & M Douglas 'The notion of manhood embedment in the practice of traditional male circumcision in Ngove Village, Limpopo, South Africa' (2018) 12(5) *American Journal of Men's Health* 1567–1574, Ghana Statistical Service 'About 80,000 girls in Ghana aged 12 to 17 years already married or living with a man' *Monthly Press Release* 1 October 2022, T Muzingili & R Taruvinga 'Culturally-inflicted child rights violation: A case of khomba practice of Shangaan people in Zimbabwe Mgbakoigba' (2017) 17(1) *Journal of African Studies* 35.
[21] Ibid.

It must be underscored that the prohibition of children under 15 years of age from working does not automatically eliminate child labour, as the factors that compel them to work still exist. It does, however, lead to such children to perform work unlawfully; that is, unregulated by legislation. This condition creates the bedrock for exploitation of children when they perform work.[22] Alternatively, by lawfully reducing the minimum age of employment, more children who do perform work within the lowered age category would come under the protection of the law and receive protection while they work.

The comparative analysis highlighted that the USA permits children at very young ages to undertake work. However, the USA also provides a comprehensive structure to strictly regulate how these children perform the work. It is submitted that South Africa should assimilate the USA's approach to protecting children while they work rather than instituting a complete ban on children under 15 years of age working. The USA actively enables children to work without compromising their education. It is recommended that South Africa study the model implemented by the USA to enable children to both work and go to school without compromising their wellbeing.

In addition, in Uganda s (3)(1) of the Education Act 13 of 2008 provides for alternate forms of schooling if children leave school before they complete their compulsory years of schooling. While the legislation does not specify how this should be done, it is recommended that South Africa adopt a similar provision but include directives for how alternate schooling can be implemented. Night school and home schooling may be viable models to consider.

The Global Child Labour Conference in 2022, discussed in chapter 5, highlighted that one innovative way to address child labour is to amend the school structure to make it more flexible to accommodate the possibility of work and school.[23] This type of forward thinking has been supported by academics who promote work as a positive aspect a

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[22] Y Dinku, Yonatan, D Fielding & M Genc 'Counting the uncounted: The consequences of children's domestic chores for health and education in Ethiopia' (2019) 23(3) *Review of Development Economics* 1260-1281, DL Putnick & MH Bornstein 'Girls' and Boys' labor and household chores in low and middle-income countries' (2016) 81(1) *Monographs of the Society for Research in Child Development* 2-3, E Webbink, J Smits & E de Jong 'Hidden child labour: Determinants of housework and family business work of children in 16 developing countries' (2010) *NiCE Working Paper 10-110* 2-4.

[23] RA Mavunga 'International Labour Organisation Convention No. 138, Article 7 and its implementation in South African municipal laws: Suggested policy changes' (2022) 20(2) *Commonwealth Youth and Development* 1-29, DL Putnick & MH Bornstein 'Is child labor a barrier to school enrollment in low- and middle-income countries?' (2015) 41 *International Journal of Educational Development* 112–120, H Murray 'Is school education breaking the cycle of poverty for children? Factors shaping education inequalities in Ethiopia, India, Peru and Vietnam' (2012) *Policy Paper 6: Young Lives* 1-20.

child's development toward adulthood.[24] Thus, it is recommended that South Africa consider this approach to accommodate the requirements African culture place on children and the socio-economic challenges that drive children to work or undertake domestic chores.

10.3.2. MONITORING OF WORK UNDERTAKEN BY 15- TO 17-YEAR-OLDS

The BCEA permits children from 15 years of age to engage in employment.[25] The BCEA also empowers the Minister of Employment and Labour to draft regulations for the lawful employment of children between 15 and 17 years of age.[26] These regulations provide details of when and how children may engage in employment. It also lists the types of work these children may or may not undertake.[27] The regulations include permitted times of work that accommodate the combination of work and school as well as the penalties that should be imposed for contraventions of these regulations. However, the regulations do not indicate how they are to be monitored and the safeguards to be instituted to in ensure that the employment of children is conducted within the parameters of the law.

In terms of Regulation 10, a labour inspector may investigate a complaint of a suspected violation of the regulations. Additionally, regulation 10 mandates labour inspectors to conduct random inspections of workplaces.[28] Hence, it stands to reason that labour inspectors rely on complaints of suspected violations in order to identify the businesses where violations may be taking place. Thus, if complaints are not made, either because of intimidation by the employer or for fear that the child worker would lose their job, labour inspectors have no way to know about violations that are taking place within the closed doors of businesses.

In the absence of complaints made to the Department of Employment and Labour, inspectors would have to conduct random inspections of every workplace to determine if there are violations taking place. Section 65 (1)(*a*) of the BCEA empowers labour inspectors to enter the establishment of any business, but where employment takes place on private property inspectors require a court order to enter such premises. This hampers the purpose of random investigations, which is to enter property without prior warning to property owners, so

[24] AC Dammert et al 'Effects of public policy on child labour: Current knowledge, gaps and implications for program design' (2018) 110 *World Development* 104–23, O Adonteng-Kissi 'Potential tension between children's engagement in work and the rights of the child: Resolving the conflict using margin of appreciation doctrine' (2021) 26(6) *International Journal of Human Rights* 978–1003, M Bourdillion 'Children and work: A review of current literature and debates' (2006) 37(6) *Development and Change* 1201–26.
[25] The BCEA; s 40.
[26] The BCEA; s 44 (1).
[27] 'Regulations on hazardous work by children in South Africa', GN R7, GGG 32862 (c.i.o 5 February 2010).
[28] 'Regulations on hazardous work by children in South Africa', GN R7, GGG 32862 (c.i.o 5 February 2010).

that they do not have the opportunity to conceal or destroy any evidence of child labour violations. Even though in 2022 an additional 484 labour inspectors were employed, there is still not adequate manpower for labour inspectors to physically inspect every business establishment, farm and private property in the entire country. In addition, inspections would have to be done with some frequency to ensure workplaces remain free of any violations. This would be an impossible burden on labour inspectors and the resources of the state.

Labour inspectors currently lack sufficient resources to implement effective monitoring and there are insufficient experienced and suitably qualified persons within the field to deal with such violations.[29] Therefore, it is recommended that the BCEA be amended to impose on employers the mandatory record-keeping of child workers which should include reporting mechanisms of the number of employed child workers, employment certificates and age certification. This model is employed in the USA to regulate lawful child work, as discussed in Chapters Seven and Eight. This would assist the labour inspectors to be aware of where child work is undertaken to enable closer monitoring of these workplaces. Currently, the regulations pertaining to child workers[30] refers to child workers as employees under the BCEA; hence, the rights and entitlements of an adult employee are regarded as the same of a child worker.

This is indeed problematic as there are specific regulations that guide child work yet there are no specific guidelines that monitor the implementation of these regulations. The current provisions under the BCEA that pertain to record-keeping do not specifically deal with violations of child work. Rather, the provisions impede the effective record-keeping of child work. The BCEA requires all employers to retain a record of their employees.[31] This requirement, however, exempts employers who have employees undertaking domestic work on a farm,[32] employees engaged in work for less than 24 hours per month[33] and employers who have less than five people within their employment.[34]

Additionally, the record-keeping only requires employers to obtain the name, age and physical address of the domestic worker if he/she is under 18 years old. The BCEA

[29] US Department of Labor Bureau of International Labor Affairs 'Child labor and forced labor reports: South Africa' (2022), available at *https://www.dol.gov/agencies/ilab/resources/reports/child-labor/south-africa,* accessed 23 January 2023
[30] 'Regulations on hazardous work by children in South Africa', GN R7, GG 32862 (c.i.o 5 February 2010).
[31] The BCEA, s 31 (a)-(e).
[32] The BCEA, 28 (2) (b).
[33] The BCEA, 28 (1).
[34] The BCEA, 28 (2) (b).

does not require proof of any of this information.[35] These exemptions may obstruct the implementation of child labour prohibitions. First, section 28(2)(*b*) does not take cognisance of the high prevalence of child labour outside of formal employment where children are exploited in this particular area due to the lack of monitoring of child labour.[36] In this study, domestic chores were reported to be a common form of work undertaken by children in Pietermaritzburg. Additionally, statistics indicate that domestic chores undertaken by children within rural areas are prevalent in South Africa as a whole.[37] The documentation of this form of child labour in Pietermaritzburg and in national surveys indicates that the child labour laws have not been successful in eradicating child labour. If national legislation governs child labour in Pietermaritzburg and the same challenges and causes of child labour that are evident in Pietermaritzburg are also prevalent in South Africa as a whole, then national legislation is inadequate in regulating child labour. Furthermore, there has not been any attempt to amend this section in the Basic Conditions of Employment Amendment Act 20 of 2013 which has not come into effect and seeks to prohibit the undertaking of domestic chores in excess, but provides no monitoring of such prohibitions.

Second, this exemption fails to acknowledge that the guideline for the definition of child labour as endorsed in the Constitution[38] and the BCEA places emphasis on the type of work undertaken and the effect it has on the well-being, safety and development of a child, rather than the duration of work that the child performs.[39] Hence, in terms of the definition of child labour, a child could be engaging in labour even if he or she performs an hour's work but such work is hazardous or detrimental to the child's well-being and development.[40] Third, this exemption disregards the possibility that employees who employ less than five employees could have child labourers within their employment. It also fails to consider that the reason that such employees would only employ five workers is because these child labourers could be performing tasks which should be undertaken by double their workforce.[41]

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[35] 'Regulations on hazardous work by children in South Africa' GN R7, GG 32862 (c.i.o 5 February 2010).
[36] K Beegle, R Dehejia & R Gatti 'Child labour and agricultural shocks' (2006) 81 *Journal of Development Economics* 82.
[37] US Department of Labor 'Findings on the worst form of child labor: South Africa' (2021), available at *https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/South-Africa.pdf*, accessed 23 January 2023.
[38] The SA Constitution, s 28.
[39] The BCEA, s 40.
[40] The BCEA, s 40.
[41] B Mason 'Tobacco companies profit from child labour in Malawi' *World Socialist Web Site Online* (3 June 2010), available at *http://www.wsws.org/en/articles/2010/OL/mala-jo3.html.* , accessed 23 May 2018.

It is thus recommended that legislators in South Africa draw insight from the USA which enforces mandatory record-keeping of all child workers. The USA enforces age certification and employment, or work, permits for all child workers.[42] Additionally, these requirements are mandatory for all child workers in the USA irrespective of the work they undertake or the business in which they are employed.[43] It is recommended that South Africa adopt similar mandatory record-keeping provisions in its regulations guiding child work. It is suggested that the Department of Labour in every province in South Africa act as a monitoring body and keep records of the number of children employed, irrespective of how many hours are worked or how many employees are employed. It is imperative that employers have evidence of a child's age before the child is employed. It does not suffice to merely record the child's age as this can lead to incorrect records due to dishonesty on either the part of the child, because he or she wants to be employed, or on the part of the employer who wants to employ a child worker for nefarious reasons.

It is recommended that the accurate monitoring of child labour is contingent upon employers keeping accurate records of their employees' ages as well as their birth certificates.[44] It is recommended that compelling children to present birth certificates in order to be employed would oblige parents and children to obtain the proper documentation. It is suggested that the Department of Labour record children who come to them who do not have birth certificates and refer them to the Department of Social Development for assistance in obtaining birth certificates through the Department of Home Affairs. Additionally, it is suggested that mobile agencies be sent to hospitals and rural areas to facilitate the registration of children and process birth certificates. This should be closely monitored by the Department of Home Affairs and these mobile units should submit mandatory reports on the number of children registered on a monthly basis.

It is also recommended that South Africa follows Uganda's approach to enforcement practices that require their inspection officers to provide mandatory reports of their inspections. Currently, the BCEA does not make this provision a mandatory requirement.

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[42] CSR 'Report: The Fair Labour Standards Act: An overview' (2023), available at *https://sgp.fas.org/ crs/ misc/R42713.pdf,* accessed 23 January 2023.
[43] Ibid.
[44] United State Department of Labor Bureau of International Labor Affairs 'Finding on the worst forms of the child labour: South Africa' (2012) available at *http://www.dol.gov/ilab/reports/childlabour/south_africa.htm*; accessed 23 May 2018.

Enforcing mandatory reporting would promote the accountability of the government officials in carrying out their responsibility.

As highlighted in the empirical findings in Chapter Nine, the respondents in this study stated that government, society and families must work together to eradicate child labour. It is thus necessary that government departments work together to refer matters from the Department of Labour to the Department of Social Development and the Department of Home Affairs. The mandatory enforcement of work permits for the type of work children are employed to conduct would compel employers to report a child worker within their business to the Department of Employment and Labour. This would allow greater visibility of where child workers are employed. This would assist labour inspectors in conducting investigations as they would be aware of the child worker and the types of work that are being undertaken. This would ease the burden of labour inspectors having to conduct random investigations to identify where child workers are employed and allow labour inspectors to closely monitor these establishments. Additionally, this would assist the Department of Employment and Labour in keeping its own records of the number of child workers in each province in South Africa. This would assist further in contributing to the statistics on youth employment from which further developments and allocation of resources could be made to alleviate the plight of working children. Currently, the onus of compiling statistics pertaining to youth employment is undertaken by Statistics SA.[45] The readily available records that the Department of Employment and Labour would have could be beneficial to Statistics SA in their research.

It is recommended that South Africa draw from the USA's approach and enforce a mandatory obligation to inform child workers of their rights. It is further recommended that child workers should be made aware of their rights as employees and the regulations under which they are expected to work. Currently, there are no provisions in the BCEA which stipulate that employers are compelled to inform child workers of their rights. It must be acknowledged that many child workers who engage in work have either exited school at 15 years old or are still at school; therefore, they would not have received any formal education on their rights as employees because this does not form part of their curriculum at school. It is argued that this lack of knowledge places child workers in a precarious position as they would not be aware of when their rights are being violated nor would they be aware of who to approach should they experience exploitation when they work. As previously mentioned in

[45] StatsSA 'Survey on the Activities of Young People, 2019' (2021) at 6-30.

the comparative analysis, the USA enforces a mandatory provision that requires employers of child workers to inform the child worker of their rights by displaying the regulations of child work in their place of employment. Thus, if children are exploited when they work, they will know the procedures to undertake to enforce their rights.

This recommendation could be further strengthened by creating unions for child workers. It is recommended that South Africa consider creating a platform for child workers within the workplace that would defend the rights of children without child workers having to seek assistance from the Department of Labour when their rights are infringed. Additionally, it is recommended that government take steps to include the rights of child workers within the curriculum in schools so that children are given formal education on their rights as employees and the regulation of child work should they want to be employed (this could be included in the compulsory Life Orientation subject). This would allow children to make informed decisions about whether they want to work and how they can combine work and school so that they still obtain an education.

10.3.3. EMPOWERING LABOUR INSPECTORS TO ENTER HOMES OF FAMILIES SUSPECTED OF ENGAGING IN CHILD LABOUR

This recommendation pertains only to labour inspectors entering private homes to investigate a child's performance of domestic chores as a potential case of child labour. While the formal employment of children is provided for in the BCEA, this is not. A pertinent observation that can be elicited from the comparative analysis is that South Africa has proposed to include the term 'work' to include any type of work undertaken by children, including domestic chores in a child's own home.[46] The ramification of the proposed amendment to the BCEA is that it enlarges the ambit of the definition of child labour to subsume activities such as domestic chores. However, another observation that was drawn from the comparative analysis is that South Africa has only one set of laws and regulations for the formal sector that pertains to child labour. It is submitted that the lack of differentiation between employment in the formal sector and all other activities of work outside of a formal employment contract creates impediments to the effective implementation of child labour law.

This submission is based on the approach that is taken regarding the powers of labour inspectors within formal and private premises. In the formal sector, labour inspectors are empowered by section 65(1)(*a*) of the BCEA to enter the business premises of any

[46] The BCEA; s 40.

workplace without providing prior notice to the employer. This provision facilitates the effective implementation of child labour regulations as it ensures that labour inspectors can carry out inspections without the delay of obtaining warrants and it assists them to obtain evidence as it prevents employers from being aware of the intended inspection so that they cannot dispose of evidence of child labour.

In terms of private premises where domestic chores take place, however, the powers of labour inspectors are severely restricted. In terms of section 65 (1)(*a*) of the BCEA, labour inspectors require the consent of the owners of private homes to enter their premises to conduct inspections. In the absence of such consent, labour inspectors would need a warrant to permit them access to the premises. Although it can be contended that this protects homeowners' right to privacy[47], the practical implication is that inspections are severely hampered as a result of this requirement. The effective monitoring of child labour within private premises where children are engaged in domestic work, child prostitution, or any other work which is concealed within the confines of the home or private property, is thus contingent upon the consent of the owners of the private property.

In light of this, it is recommended that section 65 of the BCEA be amended to empower labour inspectors to enter private property in suspected cases of child labour without notice to the owner of the property or a warrant from the court, thus affording labour inspectors the same access that social workers have to enter property where there are suspected child rights violations, as discussed below. It is further recommended that there be a mandatory obligation placed on inspectors to conduct inspections in both the formal sector and private premises.

It is also recommended that legislation require inspectors to submit a record of their inspections to the Department of Labour. This draws on Uganda's approach (discussed in Chapter Six), which makes it mandatory for labour inspectors to report on the number of inspections conducted. While this requirement is not adequately enforced in Uganda, it is suggested that South Africa build on this provision to ensure that inspections are carried out. This recommendation is also based on the empirical evidence presented in Chapter Nine and national statistics that indicate the prevalence of child labour in informal labour situations that indicate a greater need to regulate the informal sector than the formal sector.

[47] SA Constitution, s 7(2).

It is submitted that a child-centered approach in promulgating legislation would thus alter the approach to eliminating child labour by tilting the scale of rights in favour of children by affording labour inspectors greater power to protect children through legislation. The eradication of child labour is contingent upon the proper implementation of child labour prohibitions. If the implementation of child labour prohibitions is not effective at the grassroots level, it stands to reason that any further process to refer the matter for investigation or ensure the successful prosecution of child labour offenders would be futile. It is unconscionable that South Africa has been esteemed for its array of legislation that prohibits child labour yet, practically, it cannot be implemented.

This indicates that the laws designed to assist children and promote their well-being are merely inscribed on paper but do not adequately address the reality of the vulnerability of children exploited through child labour. This, in turn, vitiates the purpose of child labour prohibitions. It is recommended that the enforcement of child labour prohibitions should adopt a child-centered approach and deal with all matters pertaining to the suspicion of child labour as a matter of urgency; first, to protect the child who is engaging in child labour, and second, so that any opportunity to conceal the illegal activities by the offender is prevented.

The extension of labour inspectors' authority to enter homes suspected of child labour might require significant legal, administrative, and training resources, which need a structured plan for implementation. It is recommended that a child labour department within the Department of Labour should be established that would oversee all other child labour departments (this is further discussed later in the chapter). It is recommended that the existing employees of the Department of Labour be grouped to focus only on child labour issues. It is not recommended that a new department with additional employees be employed for this development. It is merely recommended that the child labour department limit their focus to only child labour matters rather than directing their attention to all labour issues that come to the Department of Labour. This way these employees could develop their skills to specifically deal with children and child labour issues. It is envisaged that the child labour department would carry any additional administrative requirements of implementing this recommendation. It is also suggested that labour inspectors obtain training specifically within the area of children's rights to broaden their understanding on how to deal with child labour not only from a labour perspective but also how to interact with children.

In addition, it is recommended that special safeguards be implemented to ensure that labour inspectors do not abuse their entry into private homes of suspected child labour

situation. One of the safeguards would be to have a police officer accompany the labour inspectors into the private homes of people. This would ensure that labour inspectors have an authoritative figure to confirm the findings of the investigation in the home. It is also recommended that labour inspectors provide a report on the private houses they investigated even if no child labour was found. This would assist the Department of labour to monitor the investigations into private homes and also identify the specific homes that should be monitored closely to ensure that child labour is not taking place.

It is further recommended that South Africa draw from the approach that the USA has taken in how they differentiate between agricultural and non-agricultural sectors. As previously discussed in Chapter Seven and the comparative analysis, the USA has drafted a comprehensive legal framework solely for the regulation of child labour laws in the agricultural sector. As mentioned above, the empirical research indicates that there is a need for domestic settings to be given more attention than the formal sector of employment. Furthermore, it must be acknowledged that the formal sector differs vastly from the domestic setting of a child's own home in terms of the work that children might be expected to perform. It is thus recommended that South Africa develop specific regulations for inspections of private premises to assist labour inspectors to enforce prohibitions more consistently.

10.3.4. CO-ORDINATION OF MORE SOCIAL PROGRAMMES TO ASSIST IN ERADICATING CHILD LABOUR

Although this thesis is focused on providing recommendations to improve the implementing child labour regulations, it is imperative that the researcher highlight the role of government and non-government programmes with a mandate to address child labour or with the capacity to play a role. As child labour represents an infringement of the basic rights of children, it cannot be considered in isolation. Rather it is imperative that government initiatives and social programmes that address the basic rights of children supplement any effort to eradicate child labour. It is these social initiatives that bridge the gap when there are limitations on government to fulfil its mandate of providing basic human rights to the people.

As previously mentioned in the comparative analysis and Chapter Five, South Africa had the National Child Labour Programme of Action (CLPA) which was implemented in phases. The purpose of the CLPA was to implement various programmes under government entities with the ultimate aim of eradicating child labour. It must be noted that this is the only

one of the few programmes that has been developed in South Africa for the eradication of child labour. It must be further highlighted that the success of this programme has not been determined because the government agencies involved have not been able to provide data on the fulfilment of their obligations under the programme. Thus, while funds were invested, no impact has been demonstrated for the years that the programme was implemented. This is significant as it illustrates South Africa's lack of commitment to the eradication of child labour. In contrast, Uganda has implemented numerous social programmes with international funding that have been demonstrated to have reduced child labour, as reported in Chapter Six.

In light of this, it is recommended that South Africa obtain the assistance of international organisations, such as International Programme on the Elimination of Child Labour (IPEC), to provide guidance, broaden South Africa's financial capacity to address child, and strengthen South Africa's reporting capacity and accountability structures with regard to child labour. One of the recommendations that the 5th Global Conference on Child Labour highlighted was that more funding was necessary for additional programmes to eradicate child labour. While it is acknowledged that South Africa has obtained funding for the CLPA phases, it is recommended that the suggestions offered by the conference for increasing funding be considered. Some of the suggestions included obtaining loans from international banks, developed countries assisting developing countries and increased use of technical assistance from international entities that would not only provide funding but also help South Africa develop programmes to eradicate child labour. This was discussed in great detail in Chapter 5.

It is further recommended that South Africa study the programmes Uganda has implemented, especially its successful poverty alleviation programme, as poverty has been found to be a key factor driving child labour and consider introducing similar models in South Africa.

It is recommended that South Africa consider introducing social programmes in three key areas that contribute to child labour. The first area is increased access to education. This area deserves top priority as it is the basic human right of every child. Additionally, poor educational infrastructure has been noted as a key factor contributing to child labour. It is imperative that government, social society, teachers and parents work together to ensure that plans that are developed are successfully implemented. The second key area that contributes to child labour is HIV/AIDS. Programmes should be designed to assist those families where children are obliged to work, including child-headed households where children are in dire need of assistance. This could be achieved through more assistance from social services and

community faith-based organisations. This area is important as it pertains to the basic survival of children and should be given high priority. The third area is poverty. Programmes should be implemented that promote income-generating activities so that families can learn to financially sustain themselves instead of being dependent on government for social assistance. Communities should also be taught how to generate their own source of food through garden projects. This is an important aspect as people need to be taught how to use their own abilities to make money for themselves and provide for their homes.

The approach Uganda has taken in its implementation of programmes to address child labour is significant. Each programme has had one central focus implemented through a range of projects that involve government, civil society and communities. The programmes have been designed with purposeful steps to ensure their success of the programme. In contrast, South Africa has implemented programmes addressing multiple aspects of child labour without a clear aim. This has made it difficult to determine a clear path to realising the goals of the programmes. Breaking down the programmes into specific issues and initiatives may enable better implementation and ultimate success.

It is also worth noting that Uganda has demonstrated a high level of commitment to implementing and ensuring the success of these programmes. Many programmes developed with good intentions fail due to a lack of willingness on the part of officials to go the extra mile in order to ensure the success of the programme. In South Africa, a stronger and more cohesive effort is needed from all key players in the country if any programme is going to be successful.

10.3.5. MANDATORY TRAINING AND SPECIALISATION FOR ORGANISATIONS AND PERSONNEL RESPONSIBLE FOR IMPLEMENTING CHILD LABOUR LAWS

In Chapter 9, the findings of the empirical research highlighted a deficit in how to address child labour, especially when children undertake work in the form of domestic chores. During sample selection, the researcher was advised by the directors of the NGOs that some NGOs are not provided training nor are they aware of the laws governing child labour especially regarding the new amendments to the child labour laws. Their understanding of child labour was limited to formal employment within the workplace. They only became aware of child labour in the form of domestic chores after the researcher clarified the concept of child labour in light of the proposed amendment to the BCEA.

In addition, none of the organisations in the study had specific department dedicated to child labour. It is submitted that there may be a correlation between the lack of a

separate department that deals with child labour and a lack of knowledge regarding the laws regulating child labour. The majority of the participants in the study indicated that addressing child labour is one part of the overall scope of their jobs. This would suggest that no separate training is provided to organisations in the area of child labour. While training on child labour may be conducted for government departments, NGOs require the same training as these organisations are responsible for addressing child labour within the domestic arena, rather than in formal employment.

As discussed in Chapters Five, Six and Seven, labour inspectors are trained to deal with labour issues within employment settings. The new amendment to the child labour laws that deals with domestic chores as child labour is beyond the training received by labour inspectors. Labour inspectors are now required to determine if certain domestic chores constitute child labour. Additionally, labour inspectors are required to determine if certain activities are beyond a child's physical and mental ability and can be deemed hazardous to a child. Moreover, labour inspectors would be required to make visits to communities and private homes to monitor compliance with the new amendments to the child labour laws.

Labour inspectors are already burdened with the issues related to formal employment; thus, to require additional obligations of them without adequate training may be unrealistic and thus do injustice to the victims of child labour. This gap is of great significance as the law regarding child labour has developed over time to include domestic chores as a potential form of child labour. This recent amendment requires teaching and training of staff to understand how to identify child labour in domestic situations as well as the steps required to assist children.

Due to the gap in the enforcement of child labour law in the domestic context, it is recommended that training be made a mandatory requirement for all personnel dealing with child labour. This calls for organisations to undergo courses that would inform them on the laws regulating child labour especially in regard to the proposed amendments to legislation. This requires that experts in the field of child labour law develop material and conduct courses to train staff in the concept of child labour, the laws regulating child labour and how to identify cases of child labour.

As indicated in Chapter Nine, respondents indicated that, in terms of the Children's Act[48], if a case of child labour was identified they were aware of the steps that

[48] Children's Act 38 of 2005.

needed to be taken to remove the child from the situation. While this may be an effective course of action for some cases of child labour, it does not address situations where children are dependent on working to support their families, nor does it resolve issues where domestic chores constitute child labour. It would be impractical to assume that in communities where children are heading households and undertaking domestic chores to sustain their families that these children be removed from their homes. The removal of these children would be detrimental to their families.

This, in light of the proposed amendments to the BCEA, it is recommended that more practical solutions be devised to assist children, avoiding approaches that appear progressive on paper but do not work in practice. As shown in Chapter Nine, respondents indicated that more government grants need to be made available to families of child labour victims. Currently, child support grants and the R350 grant that government has made available to those who are unemployed does not adequately assist children in child-headed households where there are no adults present. It is imperative that social workers assist these children in obtaining these grants. The International Labour Organisation's Governing Body indicated in their observations that South Africa must take measures to increase its social grants to vulnerable groups. Additionally, the 5th Global Conference on Child Labour also indicated that a lack of social grants contributed to child labour as the basic needs of children could not be met. It was suggested from the conference that funding could be obtained through international support. Countries can consider forming support networks from developed countries, employers organisations and international corporations. The need for an increase in social grants and possible suggestions on how to attain these funds was discussed in detail in Chapter 5.

Additionally, Chapter Nine reported that the respondents' organisations provided clothing and food parcels to families. These endeavours to assist families need to be maximised to ensure that more families receive assistance on a greater scale and on a regular basis. One of the hurdles to removing children from situations of child labour identified in the study was that it was beyond the resources of the organisation. As discussed in the literature review, socio-economic factors compel children into child labour. This is even more evident when children engage in domestic chores that constitute child labour because their basic socio-economic rights have not been fulfilled. It is insufficient to simply claim that the resources are beyond an organisation's ability. If such situations are identified and are beyond the resources of one organisation, then such matters should be referred to another government department

that is able to address the situation and be of assistance. This calls for government departments to work cohesively to ameliorate the socio-economic impediments previously discussed. While it might not be possible to eliminate socioeconomic issues entirely, meaningful steps can be taken, such as providing more JoJo tanks to communities so that children are not compelled to walk lengthy distances to fetch water. Additionally, where there is no electricity, families could be assisted with solar light savers to avoid the expense and danger of candles and paraffin. These expenses may appear to be small, but in impoverished homes they may constitute a significant financial burden.

These recommendations should be supplemented with broader economic policies that would relieve children from engaging in child labour. These can include job creation programs for adults, and skills development programmes that would train adults to use their talents and abilities to generate an income for their families. Communities need to be educated on how to start garden projects that would provide daily fruit and vegetables for families within impoverished communities. There needs to be more social welfare enhancements, and efforts to reduce inequality. These recommendations could include strategies for engaging businesses, which would provide complete scholarship and bursary programs to children from impoverished communities. This would alleviate the burden on parents to pay school fees and additional costs of schooling. This could involve creating incentives for businesses that provide such scholarships and bursaries, to be regarded as preferred suppliers to government entities, which can drive positive change through market forces.

During the sample selection for the empirical study, it was learned that Mama Ntombi's Community Projects had built a community centre in Ezinketheni. The centre serves as a place where children from child-headed households can leave their younger siblings to receive day care and basic education while older siblings attend school. They also receive meals, clothing and groceries as donors provide. It is recommended that other NGOs adopt this model, especially those in rural areas where domestic chores are more likely to be excessive and qualify as child labour. Such practical approaches to assisting child labour victims and their families can provide solutions other than simply removing a child from a situation of child labour.

Additionally, personnel need to have practical experience in identifying which activities constitute child labour. This requires going into communities and witnessing for themselves the reality of child labour, rather than only engaging in scenarios in a handbook. It

is submitted that, by doing so, personnel would gain a greater awareness of the problems children encounter on a daily basis that pushes them into child labour.

It is not recommended that South Africa adopt Uganda's model of delegating the responsibility of addressing child labour to district and local municipalities. As South Africa has a colossal problem with corruption and lack of service delivery at the municipal level, they do not currently have the capacity to discharge such a responsibility effectively. It is therefore recommended that responsibility for addressing child labour be delegated to the departments and organisations that are entrusted to address child labour. It is imperative that these proposed child labour departments are interrelated with all other child labour departments as this would keep personnel informed on the progress of the governance of child labour. It would also allow personnel to work together and combine their efforts to assist children.

It is envisioned that the proposed child labour department within the Department of Labour serve as the head department that would oversee all other child labour departments. As discussed in Chapter Six, in Uganda the Employment Act[49] mandates all labour inspectors working at the municipal level to provide monthly reports to the Ministry of Gender, Labor, and Social Development (MGLSD). It is recommended that South Africa institute a similar requirement in its own legislation, making it mandatory for all personnel within the proposed child labour departments of organisations to submit monthly reports on their monitoring and inspections of child labour, and assistance provided to those engaged in child labour, to improve accountability and transparency. At present, there is no compulsion for labour inspectors to undertake inspections. Additionally, it must be noted that child labour inspections only come to light if there is a complaint made to the Department of Labour or if labour inspectors undertake random inspections. Hence if no complaints are made and no obligation to conduct inspections is placed on labour inspectors then cases of child labour would go undetected.

Additionally, it is envisioned that the proposed child labour department at the Department of Labour serve as a platform where child workers who are engaged in lawful work can address complaints regarding infringements of their labour rights. Currently, legislation legalises the employment of children who are 15 years and over but has not provided avenues to be followed when there is an infringement on the rights of child workers in the workplace.

[49] The Employment Act No. 6 2006.

This platform would create a voice for child workers and would give children an opportunity to enforce their rights.

10.3.6. MANDATORY KNOWLEDGE BUILDING AND AWARENESS CAMPAIGNS FOR CHILD LABOUR LAWS

The findings discussed in Chapter Nine indicated that there was a lack of knowledge regarding child labour laws on the part of communities. It was highlighted by the respondents that members of the community are unaware that certain activities constitute child labour. Some people in rural areas have limited access to education and limited access to the media and different forms of telecommunication. As discussed in the literature review, within African communities, children are expected to undertake domestic chores as part of their culture.[50] In such situations, community members may be unaware that these activities could constitute child labour and thus be unlawful.

The proposed amendments to the BCEA regarding child labour laws that include domestic work in excess as an activity that could constitute child labour requires that parents and caregivers be made aware of these amendments. If communities, as well as personnel who enforce child labour laws, are unaware of which activities constitute child labour, then employers and children may also lack adequate knowledge.

Awareness of child labour law is instrumental in the eradication of child labour. If society is unaware of the activities that constitute child labour, it is not well equipped to prevent children from undertaking these activities. As enshrined in the Constitution of the Republic of South Africa, 1996,[51] children have a right to be protected from child labour.

Unfortunately, this right has not been adequately provided to children, which contributes to the cycle of exploitation of child labourers. It is optimistic to assume that employers are aware of the rights of children pertaining to child labour. Currently, the Basic Conditions of Employment Act[52] only makes mention that children under 15 years old are prevented from undertaking work. The BCEA does not specifically endorse that children who are 15 years and older may leave school and become lawfully employed. This provision has to be read together with s 15 of the Schools Act and the Constitution in s 28 (1)(*f*) which specifies the minimum age a child has to complete compulsory schooling.

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[50] 'A Future Without Child Labour: Global Report' under the follow up of the ILO Declaration on the Fundamental Principles of Rights at Work *International Labour Conference 90th Session* (2002) 49.
[51] SA Constitution; s 28.
[52] BCEA; s 43.

There is no legal compulsion on a business owner, especially an entrepreneur, to undergo a course on employment law and rights, including child labour laws, in order to register their business. Whereas it may be possible that large corporations undergo courses and conduct seminars on the laws regulating employment which may encompass child labour laws, small businesses within communities where child labour and lawful child work are more likely to occur are unlikely to disseminate knowledge to employees and employers on employment rights.

It is recommended that the Department of Labour, the Department of Education, NGOs and employers work together to develop and implement awareness campaigns on child labour laws, similar to those implemented in Uganda under its National Child Labour Policy. As discussed in Chapter 6, these awareness campaigns, combined with other efforts, have been successful in decreasing child labour in Uganda. In residential areas, awareness campaigns could be held by ward councillors at community halls or with mobile units to inform parents and caregivers about how domestic chores could constitute child labour. In rural areas, this knowledge building could be undertaken through the chiefs in those areas, with the assistance of mobile units. These awareness campaigns can be delivered in the form of community programmes especially targeting rural areas where there may be a prevalence of child labour in the form of domestic chores that fall under the banner of child labour. These community programmes could be co-ordinated by the proposed child labour departments of organisations. It is essential that information be facilitated in the mother tongue of community members so that people can understand the laws regarding child labour and the rights of children. Interaction with the community could increase the visibility of child labour, enabling organisations to identify and assist child labour victims and their families.

It is also recommended that awareness of child labour laws be addressed through the school curriculum. Children need to be aware of their rights to be protected from child labour and they need to be aware of their right to be lawfully employed from the age of 15 years old as well as the regulations that govern lawful child work. This would allow children to make an informed decision if they want to leave school to work or combine work and school. It is also recommended that there be school drives where awareness campaigns are taken to schools and children of both primary and secondary schools are given information about child labour and their rights within lawful child work.

In the USA, it is mandatory for employers to display in their workplaces the rights of child workers and the regulations governing lawful child work. It is recommended

that South African legislation do the same to ensure that employers and child workers are aware of their rights and so that if children's employment rights are infringed they would understand how to address the situation. Additionally, it is recommended that employers be required to run workshops and programmes on the rights of employees and inform staff about child labour laws. This would increase awareness of child labour and encourage greater adherence to child labour laws.

While this recommendation calls for enhanced awareness campaigns and education on the harms of child labour, further detail support mechanisms for children currently involved in child labour is needed. This includes creating safe reporting channels for child workers, psychological support services, and reintegration programs for those transitioning out of child labour. These services should be provided through NGOs and the Department of Social Development. Children who are engaged in domestic chores that constitute child labour as well as children undertaking lawful child work must be informed on the procedures and the channels where they can report this violation without being victimized or prejudiced by employers or parents and guardians.

10.3.7. FURTHER RESEARCH AND STATISTICAL STUDIES ON CHILDLABOUR

While the recommendations mention the need for improved record-keeping and monitoring, it is envisaged that the Department of Labour, Department of Social Development, Department of Home Affairs, NGOs and the South African Survey on Young People (SAYP) serve to obtain data on child labour. This data should be systematically collected, analysed, and used to inform future policy. This could include regular surveys, reporting mechanisms, and public transparency in publishing the findings to ensure ongoing accountability. It is further recommended that the SAYP provide more detailed research on a more regular basis into specific areas of provinces and not simply provide an overview of an entire province. This would improve the visibility of child labour in specific areas so that policy makers can identify specific causes of child labour that may highlight child labour to be more prevalent in one area as compared to others.

10.4. CONCLUSION

This study has established that child labour exists in South Africa. It has explored how South Africa perceives and deals with child labour in relation to international perspectives on child labour. As there are several obstacles to the effective implementation of child labour law in South Africa, a robust range of initiatives must be explored to eradicate child labour that take

cognisance of the socio-economic impediments and financial instability of the country that are factors that drive child labour. A comparative analysis of child labour law in Uganda and the USA has highlighted areas where South Africa could strengthen its child labour law and enforcement and stimulate active participation by society and government initiatives to eradicate child labour. This study has made numerous practical recommendations to this effect.

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s 89

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s 43

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s 3

s 93

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s 4

s 5

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s 1

s 2

s 9

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Article 29

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s 8

s 32

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s 2

s 3

s 4

s 5

s 6

s 7

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s 2

s 3

s 15

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s 1

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s 5

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Article 30

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s 2

s 8

s 32

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s 3

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Article 24

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s 133

s 156

s 167

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s 2

s 3

s 4

s 5

s 6

s 7

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- § 7107(a)

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§ 4

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§114

§1862

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Article 4

Article 11

Article 15

Article 16

Article 20

Article 21

Article 31

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Article 1

Article 2

Article 3

Article 4

Article 6

Article 9

Article 12

Article 18

Article 19

Article 20

Article 21

Article 28

Article 29

Article 32

Article 34

Article 36

Article 37

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Article 32

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Article 3

Article 4

Article 6

Article 7

Article 8

Article 9

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Article 2

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Article 4

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Worst Form of Child Labor Convention No. 182, 1999

Article 1

Article 2

Article 3

Article 4

Article 5

Article 6

Article 7

APPENDICES

Appendix 1	Questionnaire
Appendix 2	Consent and indemnity form
Appendix 3	Letter of request for permission to conduct research
Appendix 4	Statistical report
Appendix 5	Certificate of professional editing
Appendix 6	Ethical clearance certificate

APPENDIX 1 QUESTIONNAIRE

QUESTIONNAIRE

Section 1 : Demographics of the respondents

Please tick the appropriate option

1. Gender

Male	
Female	
Other	

2. Age

18-25	26-35	36-45	46-55	56-65	Above 65

3. Highest level of education completed

Secondary Education	Diploma or certificate	Bachelor's degree	Postgraduate degree	Other (Please specify)

4. Indicate your experience in the current field of employment

No experience	Less than 1 year	More than 1 year but less than 5 years	More than 5 years but less than 10 years	More than 10 years but less than 15 years	More than 15 years but less than 20 years	20 years and more

SECTION 2 : CHARACTERISTICS OF THE ORGANISATION

5. In which field are you currently employed?

Department of Labour	Department of Social Development	Non-government Organisation

6. indicate how long you have been employed in the organization you currently work in

Less than 1 year More than 1 year but less than 5 years More than 5 years but less than 10 years More than 10 years but less than 15 years More than 15 years but less than 20 years 20 years and more

7. Indicate the jurisdiction of the organisation

The entire region of PietermaritzburgOnly specific regions in Pietermaritzburg (please indicate the regions) The entire region of Pietermaritzburg and outer regions (please indicate the regions)

8. Indicate from the options below, the reasons that motivated your decision to join the organisation. Please tick in the appropriate boxes

Reasons for joining the organisation Strongly disagree Disagree Sightly disagree NeutralSlightly agree Agree Strongly agree

8.1. I found a suitable job opportunity

8.2. I wanted to improve my career path

8.3. I wanted to improve the society that we live in

8.4. I wanted to assist those that the organisation is directed to protect

8.5. Other (Please specify)

9. In your opinion, do you believe that your employment in the organization has made a valued contribution to your field?

YES

NO

Please explain your answer above.

_____

_____

_____

_____

SECTION 3 : EXPERIENCE WITH CHILD LABOUR

10. Does the organisation you are employed at have a specific department that deals only with child labour issues

YES

NO

10.1. If no, please explain if addressing child labour cases forms part of your duties at work

_____
_____
_____
_____
_____

11. Indicate from the options below if the organization you are employed at has/is preparing you to deal with issues pertaining to child labour. Please tick the appropriate answer boxes.

Steps to prepare you to address child labour Strongly disagree Disagree Slightly disagree Neutral Slightly agree Agree Strongly agree Other (please explain)

11.1. I have been given formal education on the laws and policies on child labour

11.2. I have been given informal education on the laws and policies on child labour

11.3. I understand the laws and policies on child labour

11.4. I can easily identify situations that involve child labour because of the training I have received

11.5. I understand the steps that need to be taken if a situation of child labour has been identified

11.6. I have sufficient resources within the organization that are needed to address a situation if child labour has been identified

12. Indicate your level of agreement from the options below of your personal experience in your employment in dealing with child labour. Please tick in the appropriate answer boxes.

Personal experience of child labour Strongly disagree Disagree Slightly disagree Neutral Slightly agree Agree Strongly agree Other (Please specify)

12.1. I have come across situations that deal with child labour

12.2. I have been able to assist those that need protection from child labour

12.3. I know of situations of child labour but it is beyond my capacity to render assistance

12.4. I know of situations of child labour but have refrained from assisting as children and families would be in a worse off position if the child stopped working

12.5. I know of situations of child labour but corrupt law enforcement have prevented assistance to child labourers

Please explain any of your answers above

_____
_____
_____
_____
_____
_____

13. Indicate your level of agreement with your personal experience in investigating suspected cases of child labour. Please tick the appropriate answer boxes.

Experience in investigation of child labour Strongly disagree Disagree Slightly disagree Neutral Slightly agree Agree Strongly agree

13.2. I know of suspected situations of child labour but employers have made it difficult to investigate further

13.3. I know of suspected situations of child labour but parents have made it difficult to investigate further

13.4. I know of suspected situations of child labour but children are unwilling to cooperate

13.5. I know of suspected situations of child labour but authorities are difficult to work with to investigate further

13.6. I know of suspected situations of child labour but there is a lack of manpower to investigate further

Please explain your answer above

_____
_____
_____
_____
_____
_____

14. Indicate your level of agreement of your personal experience in the enforcement of laws and policies pertaining to child labour. Please tick the appropriate answer boxes.

The laws and policies are adequate in: Strongly disagree Disagree Slightly disagree Neutral Slightly agree Agree Strongly agree

14.1. Assisting me with investigating suspected cases of child labour

14.2. Obtaining employers' compliance to investigate suspected child labour in the workplace

14.3. Assisting me when I have to refer cases of child labour to higher authority

14.4. Prosecuting child labour offenders when referred to higher authority

15. Indicate from your personal experience with child labour cases the reason/s that children have identified as their motivation for seeking employment

_____
_____
_____
_____
_____
_____

16. Indicate from your personal experience with child labour cases reasons that you have identified as motivating children to seek employment.

_____
_____
_____
_____
_____
_____

17. Have you been successful in removing a child from a situation of child labour to a place of safety? a) If yes, please explain why/how you were successful or b) If you were not successful.

_____
_____
_____
_____
_____
_____

18. What measure/s or help have you or the organisation you are employed at provided to the families or children that were dependent on the income derived from the child labour?

_____
_____
_____
_____
_____
_____
_____

19. What in your personal opinion impedes your ability to remove a child from a situation of child labour?

_____
_____
_____
_____
_____
_____

20. What in your personal opinion would assist you better in providing protection to children who are engaged in child labour?

_____
_____
_____
_____
_____
_____

21. In your personal opinion do you believe that our current labour laws are adequate in controlling child labour? Please explain your answer.

_____
_____
_____

_____
_____
_____
_____--_

22. In your personal opinion, what do you suggest legislators could do to improve the current labour laws that control child labour?

_____
_____
_____
_____
_____
_____
_____

THANK YOU FOR YOUR PARTICIPATION IN THIS STUDY

APPENDIX 2 CONSENT AND INDEMNITY FORM

Informed Consent Document

Dear Participant,

My name is…….. (*student nr*). I am a Honours / Masters / PhD candidate studying at the University of KwaZulu-Natal, Howard College / Pietermaritzburg Campus. The title of my research is: …….. The aim of the study is to (*explain in a few sentences* ...). I am interested in interviewing you so as to share your experiences and observations on the subject matter.

Please note that:

- The information that you provide will be used for scholarly research only.
- Your participation is entirely voluntary. You have a choice to participate, not to participate or stop participating in the research. You will not be penalized for taking such an action.
- Your views in this interview will be presented anonymously. Neither your name nor identity will be disclosed in any form in the study.
- The interview will take about (*how long?*).
- The record as well as other items associated with the interview will be held in a password-protected file accessible only to myself and my supervisors. After a period of 5 years, in line with the rules of the university, it will be disposed by shredding and burning.
- If you agree to participate please sign the declaration attached to this statement (a separate sheet will be provided for signatures)

I can be contacted at: School of Social Sciences, University of KwaZulu-Natal, Pietermaritzburg Campus, Scottsville, Pietermaritzburg. / Howard College Campus, Durban.
Email: ……;
Cell: ……..…..; ……..
My supervisor is …….. who is located at the School of Social Sciences, Pietermaritzburg Campus / Howard College Campus, Durban of the University of KwaZulu-Natal. Contact details: email ……..…. Phone number: ……..
My co-supervisor is ……..…. who is located at the School of Social Sciences, Howard College Campus/ Howard College Campus of the University of KwaZulu-Natal. Contact details: email …….. Phone number: ……..…
The Humanities and Social Sciences Research Ethics Committee contact details are as follows: Ms Phumelele Ximba, University of KwaZulu-Natal, Research Office, Email: ximbap@ukzn.ac.za Phone number +27312603587.

Thank you for your contribution to this research.

DECLARATION

I…… *(full names of participant*) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire. I understand the intention of the research. I hereby agree to participate.

I consent / do not consent to have this interview recorded (if applicable)

SIGNATURE OF PARTICIPANT DATE

……

APPENDIX 3 LETTER OF REQUEST FOR PERMISSION TO CONDUCT RESEARCH

UNIVERSITY OF KWAZULU-NATAL
INYUVESI YAKWAZULU-NATALI

8 March 2023

The Department of Employment and Labour

Laboria House,

215 Francis Baard Street,

Pretoria

0001

To: The Director-General, Mr Thobile Lamati

RE: REQUEST FOR PERMISSION TO CONDUCT RESEARCH IN THE DEPARTMENT OF EMPLOYMENT AND LABOUR IN PIETERMARITZBURG

Dear Sir,

My name is Judell-Lesha Joseph. I am currently registered as a PhD law candidate at the University of Kwazulu-Natal, PMB, South Africa. I am interested in researching the extent of child labour that is prevalent in Pietermaritzburg. The purpose of my research is to gain knowledge on this area in order to highlight the deficits in our child labour laws and the obstacles in the implementation of child labour laws. My research is intended to not only assist me in my studies but also to contribute to the effective implementation of child labour laws in the country as a whole. I have chosen the director/manager and the labour inspectors in Pietermaritzburg who deal with field work to form part of my research as they would have greater understanding of the prevalence of child labour within Pietermaritzburg.

My research will be conducted in the form of questionnaires which will be completed by the participants. This will ensure minimal use of time of the participants. Please note the following:

- The names of the participants will not be requested as all participants will remain completely anonymous.
- The decision to form part of the research is completely voluntary and individuals are free to decline being part of the study.
- There will be no benefits given to the participants who form part of the research.
- The participants are free to withdraw from the research at any time they desire without any negative consequences to themselves or their organisation.
- There will be no information given by participants that will be used against them and all the data obtained from the participants will be used solely for the purposes of research.

- Data will be stored in a secure location at all times and will be destroyed after 5 years.
- Should my request be approved, I require a letter of permission from the Department giving me authorisation to conduct my research. The letter of permission must specifically state that permission is being given for the title of my dissertation, "The effectiveness of labour legislation in regulating child labour in South Africa: A comparative study of Uganda and the United States of America".

I would like to assure you that that the information gathered will be treated with the utmost of confidentiality. I am bound by the ethical standard of conducting research to not reveal any information gathered, furthermore the dignity, privacy and interests of the participants will be respected.

Thank you for considering my request.

I can be contacted on:
EMAIL: JudellJ@dut.ac.za
CELL: [redacted]

My supervisors are :
Dr D Subramanien (School of Law and Management Sciences - UKZN)
EMAIL: SubramanienD@ukzn.ac.za

Dr E Tenza (School of Law and Management Sciences - UKZN)
EMAIL: TenzaE@ukzn.ac.za

Dr R Kuhn (University of KwaZulu-Natal (UKZN)
EMAIL: KuhnR@ukzn.ac.za

You may also contact the UKZN research office on:
Duduzile Dlamini
HSSREC Office
EMAIL: Dlaminid1@ukzn.ac.za

Thank you for your contribution to this research.

Yours Sincerely

[redacted]

Judell-Lesha Joseph

APPENDIX 4 STATISTICAL REPORT

Appendix 4a: Construct '*motivation to join an organisation*.'

Cronbach's Alpha: Reliability Statistics	N of Items
,787	**4**

Item Statistics

	Mean	Std. Dev	N
8.1 I found a suitable job opportunity	6,6429	,49725	14
8.2 I wanted to improve my career path	6,4286	,85163	14
8.3 I wanted to improve the society that we live in	6,6429	,49725	14
8.4 I wanted to assist those that the organisation is directed to protected	6,4286	,85163	14

Appendix 4b Construct '*preparation for child labour cases*'

Cronbach's Alpha: Reliability Statistics	N of Items
,781	**6**

Item Statistics

	Mean	Std. Dev	N
11.1 Received formal education on the laws and policies on child labour	3,9286	2,129081	14
11.2 Received informal education on the laws and policies on child labour	3,0714	1,81720	14
11.3 I understand the laws and policies on child labour	3,7857	1,84718	14
11.4 I can identify child labour cases due to training received	4,1429	1,91581	14
11.5 I understand steps needed when child labour has been identified	4,5714	2,02729	14
11.6 have sufficient resource to deal with child labour cases identified	3,1429	1,29241	14

Appendix 4c: Construct 'Personal experience of child labour'

Cronbach's Alpha: Reliability Statistics	N of Items
,441	**5**

Item Statistics

	Mean	Std. Dev	N
12.1 I have come across situation that deal with child labour	4,4667	1,76743	15
12.2 I have assisted those that needed protection from child labour	4,0000	1,81265	15
12.3 Situations of child labour beyond my capacity to render assistance	3,0667	1,53375	15
12.4 Situations of child labour refrained from as children would be worse off	2,8000	1,69874	15
12.5 Situations of child labour assistance prevented by corrupt law enforcement	2,4000	,82808	15

Item-Total Statistics

	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
12.1 I have come across situation that deal with child labour	12,2667	11,924	,329	,304
12.2 I have assisted those that needed protection from child labour	12,7333	15,781	,000	**,569**
12.3 Situations of child labour beyond my capacity to render assistance	13,6667	10,381	,641	,051
12.4 Situations of child labour refrained from as children would be worse off	13,9333	12,210	,335	,302
12.5 Situations of child labour assistance prevented by corrupt law enforcement	14,3333	19,238	-,118	,526

Appendix 4d: Construct *'Personal experience of child labour'*

Cronbach's Alpha: Reliability Statistics '	N of Items
,569	4

Item Statistics

	Mean	Std. Dev	N
12.1 I have come across situations that deal with child labour	4,4667	1,76743	15
12.3 Situations of child labour beyond my capacity to render assistance	3,0667	1,53375	15
12.4 Situations of child labour refrained from as children would be worse off	2,8000	1,69874	15
12.5 Situations of child labour assistance prevented by corrupt law enforcement	2,4000	,82808	15

Item-Total Statistics

	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
12.1 I have come across situations that deal with child labour	8,2667	10,210	,217	**,630**
12.3 Situations of child labour beyond my capacity to render assistance	9,6667	8,095	,611	,259
12.4 Situations of child labour refrained from as children would be worse off	9,9333	8,210	,481	,374
12.5 Situations of child labour assistance prevented by corrupt law enforcement	10,3333	14,095	,161	,610

Appendix 4e: Construct *'Personal experience of child labour'*

Reliability Statistics

Cronbach's Alpha:	N of Items
,630	3

Item Statistics

	Mean	Std. Dev	N
12.3 Situations of child labour beyond my capacity to render assistance	3,0667	1,53375	15
12.4 Situations of child labour refrained from as children would be worse off	2,8000	1,69874	15
12.5 Situations of child labour assistance prevented by corrupt law enforcement	2,4000	,82808	15

Item-Total Statistics

	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
12.3 Situations of child labour beyond my capacity to render assistance	5,2000	4,314	,556	,344
12.4 Situations of child labour refrained from as children would be worse off	5,4667	3,124	,699	,055
12.5 Situations of child labour assistance prevented by corrupt law enforcement	5,8667	8,695	,170	,795

Appendix 4f: Construct *'Personal experience of child labour'*

Cronbach's Alpha: Reliability Statistics	N of Items
,795	**2**

Item Statistics

	Mean	Std. Dev	N
12.3 Situations of child labour beyond my capacity to render assistance	3,0667	1,53375	15
12.4 Situations of child labour refrained as children would be worse off	2,8000	1,69874	15

Appendix 4g: Construct *'experience investigating child labour cases.'*

Cronbach's Alpha: Reliability Statistics	N of Items
,808	**6**

Item Statistics

	Mean	Std. Dev	N
13.1 Situations of child labour assistance prevented by corrupt law enforcement	2,4000	,82808	15
13.2 Child labour cases employers have made difficult to investigate	2,8000	1,85934	15
13.3 Child labour cases parents have made difficult to investigate	3,2000	1,82052	15
13.4 Child labour cases, with children unwilling to cooperate	4,5333	2,19957	15
13.5 Child labour cases are known, but authorities are difficult to work with	2,8667	2,16685	15
13.6 Child labour cases, but there is a lack of manpower to investigate	2,4667	1,88478	15

Appendix 4h:

Cronbach's Alpha: **Reliability Statistics**	N of Items
,927	**4**

Item Statistics

	Mean	Std. Dev	N
14.1 Laws and policies assist in investigating cases of child labour	3,0714	1,43925	14
14.2 Laws and policies adequate in obtaining compliance to investigate suspected child labour cases	3,9286	1,85904	14
14.3 Laws and policies assist in referring child labour cases to higher authorities	4,5000	1,69842	14
14.4 Laws and policies adequate in prosecuting labour offenders	4,4286	1,65084	14

APPENDIX 5 CERTIFICATE OF PROFESSIONAL EDITING

CERTIFICATE OF

PROFESSIONAL EDITING

I, Barbara L. Louton, do hereby declare that I am a professional editor with a Bachelor of Arts (1993) in Professional Writing and 18 years of experience as an editor, researcher, and writer.

I declare that I was contracted by **Judell-Lesha Joseph**, a doctoral student at the University of KwaZulu-Natal, to proofread her thesis:

The effectiveness of labour legislation in regulating child labour in South Africa: A comparative study of Uganda and the United States of America

I declare that I have completed a professional edit of the document, addressing the clarity and flow of language and correcting grammar, spelling and formatting. Changes were tracked and unresolved queries were flagged for the client.

Disclaimer:

Responsibility for the originality and accuracy of the material presented in the edited document lies with the client. I have not verified the originality or accuracy of statements, quotations, citations, and references presented in the document. Where I have detected inaccuracies, I have rectified them or reported them to the client. In addition, the client is at liberty to make additional changes to the edited manuscript.

I can be contacted at:

Cell: [redacted]

Email: [redacted]

Barbara L Louton	[redacted]	26 September 2024
Name	Signed	Date

APPENDIX 6 ETHICAL CLEARANCE CERTIFICATE

UNIVERSITY OF KWAZULU-NATAL
INYUVESI YAKWAZULU-NATALI

26 June 2023

Judell-Lesha Joseph (209501569)
School of Law
Pietermaritzburg Campus

Dear J-L Joseph,

Protocol reference number: HSSREC/00004551/2022
Project title: The effectiveness of labour legislation in regulating child labour in South Africa: A comparative study of Uganda and the United States of America
Degree: PhD

Approval Notification - Expedited Application

This letter serves to notify you that your application received on 27 July 2022 in connection with the above, was reviewed by the Humanities and Social Sciences Research Ethics Committee (HSSREC) 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.

This approval is valid until 26 June 2024.
To ensure uninterrupted approval of this study beyond the approval expiry date, a progress report must be submitted to the Research Office on the appropriate form 2 - 3 months before the expiry date. A close-out report to be submitted when study is finished.

HSSREC is registered with the South African National Health Research Ethics Council (REC-040414-040).

Yours sincerely,

[redacted]

Professor Dipane Hlalele (Chair)

/dd