

# Understanding trends in the worst forms of child labour and the state's legal responses: a descriptive analysis

Lecturer Mashele RAPATSA<sup>1</sup>

## **Abstract**

*This article discusses trends in the worst forms of child labour. It also examines state's legal responses designed to eradicate child economic exploitation. This is premised on the Constitution transformative ideal of accelerating social transformation and human development. The exploitative nature of the worst forms of child labour is amongst the most disconcerting aspects in social, educational and economic realities. Most repugnant forms include children being subjected to Commercial Sexual Exploitation, Children being Used to Commit Illicit Activities, bondage labour and other hazardous economic activities. Such activities often result in unalterable physical and psychological harm or even worse, threaten children's lives. Thus, it is a human rights issue, which infringes children's core rights such right to dignity, life, social security and freedom. Widespread anecdotal evidence suggests that no country in the world is immune from this scourge, and so is South Africa. Hence, the need to highlight the nature and extent of prevalence, and the efficacy of the rights-based legal instruments adopted against child economic exploitation. It is asserted that factors that proliferates child economic exploitation manifests in the form of primary factors (those with direct impact such as social deprivations, e.g. poverty) and secondary factors (those that relate with action or inaction of governments, e.g. corruption, lack of state capacity). It is argued that legal instruments will be of no effect lest these direct and indirect causes are not interrupted. Widespread awareness campaigns also remain indispensable in order to conscientise society regarding the urgency of the problem.*

**Keywords:** child exploitation, child well-being, children's rights, transformation, development.

**JEL Classification:** K10, K31

## **1. Introduction**

The worst forms of child labour (WFCL) is amongst society's major human development inhibitors. It forms part and parcel of disconcerting socio-economic challenges facing the entire global community. The central purpose of this article is to present a selected South African experience with regard to this problem. The problem is noted to be amongst the factors hindering the country's welfare and development of children.<sup>2</sup> A South African experience with regard to

---

<sup>1</sup> Mashele Rapatsa - School of Law, University of Limpopo, South Africa. LLB (UL) LLM (UCT), (PhD candidate University of Groningen, Netherlands), mashele.rapatsa@ul.ac.za.

<sup>2</sup> Dawie Bosch et al, *White Paper (draft) on a National Child Labour Action Programme*, (2003) p. 2.

the WFCL follow almost comparable trends to those in several countries across the Southern African Development Communities (SADC), including Lesotho and Mozambique. Causes of the scourge and the effects thereto also appear comparable in many respects among these Southern African Development Communities (SADC) countries.<sup>3</sup> In general, children involved in the worst forms of child labour experience similar forms of tragedies, with most of them permanently hurt. It has been evinced that, today, tens of millions of children work in the most repugnant conditions which rob them of their childhood, their health and sometimes even their lives in which none of these children have ever had the slightest opportunity to realize their potential.<sup>4</sup> Notwithstanding the ILO's report in 2004,<sup>5</sup> and 2013/14,<sup>6</sup> that there has at least been a decline with regard to its prevalence, the plight of child labour has persistently presented an explicit challenge to the global community. It remains the distinct notable source of child exploitation and child abuse in the society.<sup>7</sup> Estimates illustrates that about one million South African children are affected. The country is also noted as a well-established destination and transit point for most of these abysmal forms of child labour.<sup>8</sup>

In South Africa, the worst forms of child labour involves children being enslaved, forcibly recruited, prostituted, trafficked, forced into illegal activities and exposed to hazardous work.<sup>9</sup> It affects social and economic wellbeing of communities. It is not only an issue in developing countries like South Africa, but rather, it is a worldwide concern with many governments proclaiming laws protecting children from labour exploitation.<sup>10</sup> Child labour also constitutes a complex and multifaceted issue which is indeed a persistent social problem.<sup>11</sup>

In years prior to South Africa's first democratic elections of 1994, children were used and heavily exploited mostly on farms, performing works harmful to their own health, in both physical and psychological contexts. At the advent of

---

<sup>3</sup> Vivienne Taylor, *Transforming the Present- Protecting the future: Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa*. (2002) p.31. See also Servaas Van der Berg, *South African social security under apartheid and beyond*. "Development South Africa" (1997) p. 485.

<sup>4</sup> Handbook for Parliamentarians No. 3, 'Eliminating the Worst Forms of Child Labour: A practical guide to ILO Convention No. 182' (2002) at p. 5.

<sup>5</sup> ILO released a report indicating that the actual number of child labourers worldwide fell by 11 percent between 2000 and 2004, from 246 million to 218 million. ILO further remarked that it believed, maintaining the effort and the global momentum to stopping child labour could feasibly eliminate it in most of its worst forms.

<sup>6</sup> The recent ILO reports states that there are currently over 168 million child labourers. ILO 'Global number of child labourers down by third' ILO News, September 2013. At [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_221568/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_221568/lang--en/index.htm) (Accessed on 24/05/2017).

<sup>7</sup> Bahati A, 'A Critical Analysis of International Legal Regulations of Child Labour: A Case Study of Tanzania' (2004) at p. 1.

<sup>8</sup> Elizabeth Musvoto, 'Child labour in South Africa: A brief overview study' (2007) at p. 2.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid, at p. 1.

<sup>11</sup> Schurink W, Molope C & Tshabalala S, 'Exploring some dimensions of Child labour in South Africa' (1997) 1<sup>st</sup> Ed at p. 1.

democracy in 1994, South Africa adopted the Constitution<sup>12</sup> which has been characterised by Karl Klare as being transformative.<sup>13</sup> Hence, the Constitution also defines who a 'child' is,<sup>14</sup> outlaws child labour and commands that children be protected against exploitative labour practices,<sup>15</sup> against work inappropriate for the child's age and work that is hazardous to their education, health or well-being, physical or spiritual, moral or social development.<sup>16</sup> To this effect, the Basic Conditions for Employment Act<sup>17</sup> contains an explicit provision prohibiting employment of children.<sup>18</sup>

The WFCL go beyond contravening s28 of the Constitution, in that other constitutional entitlements such as the right to dignity, education, health, life, equality and fundamental freedoms also get trampled upon. It was in this context that the ILO prepared and adopted the WFCL Convention No. 182 together with an accompanying Recommendation No. 190 of 1990.<sup>19</sup> The ILO Convention No. 182 brings the plight of these children out of obscurity and sets the goal of eradicating the worst forms of child labour.<sup>20</sup> South Africa is involved in this ambitious project of eliminating the WFCL and recognises an idea that elimination of the WFCL is thus proclaimed as a major and urgent priority for national and international action.<sup>21</sup> In recognition of the problem of the worst forms of child labour, the Government of South Africa has since 1996 been involved in the process of formulating the appropriate policies, particularly Convention 182 on the worst forms and national programme of action to combating the scourge.<sup>22</sup> This finds proponents from the 2003 statement of the former Minister of Labour, Membathisi Mdladlana, when he said,

'...We have committed ourselves towards eradicating child labour in the country by ratifying international instruments such as the International Labour

<sup>12</sup> The Constitution of the Republic of South Africa, 1996.

<sup>13</sup> Transformative Constitutionalism entails, changing and burying all the wounds of the past to build one unified nation premised on freedom and the rule of law. The former Chief Justice Pius Langa, described this notion as 'a permanent ideal which embraces an openness to the other, a commitment to inclusive, democratic dialogue, and a sharing of the responsibility of transformation between all three branches of government in partnership with a vibrant, independent civil society. Karl Klare described the notion as 'a long-term project of constitutional enactment, interpretation and enforcement committed to transforming a country's political and social institutions and power relations in a democratic, participatory and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing major social change through nonviolent political processes grounded in law'.

<sup>14</sup> The Constitution, 1996, s28(3).

<sup>15</sup> Ibid s28(1) (e).

<sup>16</sup> Ibid s28(1) (f) (i) to (ii). See also Elizabeth Musvoto, *supra*, at p. 1.

<sup>17</sup> Act 75 of 1997.

<sup>18</sup> Ibid s43.

<sup>19</sup> Handbook for Parliamentarians No. 3, 2002, 'Eliminating the Worst Forms of Child Labour: A practical guide to ILO Convention No. 182' at p. 20.

<sup>20</sup> Ibid at p. 5.

<sup>21</sup> Ibid at p. 21.

<sup>22</sup> Debbie Budlender, 'Childlabour and other work-related activities in South Africa: An analysis on the Labour Force Survey', March 2006 at preface para3.

Organisation (ILO) Conventions on the minimum age and the worst forms of child labour’.

Notwithstanding all these efforts, trends have shown that the prevalence of the scourge remain appalling. In Mpumalanga Province, children as young as six are forced to work on farms as a strategy by farmers to use the most cheapest and docile labour force, with most of them being Mozambican nationals who cannot complain because of fears of being fired or worse enough, deportation.<sup>23</sup>

One of the heartless exploiters, a farmer in Mpumalanga, was quoted as saying “We don’t employ anyone unless they ask us for work, and these children do. This is any case a good way for them to learn how to work while they are still young’ further stating that ‘South Africans are very lazy and only want to work in offices these days, we use these illegal Mozambicans and Zimbabweans who are very eager to do real work’.<sup>24</sup>

## 2. Rationale and methodology

The object of this article is to provide a hypothetical exposition of the nature and extent of the problem of child labour in South Africa. It is centred on highlighting factors that are considered as major contributors proliferating child economic exploitation. It also explains why legislative and policy responses should focus on eradicating or at least addressing such factors first and foremost in order to report meaningful progress against child exploitation. The article adopts a descriptive approach and relies on empirical data obtained from secondary sources. It utilised such statistical information and reports to analyse aspects concerning participation of children in harmful exploitative works, against the need to effectuate legislative responses.

## 3. Defining child labour and its worst forms

South Africa’s legal perspective defines child labour as any participation of children below the age of 18 years of age in labour force for paid or unpaid work. According to the 1998 South African Child Labour Programme (SACLAP), based on the International Labour Organisation (ILO), child labour refers to; ‘Any work which deprives children of their childhood, their potential and their dignity and that is harmful to their physical and mental development.’<sup>25</sup> It further defines child labour as ‘...work done by children under 18 years of age which is mentally, physically, socially or morally dangerous and harmful to children, and interferes with their schooling:

- by depriving them of the opportunity to attend school;
- by obliging them to leave school prematurely; or

---

<sup>23</sup> Sizwe Yende of African Eye News Service, ‘Child labour uncovered in South Africa’ [http://www.afrol.com/News2001/sa\\_026\\_childlabour\\_raid.htm](http://www.afrol.com/News2001/sa_026_childlabour_raid.htm) (accessed on 15/10/2017).

<sup>24</sup> Ibid.

<sup>25</sup> Elizabeth Musvoto, *supra*, at p. 1.

- by requiring them to attempt to combine school attendance with excessively long and heavy work<sup>26</sup>

According to the ILO, the term child labour covers all the economic activities carried out by persons under the age of 15 regardless of their occupational status, excluding household work performed in their parental homestead.<sup>27</sup> On the other hand, the WFCL entail a violation of children's rights that demand immediate action for their prohibition and elimination.<sup>28</sup> The definition of the WFCL is proffered in accordance with the ILO Convention No. 182, adopted at the International Labour Conference in Geneva by delegates from employers' organisations, trade unions and governments of over 175 countries that are member states of the ILO.

Article 3 of Convention 182 defines the WFCL as; a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory, labour, inclusive of 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, procurement 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, such as harmful work to be determined by national authorities.

Of importance is a question as to why these are described as the worst forms, which question will be answered in accordance with the international labour standards concerning child labour and the worst forms (the nature of the work performed by a child). While acknowledging that a variety of work performed by children has an effect of jeopardizing their mental and physical health, safety and morals, it is important to note that certain jobs do so extremely. Thus, they are described as the 'worst forms'. These forms of child labour are not only the most intrinsically harmful, they are also performed by the most vulnerable children.<sup>29</sup> The presence of extreme abuse and exploitation necessitates immediate action.

While Article 3 provides a clear definition and alludes specifically on those works falling within the ambits of the worst forms, it is asserted that this is not exhaustive still. This is because there are a lot more children involved in other forms of labour, like; mining activities, child quarrying and economic activities of street children, which works should be considered hazardous, based necessarily on the nature of tasks and the environment in which the work is carried out.<sup>30</sup>

<sup>26</sup> ILO 'Child labour: A textbook for university students' (2004) at p. 16.

<sup>27</sup> Gigunda NK, 'Child Labour: An Analysis' (1999) at p. 6.

<sup>28</sup> Global Report under the follow-up to the ILO Declaration on the Fundamental Principles and Rights at Work: A Future Without Child Labour 2002 ILO 90<sup>th</sup> session at p. 11.

<sup>29</sup> Ibid at p.11.

<sup>30</sup> Kielland A & Tovo M, 'Children at Work: Child Labour Practices in Africa' (2006) at p. 105.

The WFCL Convention defines amongst others, three clear categories of activities that constitute the worst forms of child labour, which are of particular relevance to South Africa.<sup>31</sup> These categories are; *first*, slavery and practices similar to slavery, which is in terms of Article 3(a), *second*, commercial sexual exploitation of children, in accordance with Article 3(b) and *third*, the use of children to commit crime, stated in Article 3(c) which involves circumstances where adults or other children lure others by encouragement or outright coercion in criminal activity.<sup>32</sup>

#### 4. Types of the WFCL: an interpretative approach

The WFCL manifests in a variety of ways. Hence, it is essential to determine what works ought to be targeted for urgent elimination. Many nations and international organizations make a distinction between the worst forms of labour activities “*by definition*”- also referred to as the unconditional worst forms of child labour and those which are “*by condition*”- which focuses purely on the nature (hazardousness) of the work in question. Worst forms falling within the ambits of “*by definition*” are often illegal, unacceptable and also intolerable for adults, and includes all the activities whose status as worst forms cannot be altered no matter what measure is put in place to improve such conditions of work.<sup>33</sup>

These activities fall within those reflected by article 3(a), (b) and (c) of C.182. Such activities are of a nature that either or both physical and psychological harm are unquestionably evident on the child and as such no any imaginable change could make such work reasonably justifiable and acceptable for occupation by a child. In that regard, the national scope does not determine whether such work constitute worst forms of child labour or not. These kinds of activities remain the worst forms by virtue of the definition. Such activities could involve amongst others, for instance, enslaving children for commercial sexual exploitation (prostitution), forcefully recruiting children into military, using children for committing crimes, underground mining and so forth.

In contrast, article 3(d) make a further provision binding the member states to determine what could be considered hazardous work at a national level. This entails the need for appreciation that what could be regarded as hazardous in a developed country may be accepted as standard in a developing or under-developed country. This indicates that states are expected to execute, through national legislation and by designing a programme (TECL and CLPA in case of South Africa), programmes that are equal to the fight against child labour. The reason for referring to this category as worst forms by condition is based on the fact that member states themselves assess the nature and conditions of works children are involved in and determine whether such constitute worst form or plain

---

<sup>31</sup> Dept of Labour, South Africa, Child Labour Programme of Action 2008 – 2012 ‘*Uniting to Stop work that harms our youth*’ at p. 8.

<sup>32</sup> Ibid.

<sup>33</sup> ILO ‘*Child labour: A textbook for university students*’ (2004) at p. 46.

child labour. Some of these activities can be improved by altering circumstances if they are at that point affecting the health and safety of children involved in them.<sup>34</sup> The hazardousness of such work could be found to be on either the occupation itself or the task a child has to carry out, however it is worth noting that in most instances it is the conditions and particular tasks on the work which renders it hazardous and as such worst form of child labour. Some of the notable worst forms by condition are hazardous manufacturing operations, mining, crushing of rocks, deep sea diving, working at heights in constructions, scavenging or carrying of heavy loads.<sup>35</sup> This requires the states to also consider that some work do not cause physical harm rather harm the psychological and intellectual development of the child, for instance when a child is being subjected to verbal abuse, strain, isolated from peers and exposed to adult behaviour (drinking, smoking and so forth.). It is argued that since all these activities vary by countries, a regard be given to the actual cause of such child labouring when determining in terms of the second footing of interpretation, "by condition", for addressing the actual factor resulting in child labouring.

### **5. The nature and extent of the WFCL in South Africa: a comparative reflection**

Several studies have concurred that there are notable difficulties in determining the exact nature and extent of the WFCL mainly because most of these activities occur discreet. Further that perpetrators secrete their acts as they are fully aware of their criminal behaviour and also that children victims do not disclose their involvement as they fear being embarrassed or subjected to reprisals or prosecution. In working to determine the nature and the extent of the worst forms of child labour, a technical advisory committee (TAC) was set up and consisted of representatives from the government departments, the NGO sector, the ILO and UNICEF to conduct the study called the Survey of Activities of Young People (SAYP).<sup>36</sup> There has been a clear evidence of growing child trafficking, Commercial Sexual Exploitation of Children (CSEC) and Children being Used by Adults in the Commission of Crimes (CUBAC).<sup>37</sup>

Most notably, trafficking of children is one phenomenon contributing very immensely in the prevalence of the scourge. Molo Songololo and the International Organisation on Migration (IOM) reported that children were mostly trafficked for various purposes by criminal gangs in South Africa, particularly in big cities. These includes, but not limited to, trafficking for sexual exploitation, forced labour or slavery (farm labouring and domestic works), committing illicit activities,

---

<sup>34</sup> Ibid at p. 47.

<sup>35</sup> Ibid.

<sup>36</sup> Karen Allan, 'The Network Against Child Labour: Causes and Extent of Child Labour' (2004) at p. 3.

<sup>37</sup> Dept of Labour, South Africa, Child Labour Programme of Action 2008 – 2012 '*Uniting to Stop work that harms our youth*' at p. 13.

servitude, forced marriages, adoption and the removal of organs or body parts (ritual sacrifice for instance).<sup>38</sup>

Molo Songololo further stated that the South African trend on trafficking for purposes of prostitution and involvement in illicit activities were amongst the prioritized fields of exploitation by traffickers. These includes forced prostitution, bride trafficking, child prostitution, child pornography, drug dealing and commission of crime such as housebreaking, theft, robbery and so forth.<sup>39</sup> This problem of trafficking children for various forms of exploitation is also reported to be rife and as a major source of WFCL in Lesotho.<sup>40</sup> In its first study focused on trafficking of children for sexual exploitation in 2000, Molo Songololo reported that there were 28 000 and 38 000 prostituted children in South Africa and further found that 25% of the prostituted populace in Cape Town were children,<sup>41</sup> also finding that parents, particularly mothers, are among the primary traffickers in children. UNICEF and IOM also reported in 2003 to have found trafficking in women and children for sexual exploitation to be a significant problem in Southern Africa.<sup>42</sup>

In Lesotho, children are trafficked internally and externally, mainly to South Africa as the latter provides easy entry-exit points through its porous borders, and also to Zimbabwe and Zambia for Commercial Sexual Exploitation of Children (CSEC).<sup>43</sup> In Mozambique, children are trafficked for sexual exploitation, forced labour or slavery (for instance, on farms and for debt bondage), and body parts or organ harvesting.<sup>44</sup> There are credible reports that children are enticed under the pretext of good economic opportunities, only to be trafficked to serve in exploitative child labour (WFCL) in South Africa, Swaziland and Zimbabwe and also outside Africa.<sup>45</sup>

In South Africa, the high levels of trafficking in persons contribute very immensely in making the scourge of the worst forms of child labour a critical challenge to overcome. It crop up primarily in rural districts to the cities like Johannesburg, Pretoria, Bloemfontein, Cape Town, Durban, Rustenburg, Nelspruit

---

<sup>38</sup> Carol Allais, 'RECLISA - Reducing Exploitative Child Labour in Southern Africa' Regional Child Labour Conference July 2006 at p. 1.

<sup>39</sup> Ibid at p. 5.

<sup>40</sup> Victor Inkiwane & L. Muso, 'Human Trafficking in Lesotho: Root Causes and Recommendations' at p. 14.

<sup>41</sup> Susan S. Kreston, 'Trafficking in children in South Africa: An analysis of pending legislation' UFS IOM's paper on Trafficking in children for purposes of sexual exploitation in South Africa, (2007) at p. 37.

<sup>42</sup> Ibid, at p. 37.

<sup>43</sup> Victor Inkiwane & L. Muso, 'Human Trafficking in Lesotho: Root Causes and Recommendations' at p.24 para3. See also <http://www.docstoc.com/docs/23169136/Country-Report-Lesotho> & Also '2007 Findings on the Worst Forms of Child Labor – Lesotho' <http://www.unhcr.org/refworld/docid/48caa47b3c.html> (accessed on 08/07/2015).

<sup>44</sup> Lea Boaventura & Carlos Manjate, 'Human Trafficking in Mozambique: Root Causes & Recommendations' at p. 20.

<sup>45</sup> Ibid at p. 26.



and Polokwane.<sup>46</sup> Same is observed from studies of Mozambique and Lesotho. Records evince that, around 70% of Mozambicans live in rural areas, under the appalling conditions of abject poverty and the pandemic of HIV and AIDS, being the greatest threat to development.<sup>47</sup> The WFCL occur across both the rural and urban regions of Mozambique,<sup>48</sup> worsened particularly by the presence of these factors. In Lesotho, according to the draft poverty reduction strategy and the National vision 2020 document, almost 50% of the Basotho nation lives below poverty line, with some 25% being ultra-poor<sup>49</sup> of course in rural areas.

South Africa is considered mainly as a country of origin, transit and destination for victims of trafficking,<sup>50</sup> intended for various worst forms of child labour, particularly sexual exploitation and commission of crimes. Alarmed by the magnitude of the problem, the Johannesburg Child Welfare Society has warned of a dramatic increase in the trafficking of children from neighbouring countries (notably; Angola, Mozambique, Zambia, Senegal, Kenya, Tanzania, Uganda, Ethiopia, Zimbabwe and Lesotho) and within the country for the sex trade ahead of the 2010 soccer World Cup.

### 6. Legislative responses against children exploitation

First and foremost, a fight against the worst forms of child labour remains an international challenge with which concerted effort is pre-emptory for the international community to triumph over this problem. In that regard, it is fundamental to also target the primary factors contributing to the rising of this scourge, which is inclusive of poverty, HIV/AIDS, high unemployment rates and so forth, with awareness campaigns countrywide. South Africa is amongst the countries to have been actively involved in advancing a fight for eliminating worst forms of child labour.

Prior to the 1994 democratic dispensation, the then Nationalist government was very passive to fighting the scourge because most of those it represented were benefiting by exploiting children particularly in agriculture and industries. At the advent of democracy, the Constitution became a transformative tool which sought ending all forms of slavery, particularly in child labour context. The Constitution became the first legal instrument to outlaw employment of children<sup>51</sup> and committed the South African government towards ensuring a nation free from children exploitation.

---

<sup>46</sup> Janine L Ogle, 'Human Trafficking Within SA Borders: Briefing Paper 219' October 2009 at p. 2.

<sup>47</sup> <http://www.nationsencyclopedia.com/Africa/Mozambique-ETHNIC-GROUPS.html> (accessed on 28/05/2017).

<sup>48</sup> Elaine L. Chao, '2001 Findings of the WFCL' at p.2381.

<sup>49</sup> Mpeo Mahasi-Moiloa, Minister of Employment and Labour, 'Special Studies on the WFCL In Lesotho: Herdboys, Street, Domestic Workers & Child Sex Workers, 2005 at p. 3.

<sup>50</sup> South African Law Reform Commission, 'Trafficking in Persons' Issue paper 25 of March 2004 Project 131 at p.11. *See also* Susan S Kreston, 'Trafficking in children in South Africa: An analysis of pending legislation' 2007 at p. 37.

<sup>51</sup> The Constitution, s28(1) (e) and (f).

Subsequently, South Africa's post 1994 governments have been cooperating with the ILO and UN, and has since 1996 been involved in formulation of legal norms and standards. In the year 2000, South Africa ratified two principal instruments/conventions – the Minimum Age C. 138 and WFCL C. 182 of the ILO, aimed at reinforcing the effective abolition of child labour, and so did Lesotho and Mozambique. South Africa has also signed a Memorandum of Understanding with the ILO for a survey to be conducted to establish the nature, causes and the extent of this phenomenon, carried out in 1999 and 2006 respectively. The survey was aimed at, amongst others, providing extensive information on what activities young people were involved in, so to ensure that Child Labour Programme of Action (CLPA) would operate on the basis of a credible data necessary for appropriate action. In Lesotho, the survey was conducted in 1997 and found that nearly 19,000 children between ages 10 and 14 were working. In Mozambique, a rapid assessment survey of child labour was carried out together UNICEF in 1999.<sup>52</sup> In 2004-2005, the National Institute of Statistics conducted another survey revealing that 32% of children were engaged in some form of economic activity, with rural areas accounting for 40% and urban areas, 16% respectively.<sup>53</sup>

The South African government was also active in the drafting of the Convention 182 and in the debates towards its adoption.<sup>54</sup> South Africa has taken a number of steps in an effort to combat child labour, thus supporting the concept of “a future without child labour”.<sup>55</sup> At the forefront of the battle has been and still is the lead Department of labour which has explicitly taken responsibility for ensuring the elimination of all forms of child labour, particularly the worst forms.<sup>56</sup> Labour Department is working in partnership with other key government departments like Education, Social Development, Justice, Safety and Security and SAPS.

The Labour Department has also lobbied other social partners, centred by the Child Labour Intersectoral Group (CLIG) which consists of representatives from government departments, organised labour and NGO's.<sup>57</sup> CLIG deals with child labour as a broader National Programme of Action for the Child, which is coordinated in the Presidency, with the UNICEF and ILO also being part of the CLIG, providing technical assistance.<sup>58</sup> Labour department has further established CLIG provincial structures to ensure strategic interventions at appropriate levels.

Subsequent to initiatives of ratifying various international conventions, the South African government through the Department of Labour established the

---

<sup>52</sup> Elaine L. Chao, '2001 Findings of the WFCL' at p.237.

<sup>53</sup> Creating a protective environment against child labour, [http://www.unicef.org/mozambique/media\\_3613.html](http://www.unicef.org/mozambique/media_3613.html) (accessed on 09/12/2015).

<sup>54</sup> Debbie Budlender, 'Childlabour and other work-related activities in South Africa: An analysis on the Labour Force Survey', March 2006 at preface para 4.

<sup>55</sup> Speech by South African Former National Minister of Labour, Mr. MMS Mdladlana at 'The launch of the ILO Third Global Report on a Future Without Child Labour' 6 May 2002.

<sup>56</sup> *Ibid* at p. 1.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ibid*.

necessary legislative framework.<sup>59</sup> It was through these legislation that the minimum age for admission into employment got ascertained,<sup>60</sup> and employment of children below the specified age limit criminalised.<sup>61</sup> In line with South Africa's legislative initiatives, is Lesotho's.<sup>62</sup> Mozambique also has legislative initiatives in place.<sup>63</sup> In accordance with the Convention 138 and Convention 182, South Africa has further developed and implemented a Child Labour Programme of Action which serves a fundamental role of providing a policy framework which guides the implementation of measures to eliminate child labour.<sup>64</sup> The CLPA is recognised as South Africa's roadmap to the prevention, reduction and eventual elimination of child labour affecting about 1 million children in the country.<sup>65</sup> In contrast, Lesotho established a National Child Labour Support Group<sup>66</sup> while on the other hand Mozambique established and implemented a project known as RECLAIM.<sup>67</sup>

South Africa's CLPA was first adopted in 2003 after extensive consultation within the government, civil society organisations and children involved in child labour.<sup>68</sup> The programme has a fundamental mandate to serve. It focuses and guides the efforts of a range of government departments and civil society groups, inclusive of business organisations, labour federations and organisations purely established to serve the interests of children. South Africa's CLPA stems and finds expression from an international obligation following the government's signing and ratification of the key Conventions and protocols on children.<sup>69</sup>

<sup>59</sup> Ibid at p.2. This is accordingly inclusive of all the labour legislation and other laws bearing particular relevance to fighting the scourge of child labour; BCEA, 75 of 1997, Social Assistance Act 59 of 1992, Child Care Act 74 of 1983, South African Schools Act 84 of 1996, Education Laws Amendment Act of 2005, Sexual Offences Act 23 of 1957 and Children's Act 38 of 2005.

<sup>60</sup> BCEA, s43 (1) and (2), Child Care Act 74 of 1983 and Children's Act 38 of 2005, at its explanatory notes and chapter 20 section 305.

<sup>61</sup> BCEA s43(3).

<sup>62</sup> Article 32 of The Constitution of Lesotho, Maseru. *See also* Article 3, & *also* Elaine L. Chao, '2001 Findings of the WFCL', p.205, & *also* 2008 Findings on the WFCL- Lesotho, 10 September 2009.

<sup>63</sup> J Sloth-Nielson & J Gallinetti, 'Legal Reform for the Protection of Children in Mozambique' UWC Community Law Centre – Prepared for the Gov. of Mozambique Min. of Justice at p.31. *See also* Article 79 of Law 8/98, & *also* Consolidated Donor Report 2007, Mozambique, UNICEF at p. 38.

<sup>64</sup> Speech by South African Former National Minister of Labour, Mr. MMS Mdladlana at 'The launch of the ILO Third Global Report on a Future Without Child Labour' 6 May 2002 at p.2. *See also* Debbie Budlender, 'Child labour and other work-related activities in South Africa: An analysis on the Labour Force Survey', March 2006 at p. 5.

<sup>65</sup> Department of Labour, South Africa, Child Labour Programme of Action 2008 – 2012 '*Uniting to Stop work that harms our youth*' at p. 1.

<sup>66</sup> 2002 Findings on the WFCL- Lesotho.

<sup>67</sup> Elaine L. Chao, '2001 Findings of the WFCL' at p. 237.

<sup>68</sup> Department of Labour, South Africa, Child Labour Programme of Action 2008 – 2012 '*Uniting to Stop work that harms our youth*' at p. 1.

<sup>69</sup> Convention 182, Article 6(1) and (2), Article 7(1), (2) and (3).

The South African National Policy Framework with regard to child labour focuses on protecting children especially those in difficult circumstances.<sup>70</sup> South Africa developed strategic policies aimed at exclusively addressing the problems facing the youth. This is inclusive of policies such as; Transformation of the Child and Youth Care System, National Youth Policy (by the former National Youth Commission on Youth community service and development programmes), National Crime Prevention Strategy (NCPS), National Drug Master Plan and Poverty Alleviation Programme.<sup>71</sup> It binds all Governments departments at local, provincial and national level and also all children protection organisations and NGO's involved in government programmes.<sup>72</sup> It emphasises on the provision of social welfare or development and education. The plight of child labour is also noted and recognised as a catastrophe from a social perspective. This refers to the notion of establishing how people live and where their dependency lies. Whereas poverty eradication and education should be seen as essential strategies to eliminate child labour,<sup>73</sup> illiteracy or lack of knowledge and poverty remain central social phenomena reflecting to be the major contributors on the increase of child labour. To this effect, the government has put in place a system of social security financed through taxes, which aims at alleviating poverty and enhancing education amongst the masses, also means tested to ensure the reach by the poorest.<sup>74</sup> Whereas Lesotho lacks this poverty alleviation strategy in place, Mozambique has.<sup>75</sup> South Africa's social security initiatives are premised on the need to provide social assistance through social grants (child support grants, old age grants, foster care grants, disability grants, war veterans grants and so forth) by eradicating poverty, which would surely dissuade children from engaging in child labour while making education accessible to all.

Recognizing the fact that CSEC and CUBAC also constitutes the most conspicuous social problems, the South African government's CLPA, through Department of Social Development, has driven a policy aimed at amongst others, extending eligibility for the child support grant to cover children until the last school leaving day of the year in which they turn 15, when they may take legal employment and in the medium term until they reach the age of 18 years.<sup>76</sup>

The Non-Governmental Organisations' involvement in fighting the scourge has been through notable countrywide campaigns. The organisations such as Molo Songololo, Amazing Grace Children's Centre in Mpumalanga, International Organisation on Migration, UNICEF, Children's Rights Project of the Community Law Centre at the University of Western Cape and many more, help

---

<sup>70</sup> The Network Against Child Labour 'Causes and Extent of Child Labour' 30 September 2003 p. 5.

<sup>71</sup> Department of Labour and Welfare: Briefing on 25<sup>th</sup> Feb 2000 at p.15.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid, at p. 10.

<sup>74</sup> S. Van der Berg, 'South African social security under apartheid and beyond' (1997) at p. 485.

<sup>75</sup> Consolidated Donor Report 2007, Mozambique, UNICEF at p. 39.

<sup>76</sup> Dept of Labour, South Africa, Child Labour Programme of Action 2008 – 2012 '*Uniting to Stop work that harms our youth*' at p. 31.

with their fundamental role of undertaking researches or studies driven by the sole objective of availing credible data necessary for guiding the government and other stakeholders' legislative, policy or any actions in eliminating the scourge. The ILO which runs a regional programme, TECL, has applauded the South Africa's National Assembly for the concerted efforts shown and the taking of steps along the road to ending exploitation of children, particularly on the use of children by adults in prostitution and committing crimes.<sup>77</sup>

## 7. Conclusion

This article examined and illustrated the magnitude of exploitation of children, especially the nature and extent of the worst forms of child labour. It has ascertained that this scourge remains a critical challenge, immensely affecting majority of disadvantaged children, which is particularly rife in less developed communities, the proletariats. Discernibly, South Africa has committed by setting strong normative frameworks, to both individually and collectively, work towards eliminating child exploitation. It is asserted that South Africa's legislative and policy framework, which fundamentally effectuates both the constitutional provisions and ILO Conventions, have proffered an imperative and strategic intervention against child economic exploitation. Notwithstanding all these notable efforts, the scourge still remains a major problem. It is argued that lack of meaningful progress emanates from the deepening social inequalities, characterised by poverty which stems from pervasive disparities of wealth in the population. This reduces life opportunities, thus rendering children docile to exploitation. It is indispensable that both the legislative and policy initiatives go beyond merely prosecuting offenders, but rather seek to ensure effective deterrence on potential perpetrators. The problem is further compounded by lack of political will which is twofold. *First*, in the context of allocating state resources to sectors desperately in need, such as providing adequate social grants to deserving categories of persons and *Second*, promptly promulgating laws and policies that are mainly targeted as fundamental factors that increases children's vulnerability.

## Bibliography

- African Law Reform Commission, 'Trafficking in Persons' Issue paper 25 of March 2004 Project 131.
- Adamassie, A. Child labor and schooling in the context of a subsistence rural economy: Can they be compatible? *International Journal of Educational Development*, (2003) 23(2).
- Bahati, A. 'A Critical Analysis of International Legal Regulations of Child Labour: A Case Study of Tanzania', 2004 Thesis submitted in partial fulfilment for an LLM degree in the Faculty of Law at the University of Cape Town.
- Carol Allais, 'RECLISA - Reducing Exploitative Child Labour in Southern Africa' Regional Child Labour Conference July 2006.

---

<sup>77</sup> Dawie Bosch & Jo-Anne Collinge, 'Parliament Strengthens fight against the WFCL, at p. 1.

- Debbie Budlender, 'Child labour and other work-related activities in South Africa: An analysis on the Labour Force Survey', March 2006.
- Dawie Bosch & Associates, (2003). White Paper (draft) on a National Child Labour Action Programme. Draft 3.1.
- Department of Labour, South Africa, Child Labour Programme of Action 2008 – 2012 'Uniting to Stop work that harms our youth' 2008.
- Elizabeth Musvoto, Child labour in South Africa: A brief overview study. *Guernsey: Advocating for the Rights of Children Worldwide Trust*, (2007).
- Gigunda, N.K 'Child Labour: An Analysis', 1999 Thesis submitted in partial fulfilment for an LL.M degree in the Faculty of Law at the University of Cape Town.
- Handbook for Parliamentarians No. 3, 2002, 'Eliminating the Worst Forms of Child Labour: A practical guide to ILO Convention No. 182'
- International Labour Organisation, 'Child labour: A textbook for university students', International Labour Office, Geneva, 2004.
- Julia Sloth-Nielson & J Gallinetti, 'Legal Reform for the Protection of Children in Mozambique' UWC Community Law Centre – Prepared for the Gov. of Mozambique Min. of Justice
- Kreston, S.S 'Trafficking in children in South Africa: An analysis of pending legislation' UFS IOM's paper on Trafficking in children for purposes of sexual exploitation in South Africa, (2007) 8 (1).
- Mozambique 'How child-friendly is the Government of Mozambique?' The African Report and Child Wellbeing, Country briefs of 2008.
- Mpeo Mahasi-Moiloa, Minister of Employment and Labour, Special Studies on the WFCL in Lesotho: Herdboys, Street, Domestic Workers & Child Sex Workers, 2005.
- Schurink W, Molohe C & Tshabalala S, 'Exploring some dimensions of Child labour in South Africa' First Ed. 1997.
- Servaar Van der Berg, *South African Social Security under Apartheid and beyond*. "Development South Africa" (1997) 14(4).
- Speech by the Former National Minister of Labour, South Africa, Mr. MMS Mdladlana at 'The launch of the ILO Third Global Report on a Future Without Child Labour' 6 May 2002.
- Vivienne Taylor, *Transforming the Present- Protecting the future: Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa*. Consolidated Report, 2002.