

**THE IMPACT OF CHILD LABOUR IN AGRICULTURAL SECTORS IN THE
VHEMBE REGION: ISSUES AND CHALLENGES.**

BY

MASINDI MPHEDZISENI MOSES

A MINI DISSERTATION SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE
DEGREE OF

MASTERS OF LAWS (LLM)

IN

LABOUR LAW

IN THE

FACULTY OF MANAGEMENT AND LAW

(SCHOOL OF LAW)

UNIVERISTY OF LIMPOPO

(TURFLOOP CAMPUS)

SUPERVISOR: **ADV. L.T. NEVONDWE**

2015

ABSTRACT

This mini-dissertation deals with the impact of child labour in the Vhembe Region. Africa reportedly has the highest incidence of child labour in the world. Vhembe as a region and South Africa as a whole has the problem of child labour which is influenced by poverty. To respond to this problem, some scholars recommend an outright ban on child labour through legislation. Child labour refers to dangerous and exploitative work which is carried out at too early an age, involves long working hours, carried out in inadequate conditions, not sufficiently paid, involves excessive responsibility, and undermines the child's dignity and self-esteem. The mini-dissertation has clearly defined the child labour and discusses the legislative framework, international law framework and the challenges of child labour in the Vhembe Region.

DECLARATION BY STUDENT

I, **Masindi Mphedziseni Moses** declare that this mini-dissertation submitted to the University of Limpopo (Turfloop Campus) for the degree of Masters of Laws (LLM) in Labour Law has not been previously submitted by me for a degree at this university or any other university that is my own work in design and execution and all material contained herein has been duly acknowledged.

.....

Masindi Mphedziseni Moses

March, 2015

DECLARATION BY SUPERVISOR

I, **Adv. Lufuno Tokyo Nevondwe**, hereby declare that this mini-dissertation by **Masindi Mphedziseni Moses** for the degree of Masters of Laws (LLM) in Labour Law be accepted for examination.

.....

Adv. Lufuno Tokyo Nevondwe

March, 2015

DEDICATION

I dedicated this mini-dissertation to my wife Mathilda Masindi who believed in me throughout my academic life. My wife's perseverance motivated me. She contributed a lot to my academic success.

ACKNOWLEDGEMENTS

I convey my gratitude to the following people. Had it not been for them the completion of this mini-dissertation would not have been possible.

My wife and my children for their moral support and unconditional love. My children Khuthadzo and Andisani Masindi gave me every reason to work hard so that I can set a good example for them. Adv. L.T. Nevondwe, my supervisor for all the intellectual support, assistance and guidance throughout the study. You inspired me and I have learnt so much from you. Baloyi Lemuel, my LLM classmate for support, motivation and extra efforts made. To Adv Nicholas Matloga, Mpho Mabidi thanks for sharing ideas together. To Freddy Mahori, my colleague for support, motivation and the extra efforts made. Special thanks to Mr. Nelson Muluvhaho for his motivation and always inspired me while I was studying for my LLM degree.

LIST OF ABBREVIATIONS

1. ACRWC: African Charter on the Rights and Welfare of the Child
2. AU : African Union
3. BCEA : Basic Conditions of Employment Act
4. CLPA : Child Labour Programme of Action
5. ILO : International Labour Organisation
6. IPEC : International Programme on the Elimination of Child labour
7. OAS : Organisation of American States
8. OAU : Organisation of Africa Unity
9. UN : United Nations

LIST OF INTERNATIONAL INSTRUMENTS

1. UN Instruments
 - 1.1. Universal Declaration of Human Rights. 1948.
 - 1.2. UN. Declaration of the Rights of the child. 1959.
 - 1.3. UN Convention on the Rights of the child 1989.
 - 1.4. ILO Convention 138 – the minimum age Convention.
 - 1.5. ILO Convention 182- The worst form of child labour Convention.
 - 1.6. The ILO International Programme on the Elimination of Child Labour.
 - 1.7. The ILO Declaration on fundamental principles and rights at work.
2. Regional Instruments
 - 2.1. The American Human Rights System
 - 2.2. The European Human Rights System
 - 2.3. The African charter on the Rights and Welfare of the child

TABLE OF STATUTES

1. Basic Conditions of Employment Act 75 of 1997
2. Child Justice Act 75 of 2008
3. Children's Act 38 of 2005
4. Sexual Offences Act 32 of 2007
5. The Social Assistance Act 13 of 2004
6. The South African Constitution Act 108 of 1996

TABLE OF CASES

1. *Bannatyne v Bannatyne* (2003) 2 BCCR III CC 2003 2SA 363 (CC).
2. *Khosa and Other v The Minister of Social Development and Others*: 2004(6) BCLR 505 (CC).
3. *Mahlaule and Others v The Minister of Social Development* 2004(6) BCLR 505 (CC).

TABLE OF CONTENTS

Abstract	i
Declaration by student	ii
Declaration by supervisor	iii
Dedication	iv
Acknowledgement	v
List of Abbreviations	vi
List of international instruments	vii
Table of statutes	viii
Table of cases	ix
CHAPTER ONE: INTRODUCTION	1
1.1 Historical background to the Study	1-5
1.2 Statement of the research problem	5-7
1.3 Literature review	7-10
1.4 Aims and objectives of the study	10-11
1.5 Research methodology	11
1.6 Scope and limitation of the study	11
CHAPTER TWO: DEFINITION OF CHILD LABOUR	12-15
CHAPTER THREE: LEGISLATIVE FRAMEWORK	16
3.1 Introduction	16
3.2 Constitution	16-17
3.3 Basic Conditions of Employment Act (BCEA)	17-18
3.4 The Children's Act	19
3.5 Social Assistance Act	19-21
3.6 Sexual Offences Act	21
3.7 Child Justice Act	22-23
CHAPTER FOUR: INTERNATIONAL LAW FRAMEWORK	24
4.1 INTRODUCTION	24
4.2 UN INSTRUMENTS	24
4.2.1 The Universal Declaration of Human Rights, 1948	24
4.2.2 UN Declaration of the Rights of the Child, 1959	24-25

4.2.3	UN Convention on the Rights of the Child, 1989	25-27
4.2.4	ILO Convention 138 – the minimum age convention	27-28
4.2.5	ILO Convention 182 – The worst forms of child labour Convention.	28-29
4.2.6	The ILO international programme on the elimination of child labour (IPEC)	29-30
4.2.7	The ILO Declaration on fundamental principles and Rights at work.	30-31
4.3	PROTECTION AGAINST CHILD LABOUR REGIONALLY	31
4.3.1	The American Human Rights System	31
4.3.2	The European Human Rights System	31
4.3.3	The African Charter on the Rights and Welfare of the child (ACRWC)	32-33
	CHAPTER FIVE: CHILD LABOUR IN VHEMBE REGION	34-46
	CHAPTER SIX: CONCLUSION AND RECOMMENDATION	47
6.1	Conclusion	47-48
6.2	Recommendations	48-50
	BIBLIOGRAPHY	51-54

CHAPTER ONE: INTRODUCTION

1.1 Historical background to the study

According to Lubaale, Africa reportedly has the highest incidence of child labour in the world.¹ To respond to this problem, some scholars recommend an outright ban on child labour through legislation.² In this regard, most African countries, including South Africa have enacted legislation directed at banning child labour.

Lubaale further urged that legislation directed at banning child labour may impact negatively on certain fundamental rights of children. This is because child labour is sometimes a source of income for many children who may themselves have 'dependants'.³ For instance, for children in desperate need, adherence to laws which have the effect of depriving them of basic necessities such as food, housing and water is unrealistic, inadequate and totally ineffective. A notable example is with regard to orphaned children.

Lubaale further urged that taking such children out of employment is counter-productive as they are left with no means of survival.⁴ On the other hand,

¹ Lubaale EC, A human rights-based approach to child labour in Africa: challenges and prospects in South Africa, LLM dissertation, University of Pretoria, 2011, pl. See also International Programme on Elimination of child labour (IPEC) 'Global child labour developments: Measuring trends from 2004 to 2008' (2010) 11.

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

³ Lubaale EC, A human rights-based approach to child labour in Africa: challenges and prospects in South Africa, LLM dissertation, University of Pretoria, 2011, pl

⁴ Lubaale EC, *ibid* at page 1.

though child labour contributes to the survival of many children and their families in Africa, it impacts negatively on fundamental rights of children. Some of these rights include amongst others the right to education, health and leisure. Therefore, regardless of the circumstances that compel children to engage in child labour, it remains a problem that needs to be addressed through appropriate approaches. This study stresses that the approaches adopted need to be cognizant of the diverse circumstances under which children engage in child labour.

South Africa, like the rest of Africa, continues to grapple with the child labour conundrum. The South African Law Commission acknowledges that child labour is indeed a significant problem in South Africa⁵. In this regard, the Commission points out that relieving the burden placed on children involved in exploitative labour requires interventions beyond simply banning child labour.⁶

Child labour in South Africa has a long and complex history. As it developed throughout the years, there was a need to do research and determine how rooted child labour is in South Africa in order to curb it. In 1999 Statistics South Africa undertook a study on child labour in South Africa. The findings at the time revealed that there were an estimated 13, 4 million children in South Africa between the ages of 5 and 17 years with 36% (4, 8 million) of children in this age group engaged in economic work for 3 hours per week and other work for 7 hours per week. It was further found that approximately 4.5 million children aged between 5 and 17 years (33%) spent one hour or more per week fetching wood and water. In addition, it was found that about one in every 31 children (3%, or

⁵ South African Law Commission Discussion Paper 103 of project 110 on the review of the Child Care Act (2001) 579.

⁶ Ibid.

0, 4 million) undertook economic activities (excluding fetching wood and water) for twelve or more hours, with boys being more likely than girls to be doing economic work.⁷

In addition to the above, it was revealed that 59% of the children engaged in economic activities worked because they had a duty to help their family, and a further 15% said they worked to assist the family with money. The only other significant reason was for pocket money (16% of working children).⁸ Most children who are engaged in economic activity were unpaid in family enterprises, mostly in agriculture and retail. For all industries, the majority of children worked between three and seven hours a week.⁹

Since the year 2000, the International Labour Organization has been taking stock and measuring global progress on the reduction of child labour not only in South Africa but also in other countries.¹⁰ Since 2006, it has undertaken this

⁷ Statistics South Africa, Survey of Activities of Young People in South Africa: Country report on children's work-related activities, Department of Labour, 2001 accessed at <http://www.labour.gov.za> on 07 December 2013.

⁸ Statistics South Africa, *Ibid.*

⁹ *Ibid.* See also Gallinetti J S, 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 Offences as a Worst Form of Child Labour, A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law of the University of the Western Cape, South Africa, 2007, p. 207.

¹⁰ Marking progress against child labour - Global estimates and trends 2000-2012 / International Labour Office, International Programme on the Elimination of Child Labour (IPEC) - Geneva: ILO, 2013, 5.

analysis in light of the target set by the International Labour Organization of eliminating all the worst forms of child labour by 2016.¹¹

Since the year 2000, the dynamic picture is one of significant progress. Globally, there were almost 78 million fewer child labourers at the end of this period than at the beginning, a reduction by almost one-third.¹² The fall in girls in child labour was particularly pronounced. There was a 40 per cent reduction in the number of girls in child labour as compared to 25 per cent for boys. The total number of children in hazardous work, which comprises by far the largest share of those in the worst forms of child labour, declined by over a half.¹³ Also, progress was especially pronounced among younger children, while child labour for this group fell by over one-third between 2000 and 2012. The decline in child labour was greatest during the most recent four-year period.¹⁴

The above progress is motivated by the Hague Conference which took place in 2010, where States, including South Africa, made specific commitments around legislative amendments, education, social protection and labour market policies towards the eradication of child labour.¹⁵

¹¹ Marking progress against child labour - Global estimates and trends 2000-2012 / International Labour Office, International Programme on the Elimination of Child Labour (IPEC) - Geneva: ILO, 2013, 5.

¹² *Ibid*, p 5-6.

¹³ *Ibid*, p 5-6.

¹⁴ *Ibid*, p 5-6.

¹⁵ Ramutloa L, South Africa has made significant progress in fighting child labour, Labour Minister tells global Conference, 09 October 2013, online, www.labour.gov.za , accessed on 07 December 2013.

1.2 Statement of the research problem

The negative impact of child labour on the rights of children is not in contention.¹⁶ In fact, the need to eliminate it cannot be emphasised enough. At the same time, banning child labour without available alternatives for child labourers impacts negatively on several rights critical to children's welfare and survival. Using South Africa as a case study, a human rights based approach is considered appropriate in complementing legislation in addressing child labour. It is contended that such an approach would have the effect of responding to the circumstances that compel children to engage in child labour in South Africa. It is contended further that it creates a useful pathway to addressing child labour in a multi-dimensional manner.

Internationally, there are three major international children's 'Rights Conventions that address the economic exploitation of children firstly, in relation to employment and the workplace and then more broadly in the context of commercial and criminal exploitation of children. The first question that arises is why has it taken three international instruments to address these issues? Convention 138 principally deals with the minimum age for admission to employment as well as requiring States parties to identify and prohibit admission to those types of child labour which are hazardous and jeopardise children's health, safety and morals.¹⁷

¹⁶ Admassie A 'Explaining the high incidence of child labour in Africa' (2002) African Development Bank 253.

¹⁷ Van Bueren notes particular problems with the protection that Convention 138 purports to provide. Firstly, she argues, that by allowing States to exclude limited categories of work or employment in which 'special and substantial problems of application arise', the economic exploitation of children in those types of work can occur most in typically family undertakings and domestic service. Secondly, the protection of the Convention is weakened by allowing a State whose economy and administrative facilities are insufficiently developed to limit the scope of the Convention by making it not applicable to specific branches of economic activity or

The question, which draws together the discussion on both child labour and child justice relates to whether Convention 182 provides an effective framework for improving child protection in relation to the instrumental use of children in the commission of offences and reducing this worst form of child labour in South Africa?

Child labour in South Africa exposes children to maltreatment, neglect or degradation. These children are further exposed to exploitative labour practices and are often required or permitted to perform work or provide services that-

- (i) are inappropriate for a person of their age; or
- (ii) place at risk their well-being, education, physical or mental health or spiritual, moral or social development.

In essence, child labour in South Africa goes against the values of the Constitution.¹⁸ Child labour leads to problems and challenges to the growth of the children. It affects the well-being of the child and exposes the child to adulthood. Child labour is a global challenge; it affects almost all the countries in the world including South Africa. The problems of child labour in the Vhembe Region relates specifically to the agricultural sector since most young children are working in farms in Levebu, Nzhelele, Khubvi and Tshipata.

undertakings. Finally, the Convention not only exempts light work for children younger than the minimum age, but the concept of light work is not defined.

¹⁸ South African Constitution Act 108 of 1996. More in particular section 28.

1.3 Literature review

According to Muzvidziwa; generally child labour is considered a bad thing, but child work is not only encouraged but is considered healthy and necessary for the socialization of the child. This has led to calls to differentiate between child work and child labour.¹⁹ The concept of child labour has been defined by a number of international and national conventions, laws and regulations that govern the issues around the rights of the child.²⁰

Nkurlu defines child labour as 'all forms of economic exploitation, any work that is likely to be hazardous or interfere with the child's physical, mental, moral or social development.²¹ On the other hand, the International Labour Organization defines child labour as remunerated or unremunerated work by a young person under a certain age, the work which impairs the young's personal development, health, safety, well-being physically, mentally and psychologically , impairment which is in violation of national and international law'.²²

According to the United Nations children's Fund (UNICEF) Child Protection Information Sheet (2006), child labour refers to dangerous and exploitative work which is carried out at too early an age, involves long working hours, carried out

¹⁹ Muzvidziwa V N, Child labour or child work? Whither policy, Research Review NS 22.1 (2006) p 24-30.

²⁰ Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005, p 22-23.

²¹ Nkurlu J I, Child labour Background Paper- Africa Newsletter, 2/2000, 1, online, www.occuphealth.fi/e/info/ani/200/background03.htm, accessed 07 December 2013.

²² Luwaga J S, opcit.

in inadequate conditions, not sufficiently paid, involves excessive responsibility, and undermines the child's dignity and self-esteem.²³

According to Giri there are two implications of the term 'child labour'. First, as an economic practice and secondly, as a social evil. The first signifies employment of children in gainful occupations with a view to adding to the income of the families and the second, a broad aspect which takes into account the working conditions including the danger to which the children are exposed which means the denial of opportunities of development.²⁴

When drawing a distinction between child labour and child work Muzvidziwa is of the view that 'when work does not interfere with a child's health, well-being, leisure, play and education then it is not child labour. Again when a child helps with domestic chores, as a hand in a family business and family farm, it is not conceived of as child labour'.²⁵

Curtin, Hossain and Verghese-Choudhury noted:

Child work is work that is not exploitative and can accommodate education. It can be a part of a child's socialisation and plays a positive role in a child's development. Child work becomes child labour if a child is working long hours in difficult conditions that interfere with schooling, or are hazardous or otherwise injurious to the child's physical, mental, social or moral well-being. The futility of definitions that try to differentiate between child labour and child work comes out of a realisation that whether work is

²³ United Nations Children's Fund (UNICEF) Child Protection Information Sheet (2006), available at http://www.unicef.org/protection/files/chld_labour.pdf (assessed 20 August 2011).

²⁴ Giri V V, Labour problems in Indian Industry 1958 p. 360

²⁵ Muzvudziwa V.N., Opcit, p 24.

defined as good or bad depends upon its visibility, the context, and situational circumstances under which a child performs certain activities.²⁶

Definitions that try to differentiate between child labour and child work comes out of a realisation that whether work is defined as good or bad depends upon its visibility, the context, and situational circumstances under which a child performs certain activities.²⁷ It has often been said that the line dividing productive youth employment and exploitative child labour is subtle.²⁸ According to Parker, child labour limits the opportunities for obtaining education and female educational attainment is a recognized determinant of child survival and health.

It is clear that child labour is an important aspect of social and economic reality that surrounds us, even though it is often overlooked. Many people, organisations and economies all over the world are concerned about child labour.²⁹ The main concern is basically the kind of work which the children are doing, some which are dangerous which cause' physical and psychological damage or even threaten the child's life. Most affected are the rural areas where there is little success in the enforcement of minimum age requirements for schooling and working.³⁰ Children are engaged in child labour for various

²⁶ Curtin, Hossain and Verghese-Choudhury, *Children, living and working in the city*. In J. Beall, ed. *A City for All: Valuing Difference and Diversity*. 1997, p 72.

²⁷ Muzvudziwa V.N., *opcit*, pages 24.

²⁸ Davis L. *Youth Employment versus exploitative child labour*. 1998. p 25-29.

²⁹ Luwaga J S, *Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa*, Master of Demography, University of Pretoria, 2005, p 1.

³⁰ Section 43 of the Basic Conditions of Employment Act, 75:1997 prohibits the employment of a child under the age of 15 years or who is under a minimum school leaving age, in terms of any law. The Act further prohibits the employment of a child to do the work which is not appropriate for his or her age.

reasons, among others, are poverty and lack of education and culture or traditional beliefs.

1.4 Aims and objectives of the study

This study is aimed at advancing or promoting a common set of universal standards and ensuring that certain absolutes enshrined in international conventions and standards with regard to the rights of the children are monitored, observed, protected and respected. The research will benefit members of the community, non-governmental organizations, Vhembe District Municipality and its subsidiary municipalities, Mutale, Makhado, Thulamela and Musina, Legal Aid Boards, traditional authorities, law clinics, and Department of Labour. The study will also assist young and emerging academics who intend to study in the similar topic to bring insight into their programmes. The study will also benefit students who are studying Labour Law, Advanced Labour Law and Constitutional Law.

1.5 Research methodology

The research methodology used in this study is qualitative rather than quantitative. The research is library based and reliance is made on library materials such as textbooks, reports, legislation, regulations, publications, case laws and articles. An innovative and modern tool used in this study was the internet. The internet was of much help in locating current information on the topic.

1.6 Scope and limitation of the study

The study consists of six interrelated chapters. Chapter one is the introductory chapter laying down the foundation of the mini-dissertation. Chapter two deals with definition of child labour. Chapter three deals with Legislative Framework while. chapter four deals with international Law Framework. Chapter five deals with child labour in Vhembe Region. Chapter 6 deals with conclusion and recommendations.

CHAPTER TWO: DEFINITION OF CHILD LABOUR

Child labour is defined as work that has a negative bearing on a child's wellbeing. Child labour limits the development and negatively affects the health of the child and quite often interferes with a child's schooling.³¹

Child labour is work by children under 18 years which is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling or their social, physical, mental, spiritual or moral developmental or harmful.³²

The ILO Convention 138, states that child labour is any economic activity performed by a person under the age of 15.³³ Child labour is any employment that robs children of their rightful heritage of the chance of healthy development, full educational opportunities and necessary play time.³⁴ Child labour entails something different in which young people are being exploited, overworked, or deprived of their rights to education, adulthood and health.³⁵ Child labour includes children permanently leading adults lives, working long hours for low wages under conditions damaging to their health, and physical and mental development, sometimes separated from their family, frequently

³¹ Fyfe A. Child labour, Oxford, polity Press. 1989 p 4.

³² The constitution Act 108 of 1996

³³ Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005,p 25.

³⁴ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 261.

³⁵ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 261.

devoid of meaningful educational and training opportunities that could open up to them a better future.³⁶

Child labour generally, means the employment of the child and the extraction of the productivity for the economic gain of another, with debilitation, ramifications on the psychological and physical development of the child.³⁷ Child labour is the work performed by children that either endanger their health or work safety and interferes with or prevents their development.³⁸ Child labour is the employment of children when they are too young to work for hire or when they are employed on a job unsuitable or unsafe for children of their ages and under condition injurious to their welfare.³⁹ When work does not interfere with a child's health, wellbeing, leisure, play and education then it is not child labour. Again when a child helps with domestic chores, as a hand in a family business and family farm, it is not conceived as child labour.⁴⁰ Child labour can be differentiated from child work.

Child work is work that is not exploitative and can accommodate education. It can be a part of a child's socialization and plays a positive role in a child's development. Child work becomes child labour if a child is working long hours in difficult conditions that interfere with schooling or is hazardous or otherwise injurious to the child's physical, mental, social or moral wellbeing.⁴¹

³⁶ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial Law, 3 August 2011, Sandton p. 261.

³⁷ Padhi P.K. child labour, yesterday, today and tomorrow, Vol. 29. No. 2. May 2004. P.78.

³⁸ Padhi P.K. child labour, yesterday, today and tomorrow, Vol. 29. No. 2. May 2004. P 78

³⁹ Padhi P.K. child labour, yesterday, today and tomorrow, Vol. 29. No. 2. May 2004. P.82

⁴⁰ Muzvidziwa V.N Child labour or child work? WITHER Policy, Research Review NS 22.1 (2006) p 23-33

⁴¹ Muzvidziwa V.N Child labour or child work? WITHER Policy, Research Review NS 22.1 (2006) p 23-33

Child labour is exploitative if it involves any of the following:

- Full time work at too early on age.
- Too many hours spent working.
- Work that exerts undue physical, social or psychological stress.
- Work and life on the streets in bad conditions.
- Inadequate pay.
- Too much responsibility.
- Work that hampers access to education.⁴²

Child labour has been defined by a number of international and national conventions, laws and regulations that govern issues around the rights of children. Ideally, to define child labour one has to define a number of concepts upon which, and in terms of the relevant conventions, laws and regulations upon which the definition of child labour is based. These concepts are: a child, age, minimum working age, child work, child labour, hazardous work and unconditional worst forms of child labour.⁴³

Child labour is the employment of children in any industry or business, especially when illegal or considered exploitative.⁴⁴ The term child labour is often defined as work that deprives children of their childhood, their potential and their

⁴² Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005,p 22.

⁴³ Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005,p 22.

⁴⁴ Fyfe A. Child labour, Oxford, polity Press. 1989 p 16.

dignity.⁴⁵ Child labour means the employment of children in gainful occupations with a view to add to the income of the family.⁴⁶

In my opinion all the above mentioned authors have postulated the definition of child labour very well. I agree with the above mentioned authors as far as their postulation of the definition of child labour is concerned.

⁴⁵ Article 3 of the ILO Convention 182 of 1999.

⁴⁶ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 260..

CHAPTER THREE: LEGISLATIVE FRAMEWORK

3.1 Introduction

South Africa has good legislative framework that gives adequate protection to children's rights. The legislative framework conform to international standards on the protection of children's rights. Below is a full discussion of the following: South African Constitution, Basic Conditions of Employment Act, Children's Act, Social Assistance Act, Sexual Offences Act and Child Justice Act.

3.2 South African Constitution

The Constitution is the yardstick of children's rights in South Africa. It is the supreme law of the Country and provides that a child is a person below the age of eighteen (18) years. It further provides that 'every child has the right to be protected from exploitative labour practices and not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age or place at risk the child's well-being, education, physical, or mental, spiritual, moral or social development'. It is further required that a child's best interests are of paramount importance in every matter concerning the child.⁴⁷

In *Bannatyne vs Bannatyne*⁴⁸ it was held that, while the obligation to ensure that all children are properly cared for is an obligation that the constitution imposes in the first instance on their parents, there is also an obligation on the State to create the necessary environment for parents to do so. In this regard, the Constitutional Court has held that the State must provide the legal and

⁴⁷ Act 108 of 1996

⁴⁸ *Bannatyne V Bannatyne* 2003. 2. SA. 363 (cc)

administrative infrastructure necessary to ensure that children are accorded the protection contemplated by Section 28.

In line with the above it is clear that child labour goes against the principles which the Constitution commands because in most instances child labour exposes children to work that is inappropriate for their age or places risk in their well-being, education, physical or mental, spiritual, moral or social development.

3.3 Basic Conditions of Employment Act (BCEA)

The Basic Conditions of Employment Act which came into operation in March 1998 is the only labour legislation which prohibits child as well as forced labour. The Act dedicated the whole chapter six (6) on the prohibition against the employment of children and forced labour. According to section 43 no person may employ a child

- (a) who is under 15 years of age;⁴⁹ or
- (b) who is under the minimum school-leaving age in terms of any law, (if this is 15 or older).⁵⁰

The section further provides that no person may employ a child in employment

- (a) that is inappropriate for a person of that age⁵¹;

⁴⁹ Section 43(1) a of Act 75 of 1997.

⁵⁰ Section 43(1) b of Act 75 of 1997.

⁵¹ Section 43(2) a of Act 75 of 1997.

(b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.⁵²

The Act further provides that the Minister of Labour may 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.⁵³ Section 46 of the Act provides that it is an offence to:

- (a) assist an employer to employ a child in contravention of this Act; or
- (b) discriminate against a person who refuses to permit a child to be employed in contravention of this Act.

It is clear from the wording of the Act that the intention of the legislature is to curb child labour. It is therefore an offence to employ a child in circumstances stipulated in the Act.

3.4 The Children's Act⁵⁴

According to the Act, no person may employ or provide work to any child under the age of 15 years. The Children's Act prohibits the abuse of children and excessive use of children in family's subsistence agricultural activities or households chores. The Children's Act prohibits parental child abduction. The Children's Act combat trafficking in children.

⁵² Section 43(2) b of Act 75 of 1997.

⁵³ Section 44(1) of Act 75 of 1997.

⁵⁴ Act No 38 of 2005.

The objects of Children's Act include the following:

- To strengthen and develop community structures which can assist in providing care and protection for children.
- To protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards.
- To provide care and protection to children who are in need of care and protection.
- Generally, to promote the protection, development and wellbeing of children.

3.5 Social Assistance Act⁵⁵

The Social Assistance Act makes provision for several social grants including child support grant payable to the primary caregiver of a child under the age of seven, but recently extended to also cover older children by 2006 from 13 years to the end of the school year.

In terms of the Act, in order to be eligible for child support, you must meet the following requirements:

- (a) Be a primary caregiver who cares for a child or children under the age of 18 who comply with other qualifying criteria.
- (b) The caregiver must not be in receipt of any income in respect of the child or children
- (c) Residence in South Africa at the time of application (both the primary caregiver and the child).

⁵⁵ Act 13 of 2004.

In South Africa, grants are regarded as the most effective tool to reduce poverty, and in most poor households, these grants are used to support the entire households.

The objects of the Social Assistance Act are as follows:

- (a) To provide for the administration of social assistance and payment of social grants.
- (b) To make provision for social assistance and to determine the qualification requirement
- (c) Ensure that minimum norms and standards are prescribed for the delivery of social assistance.
- (d) To provide for the establishment of an inspectorate for social assistance

In *Khosa v The Minister of Social Development; Mahlaule v The Minister of Social Development*, it was held that "... the elderly, physically challenged and children will not be encouraged to work because they are simply unable to work".⁵⁶ It can be said that the provision of social assistance grants is to eliminate poverty and reduce child labour in South Africa. In light with child labour which is rife in South Africa, one can ask whether these grants have an impact on child labour.

⁵⁶*Khosa V The Minister of Social Development: Mahlaule V The Minister of Social Development* 2004(6) SA 505(cc) at paragraph 123.

3.6 Sexual Offences Act⁵⁷

In terms of section 15 of the Sexual Offences Act prostitution is an offence. Children who are victims of commercial sexual exploitation can be arrested for prostitution and persons exploiting children sexually can also be prosecuted⁵⁸.

The enactment of this Act is of great importance as it reduces prostitution. Some children resort to prostitution in order to have food. Some children are simply employed as such and are paid even less and this amounts to child labour.

3.7 Child Justice Act

According to Ramutloa⁵⁹, the Child Justice Act provides innovative ways in dealing with children that have been involved either in children used by adults to commit crime and commercial sexual exploitation of children.

The Child Justice Act Aims to:

- Establish a criminal Justice system for children, who are in conflict with the law, in accordance with the values underpinning our constitution and our international obligations by among others, creating as a central feature of this new criminal justice system for children, the possibility of diverting matters involving children who have committed offences away from the criminal justice system in appropriate circumstances, while children whose

⁵⁷ Act 32 of 2007.

⁵⁸ Section 15 of the sexual offences Act 32 of 2007.

⁵⁹ Ramatloa L. South Africa has made significant progress in fighting child labour. Labour minister tell Global Conference. 9 October 2013. Online www.labour.gov.za. Accessed on 07 December 2013.

matters are not diverted, are to be dealt with in the Criminal Justice system in child justice courts.

- Expand and entrench the Principles of Restorative Justice in the criminal Justice system for children who are in conflict with the law, while ensuring whose matters are not diverted, and are to be dealt with in the criminal justice system in child justice courts.
- Recognise the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration in order to minimise the potential for re-offending.
- Balance the interests of children and those of society with due regard to the rights of victims.
- Create incrementally, where appropriate, special mechanisms, processes or procedures for children in conflict with the law⁶⁰.

⁶⁰ Act No. 75 of 2008.

CHAPTER FOUR: INTERNATIONAL LAW FRAMEWORK

4.1 INTRODUCTION

This chapter discusses international instruments concerning child labour. The aim is to see what has been done to eliminate child labour. The following are international instruments adopted in order to address child labour. We have United Nations and Regional instruments.

4.2 UN INSTRUMENTS

4.2.1 The Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, 1948, embodies some more measures to protect the children; through it a common standard of achievements for all people and all nations was adopted. It provides that everyone is entitled to all the rights and freedoms set forth in this Declaration without and distinction of any kind. Naturally the standard set forth includes children also.⁶¹

4.2.2 UN Declaration of the Rights of the Child, 1959

The adoption of the Declaration of the Rights of the child by the general Assembly of the UN on November 20, 1959, was indeed a very important event as regards the international recognition of the rights of the child. The General Assembly affirmed that the child has the right to enjoy special protection and to

⁶¹ Padhi P.K. Child Labour, Yesterday, Today and Tomorrow, Vol 29. No. 2. May 2004. P 82.

be given opportunities and facilities to be able to develop in healthy and normal manner.⁶²

4.2.3 UN Convention on the Rights of the Child, 1989

The Convention on the Rights of the child was developed at the initiative of the Government of Poland (which also proposed the 1924 Geneva Declaration on the Rights of the child and the founding of UNICEF). In 1978, Poland proposed that the UN General Assembly adopt an international convention on the rights of the child based on the principles and provisions of the 1959 Declaration on the Rights of the child. It took 10 years of drafting by the UN working group, established by the UN Commission on Human Rights, to produce a draft text of the convention, which was adopted on 20 November 1989 and came into force on 2 September 1990, to date it is the most widely ratified Human Rights treaty in the world.⁶³

The Convention on the Rights of child is a legally binding international instrument that incorporates children's civil, cultural, economic, political and social rights. It establishes global recognition that children (people under 18 years old) have human rights and often need special care and protection that adults do not need. The Convention spells out the basic human rights of children everywhere, the right to survival, to develop to the fullest, to protection from harmful influences; abuse and exploitation and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interest of the child, the right to life, survival and

⁶² Padhi P.K. Child Labour, Yesterday, Today and Tomorrow, Vol 29. No. 2. May 2004. P 82.

⁶³ Fyfe A. Child labour, Oxford Polity. Press 1989 P. 163.

development, and respect for the views of the child. The Convention also sets standards in health care, education and legal, civil and social services.⁶⁴

Article 32 of the Convention states that state parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social developments.⁶⁵

Article 32 of the Convention also States that state parties to the Convention shall take legislative and administrative measures to ensure the implementation of this article. To this end, and having regards to the relevant provisions of other international instruments, the States parties shall in particular:

- (a) Provide for a minimum age or minimum wages for admission to employment.
- (b) Provide for appropriate regulation of the hours and conditions of employment.
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the article.⁶⁶

Besides United Nations, ILO has also been rendering services at the global level to protect child labour.⁶⁷The following is a discussion of ILOS:

⁶⁴ Padhi P.K. Child Labour, Yesterday, Today and Tomorrow, Vol 29. No. 2. May 2004. P 82-83.

⁶⁵ Fyfe A. Child Labour, Oxford Polity. Press 1989 P. 163.

⁶⁶ Fyfe A. Child Labour, Oxford Polity. Press 1989 P. 164.

⁶⁷ Padhi P.K. Child Labour, Yesterday, Today and Tomorrow, Vol 29. No. 2. May 2004. P 83.

4.2.4 ILO Convention 138 – the minimum age convention

Article 1 of the Minimum age Convention requires states to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Adopted in 1973 and ratified by 156 nations by 2010, Convention 138 concerns the minimum age for admission to employment. Article 2(3) specifies that the minimum age of admission into employment or work in any occupation shall not be less than the age of completion of compulsory schooling and in any case, shall not be less than fifteen. Countries whose economy and educational facilities are insufficiently developed may initially specify a minimum legal working age of 14 when ratifying the convention.

Article 3(1) states that the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years.

Additionally, under article 7(1), National Laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is:

- (a) Not likely to be harmful to their health or development and
- (b) Not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the

competent authority or their capacity to benefit from the instruction received.

Article 7(2) of minimum age Convention also allows children who are 15 years, but who have not yet finished compulsory school, to perform light work.⁶⁸

4.2.5 ILO Convention 182 – The worst forms of child labour Convention.

Adopted in 1999 and ratified by 173 Nations by 2010, Convention 182 concerns the prohibition and immediate action for the elimination of the worst forms of child labour. Article 2 of this Convention defines a child as someone under the age of 18 and Article 3 defines child labour as:

- (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.⁶⁹

⁶⁸ Fyfe A. Child Labour, Oxford Polity. Press 1989 P. 133-134.

⁶⁹ Budeli M. Children's Rights and Protection against Child Labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 263.

4.2.6 The ILO international programme on the elimination of child labour (IPEC).

A vital development occurred in 1991 with the establishment of the programme on the elimination of child labour (IPEC) which became fully operational in 1992 and has been described as the ILO's operational arm in the fight against child labour.⁷⁰

The overall strategy of IPEC is the progressive elimination of child labour, which is to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour,⁷¹ This strategy is achieved through a phased, multi-sectoral approach that includes a situational analysis of the nature and magnitude of child labour in a given country, assistance in policy design, institution building, awareness raising, development of and implementation of protective legislation and support for direct action.⁷² One of IPEC's initiatives has been to ensure the collection of data on child labour. To this end, IPEC formed the statistical information and monitoring programme on child labour in 1997 with the aim of improving the accuracy of information on the scale, distribution and characteristics of child labour and on related socio-economic factors.⁷³

⁷⁰ Lansky M. Perspectives: Child Labour: How the challenge is being met. *International Labour Review*, Vol 136 No. 2 1997 p 233

⁷¹ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 262.

⁷² Lansky M. Perspectives: Child Labour. How the challenge is being met. *International Labour Review*, Vo.. 136. No. 2. 1997. P. 233.

⁷³ Lansky M. Perspectives: Child Labour. How the challenge is being met. *International Labour Review*, Vo.. 136. No. 2. 1997. P. 233.

4.2.7 The ILO Declaration on fundamental principles and Rights at work.

Article 2 of the Declaration states that there are certain fundamental principles, which member States, even if they have not ratified the ILO conventions in questions, have an obligation to promote and realise given their membership in the ILO. These fundamental principles 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 the child labour.
- (d) The elimination of discrimination in respect of employment and occupation.⁷⁴

4.3 PROTECTION AGAINST CHILD LABOUR REGIONALLY

Regional human rights instruments have been adopted to complement and reinforce the international conventions protecting human rights.⁷⁵ They deal with protection against child labour under the American, European and African human rights system. The following is a discussion of each system.

4.3.1 The American Human Rights System

The organization of American States (OAS) is the world's oldest regional organization. It adopted an American Convention of Human Rights as an instrument protecting human rights in the Americas in 1969. It is largely

⁷⁴ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 263.

⁷⁵ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 263.

concerned with political and civil rights and broadly follows the European Convention of Human Rights.⁷⁶

4.3.2 The European Human Rights System

In 1961, the European community adopted the social charter, a regional instrument protecting social and economic rights as an adjunct to the European convention on Human rights. Its article 7 regulates the employment of young people. It limits the minimum working age to 15 years. It also recognizes the employment of children to do light work which does not harm their health, morals and education. However, the charter expressly prohibits the employment of persons who are still subject to compulsory education as this would deprive them of the full benefit of education.⁷⁷

4.3.3 The African Charter on the Rights and Welfare of the child (ACRWC)

The ACWRC was adopted by the former organization of African Unity (OAU), now the African Union (AU) in July 1990. The ACRWC has been described as the first binding regional instrument that identifies the child as a possessor of certain rights.⁷⁸ Article 15 of the charter provides as follows:

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral or social development.

⁷⁶ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 263.

⁷⁷ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton p 264.

⁷⁸ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton P. 264.

2. States parties to the present charter take all appropriate legislative and administrative measures to ensure the full implementation of this article, which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour organisation's instruments relating to children. States parties shall in particular:
- (a) Provide through legislation, minimum wages for admission to every employment.
 - (b) Provide for appropriate regulation of hours and conditions of employment.
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.
 - (d) Promote the dissemination of information on the hazards of child labour to all sectors of the community.⁷⁹

⁷⁹ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton P. 264.

CHAPTER FIVE: CHILD LABOUR IN VHEMBE REGION

Vhembe region is one of the five districts of Limpopo Province of South Africa. It is the Northern most region of the country. Vhembe shares its Northern border with Beitbridge district in Matabeleland, South Zimbabwe. The Vhembe Region is located in Thohoyandou in the Thulamela Local Municipality. The region is 170 kilometres away from the capital city of Limpopo Province, Polokwane. Vhembe region is bordered in the East by the Kruger National Park. The region has one king by the name of Mphephu Ramabulana and two paramount chiefs, Mphaphuli and Tshivhase.

Vhembe region has its seat in Thohoyandou the former capital of the former Venda Bantustan. There are four municipalities that fall under Vhembe region. They are as follows:

- (a) Musina
- (b) Mutale
- (c) Thulamela
- (d) Makhado

Vhembe consists of all territories that were part of the former Venda Bantustan, however, two districts of the former Tsonga homeland Gazankulu, in particular Hlanganani and Malamulele were also incorporated into Vhembe, hence the ethnic diversity of the region.⁸⁰

⁸⁰ www.localgovernment.co.za Assessed on 7 December 2013 at 15H00

I have selected child labour in agricultural sector in Vhembe Region for the following reasons. Child labour is a serious challenge facing Vhembe region. There is a lot of child exploitation in agricultural sector in the Vhembe region. The Department of Labour is unable to address this issue in that there is no proper monitoring of the strategies implemented to eradicate this problem. Lack of drastic action against the perpetrators lead to the increase of child labour. In Vhembe region there are few Labour Inspectors to inspect violation of labour legislation.

In Musina farms I have found that child workers are exposed to hazard in the course of their work e.g. injuries, proximity to dangerous substances, heavy machinery or dangerous animals, heavy physical work, tiring work and work for long hours. In Musina farms I have found that working children suffer from poor working living conditions. Children work for low wages in Musina farms. In Musina, farms are large and children from neighbouring farms travel long journeys on foot in order to access schools. Exhaustion adversely affects these children's ability to adequately participate in activities in the classroom.

In Levubu farms I have found that children who attend school and work are often fatigued or unable to concentrate in the classroom. In Levubu farms I have found that children are exposed to exploitative labour practices.

Overall, poverty is the commonly recognized cause of child labour in agriculture. Children most commonly work in poor rural agricultural regions in which families believe that the employment of their children will increase total family income. While employment of children may supplement family income, it

may also contribute to keeping children in perpetual poverty, as there may be a lack of affordable opportunities for further education and skills training, which limits prospect for upward or outward mobility.⁸¹

Child Labour in Vhembe is thought to result from low adult wages, low family income, or lack of financial assets. Many children work because they or their families cannot survive without the income, goods or services generated by the work of children. The lower income families spend a higher percentage of their income on basic essentials, such as food and shelter, and in many cases, may depend on the earnings to provide these basic needs. In such families the case of children who are not working is a luxury they simply cannot afford.⁸²

It has been argued that the primary cause of child labour is parental poverty.⁸³ Poverty forces parents to send their children to seek employment. Children work because their income is essential for the survival of the family. ⁸⁴ Restricted access to education is seen as a critical cause of child labour. ⁸⁵

Some children have to work to meet the costs of schooling. Some children work in exchange for the opportunity to attend school, they are required to complete

⁸¹ Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005,p 14.

⁸² Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005,p 14.

⁸³ Basu and Van P. The economics of child labour. American Economic Review 88(3) 1998. P. 412-427.

⁸⁴ Padhi P.K. Child Labour, Yesterday, Today and Tomorrow, Vol 29. No. 2. May 2004. P 79.

⁸⁵ Bowmna B and Duncan N. Perspectives in education. Vol. 26(3). September 2008. P. 37.

a minimum amount of work or risk being withdrawn from school. Going to school costs money that the parents normally do not have. Children must not cost them money; they must bring in money.⁸⁶ With respect to education, working children usually drop out of school at different stages of their schooling.⁸⁷

While financial poverty creates barriers to education of working children, children may also work because they lack alternatives. For the effective combating of child labour, we do not only need to withdraw children from work but we also need to ensure that alternatives to work exist and are accessible to these children. There must therefore be national policies aimed at broadening opportunities available for children and their families.⁸⁸

Family size is another factor that influences the working circumstance of children. In households with large number of children, if income is insufficient to meet basic needs there will be pressure to send at least some children to work in order to supplement overall income. In very poor households there is little or no choice about whether or not children work. Children must work to survive⁸⁹

⁸⁶ Luwaga J.S. Child Labour and Scholastic Reterdation: A thematic analysis of the 1999 Survey of Activities of Young Peole in South Africa. Master of Demography. University of Pretoria. 2005. P. 16-17.

⁸⁷ Luwaga J.S. Child Labour and Scholastic Reterdation: A thematic analysis of the 1999 Survey of Activities of Young Peole in South Africa. Master of Demography. University of Pretoria. 2005. P. 17.

⁸⁸ Luwaga J.S. Child Labour and Scholastic Reterdation: A thematic analysis of the 1999 Survey of Activities of Young Peole in South Africa. Master of Demography. University of Pretoria. 2005. P. 17.

⁸⁹ Luwaga J.S. Child Labour and Scholastic Reterdation: A thematic analysis of the 1999 Survey of Activities of Young Peole in South Africa. Master of Demography. University of Pretoria. 2005. P. 17.

Another cause of child labour is that child labour is cheap. Children can be engaged for more hours of work in return for less wages. They possess neither the bargaining power nor do they have the right to form trade unions to fight for their right.⁹⁰ Hence, the employers exploit the child labour by making them work from dawn to dusk. Thus, child labour is very cheap in comparison to that of adults.

Child labour has implications for the individual, the group, and wider society. Child labour has an impact on long run growth and economic development. Child labour can lead to stunted growth of future generation.⁹¹ Child labour can lead to inability to harness human resources. Child labour is curse to society as well as our economy.⁹² The bad effects of child labour for our society forces children to steal things from others in order to satisfy their daily living. Many small girls are even made to indulge in prostitution.⁹³

Child labour shifts the interest of the child from education and can increase the criminal nature of the child. Child labour kills the freedom of the child along with the creativity loss.⁹⁴

The working conditions of child labourers do not cater for, and stimulate the physical development of children.⁹⁵ One of the key consequences of child

⁹⁰Padhi P.K. Child Labour, Yesterday, Today and Tomorrow, Vol 29. No. 2. May 2004. P 79.

⁹¹ Fyfe A. Child Labour, Oxford. Polity Press. 1989. P. 24.

⁹² Fyfe A. Child Labour, Oxford. Polity Press. 1989. P. 25.

⁹³ Fyfe A. Child Labour, Oxford. Polity Press. 1989. P. 25.

⁹⁴ Bowman B and Duncan N. Educational aspirations, child labour imperatives and structural inequality in the South African Agricultural Sector. Perspectives in Education Vol 26(3) September 2008 P. 38.

labour in Vhembe region is that the practice inevitably compromises the affected child's education.⁹⁶ This concern or preoccupation, no doubt, in no small measure is due to the fact that in many indigent communities education is regarded as the only way out of poverty. Having children working is depriving them of their right to education.⁹⁷

Working children come into close contact with severe malnutrition, anaemia, hard labour, fatigue and inadequate sleep makes them more susceptible to infectious diseases.⁹⁸

Labour at young age can have dire consequences on the child's development, both mental and physical. Physically children are not suited to long hours of strenuous work, as their bodies suffer the effects of fatigue.⁹⁹ Child labour can directly contribute to adult unemployment because if a child is employed through the day, he/she remain uneducated and subsequently have low productivity as an adult.¹⁰⁰ Child labour in Vhembe region does not only result in negative physical outcomes and poor future employment prospects, but often also leads to a range of negative psychological outcomes for the

⁹⁵ Bowman B and Duncan N. Educational aspirations, child labour imperatives and structural inequality in the South African Agricultural Sector. *Perspectives in Education* Vol 26(3) September 2008 P. 38.

⁹⁶ Bowman B and Duncan N. Educational aspirations, child labour imperatives and structural inequality in the South African Agricultural Sector. *Perspectives in Education* Vol 26(3) September 2008 P. 39.

⁹⁷ Bowman B and Duncan N. Educational aspirations, child labour imperatives and structural inequality in the South African Agricultural Sector. *Perspectives in Education* Vol 26(3) September 2008 P. 39.

⁹⁸Shan P.M. *Alternative Health Approaches for the Health Care of working children*. Child labour 1985 P. 39.

⁹⁹Dogramaci I. *Child labour*: 1985 P. 9.

¹⁰⁰ Watson A. *The impact of child labour on the Educational Achievement of children*. June 2008 P. 3-24.

affected children.¹⁰¹ The recent study by Streak (2007) confirmed the negative mental health impacts of labour on children.¹⁰² These include higher levels of anxiety and depression in working children as compared with non-working children. The perceived effects of child labour included the inability to integrate into contexts beyond farming communities, a lack of assertiveness and feelings of inferiority.¹⁰³

Child labour has potential ill-effects on the health, education and moral well-being of the child, with implications that persist over the child's life. Many of these effects tend to perpetuate across generations reducing economic and social mobility.¹⁰⁴ Children working in agricultural Sector in Vhembe region are exposed to many hazards that imperil their safety and health.¹⁰⁵ Children in agricultural sector in Vhembe Region often work with unsafe farm machinery and tools that they are not always able to operate safely. For example, some children who cut sugar cane use heavy machines that they cannot wield properly and suffer various injuries as a result. When children perform chores that are simply too strenuous for them, such as carrying heavy or oversized loads of picked coffee, tea, tobacco and other crops, they suffer from problems ranging from back injuries to permanent disabilities.¹⁰⁶

¹⁰¹ Bowman B and Duncan N. Educational aspirations, child labour imperatives and structural inequality in the South African Agricultural Sector. *Perspectives in Education* Vol 26(3) September 2008 P. 40.

¹⁰² Streak J. *Harvesting Childhood, Causes, Nature and Impact of Child Agricultural Labour*. HSRC Review 5(3) 2007 P. 6.

¹⁰³ Streak J. *Harvesting Childhood, Causes, Nature and Impact of Child Agricultural Labour*. HSRC Review 5(3) 2007 P. 6.

¹⁰⁴ Bhalotra S. *Child labour in Africa*. OECD. *Social Employment and Migration Working Papers* No. 4. 28 April 2003 P. 4

¹⁰⁵ <http://www.dol.gov>. Accessed on 3 July 2013 at 14:30.

¹⁰⁶ <http://www.dol.gov>. Accessed on 3 July 2013 at 14:30.

Children working in agricultural sector in Vhembe region are regularly threatened by constant exposure to poisonous or disease carrying insects and reptiles. They are particularly susceptible to endemic and parasitic diseases. Fatigue is an ever present problem.¹⁰⁷

Hygienic conditions in Vhembe region agricultural sector are often substandard. Drinking water is often unsafe, sanitary facilities found in the agricultural sector in Vhembe region, if they exist at all, are often inadequate to treat the illness and injuries suffered by children.¹⁰⁸ A particularly dangerous threat to children working in agricultural sector in Vhembe region, is regular exposure to hazardous substances used in agriculture such as toxic chemical fertilizers and pesticides.¹⁰⁹

Child labour is abusive since it is usually characterized by low wages, long hours of work under dangerous and unhealthy work conditions and a lack of physical and social security, all of which can lead to poor physical and mental development. Child labourers are deprived of their freedom, childhood, education, fun and play, and natural development. Childhood should be a period of learning, recreation, and physical, mental and social development.¹¹⁰

The issue of child labour is relevant not only because young children are made to undertake work obligations that may be beyond their physical capability and also because of its long term effect on human capital formation and on the

¹⁰⁷ <http://www.dol.gov>. Accessed on 3 July 2013 at 14:30.

¹⁰⁸ <http://www.dol.gov>. Accessed on 3 July 2013 at 14:30.

¹⁰⁹ <http://www.dol.gov>. Accessed on 3 July 2013 at 14:30.

¹¹⁰ Assefa A. Explaining the High Incidence of Child Labour 2002 P. 253.

child's future welfare.¹¹¹ Child labour is a dis-investment in human capital formation and has detrimental effect on the private and social returns from investment in education and health.¹¹² Addressing poverty issues in the country will go a long way towards discouraging child labour, and the recent introduction of child grants is a step in the right direction.¹¹³ In addressing issues of child labour, a Government needs to know how this phenomenon affects schooling, including school achievement and progression through the system. In Vhembe region it is not known whether there is a link between child labour and academic progression and if indeed a link exist, what the characteristics are of such a relationship.¹¹⁴

Child labour is a serious challenge facing South Africa, like many other developing countries. Hence the South African government has entrenched a section in its Constitution on Children's rights and also prescribed a minimum working age by means of a section in legislation in its response to combating child labour.¹¹⁵ Although child labour is prohibited in terms of the constitution and the Basic Conditions of employment Act, in practice, child labour still persists in Vhembe region. Insufficient legislative enforcement mechanism is also a reason for the persistence of child labour.¹¹⁶ Therefore, strong enforcement mechanisms are required to enforce the laws which protect children against exploitative labour. For instance it is noted that the prosecution of child labour

¹¹¹ Assefa A. Explaining the High Incidence of Child Labour 2002 P. 253.

¹¹² Assefa A. Explaining the High Incidence of Child Labour 2002 P. 253.

¹¹³ Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005, P. 103.

¹¹⁴ Luwaga J S, Child labour and scholastic retardation, A thematic analysis of the 1999 survey of Activities of Young People in South Africa, Master of Demography, University of Pretoria, 2005, P. 103..

¹¹⁵ Budeli M. Children's Rights and Protection against Child Labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton. P. 267.

¹¹⁶ Budeli M. Children's Rights and Protection against Child Labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton. P. 267.

cases especially in the farming sector is difficult for a number of reasons, the main being the number of sources from which evidence must be obtained in order to obtain a successful conviction.¹¹⁷

The Government is currently providing access to education which is a practical response to prevent child labour. Similarly social grants are made available to destitute families.¹¹⁸ The challenge that the Government is faced with is that parents tend to utilize the child's grant funds for their own benefit and not for the benefit of its beneficiaries which are children and this defeats the whole purpose of the grant. The government should also address poverty as the main problem causing child labour and other social evils in this country.¹¹⁹

South Africa has made great progress in the battle to deal with the worst forms of child labour.¹²⁰ Whilst child labour problem in South Africa is not as pronounced as in other developing nations, the country has committed itself under the mantra that a sustainable attack on child labour should and must focus on the underlying causes for child labour. One of these is education which was identified in the road map as critical to fighting the scourge. We have as a country in effect achieved the Millennium Development goal of universal access to primary education before the year 2015. We, however,

¹¹⁷ Budeli M. Children's Rights and Protection against Child Labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton. P. 267.

¹¹⁸ Budeli M. Children's Rights and Protection against Child Labour in South Africa. Paper prepared for the International Conference in Commercial law, 3 august 2011. Sandton. P. 267.

¹¹⁹ Budeli M. Children's Rights and Protection against Child Labour in South Africa. Paper prepared at 8th International Conference in Commercial law, 3 august 2011. Sandton. P. 267.

¹²⁰ Ramutloa L, South Africa has made significant progress in fighting child labour, Labour Minister tells global Conference, 09 October 2013, online, www.labour.gov.za , accessed on 07 December 2013.

acknowledge some challenges which require us to look at innovative interventions to improve the quality and functionality of education.¹²¹

The major victory was not that the child labour programme of Action embarked on new and ground breaking work, although some of the work can certainly be called ground breaking. The success of CLPA lies in how it focuses the attention of existing programmes of Government on the issues of child labour. It is how these activities are mainstreamed with a specific child labour focus that we hope will contribute to its success.¹²²

Education, especially basic component is one of crucial component in any efficient effort to eliminate child labour.¹²³ Despite all the progress achieved and the international community growing commitment to the elimination of the worst forms of child labour in the last decades, major challenges remain to be overcome in order to reach the 2016 targets.¹²⁴

¹²¹ Ramutloa L, South Africa has made significant progress in fighting child labour, Labour Minister tells global Conference, 09 October 2013, online, www.labour.gov.za , accessed on 07 December 2013.

¹²² Ramutloa L, South Africa has made significant progress in fighting child labour, Labour Minister tells global Conference, 09 October 2013, online, www.labour.gov.za , accessed on 07 December 2013.

¹²³ Ramutloa L, South Africa has made significant progress in fighting child labour, Labour Minister tells global Conference, 09 October 2013, online, www.labour.gov.za , accessed on 07 December 2013.

¹²⁴ Ramutloa L, South Africa has made significant progress in fighting child labour, Labour Minister tells global Conference, 09 October 2013, online, www.labour.gov.za , accessed on 07 December 2013.

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Every child has the right to enjoy his or her childhood in a free atmosphere under the guidance and care of his or her parents. Child labour distorts the natural growth processes and prevents the child from attaining his full-blown adulthood. It compromises child's education and perpetuates poverty. Legal instruments were adopted both at the international and other domestic level to combat child labour, which is rampant in many countries of the world, including South Africa¹²⁵.

Children are the most readily exploited of all labour groups. The low cost of child labour gives employers potential competitive advantage in the labour market. On the other hand, unemployment and poverty are the main causes of child labour in South Africa, as elsewhere in the world. They also constitute serious challenges to the protection against child labour. Eradicating poverty and providing employment would therefore contribute to the elimination of child labour that persists in our society¹²⁶.

The international community has adopted several instruments to protect children rights, including their right to be protected against child labour. At the domestic level, States also passed constitutions that protected children's rights. Therefore, the prospects for better protection against child labour are good in many countries of the world.

¹²⁵ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the international conference in commercial law. 3 August 2011, Sandton P 268

¹²⁶ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the international conference in commercial law. 3 August 2011, Sandton P 268

As far as South Africa is concerned, the 1996 constitution and the 1998 Basic Conditions of Employment Act take children rights seriously and protect children against child labour in the country. However, if child labour is to be eradicated, the relevant international and domestic legislation need to be enforced. Nevertheless, the responsibility to eliminate child labour lives not only with the State, but also with other stakeholders including employers unions and the community at large that should be aware of the rights of the children as the future of the nation and committed to protecting them¹²⁷.

6.2 Recommendations

This mini dissertation recommends as follows in order to combat child labour. Insufficient legislative enforcement mechanism is also a reason for the persistence of child labour in South Africa. Therefore strong enforcement mechanisms are required to enforce the laws which protect children against exploitative labour¹²⁸.

There are few labour inspectors to inspect violation of labour legislation in South Africa. Accordingly, it is recommended that the Department of Labour should hire enough inspectors to monitor the violation of the provisions protecting children against exploitative and forced labour. It is also imperative that government departments such as the Department of Labour, Home Affairs and

¹²⁷ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the international conference commercial law. 3 August 2011, Sandton P 268

¹²⁸ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the international conference commercial law. 3 August 2011, Sandton P 268

Agriculture work together in monitoring the persistence of child labour in South Africa¹²⁹.

The government is currently providing access to education which is a practical response to prevent child labour. The government should also address poverty as the main problem causing child labour in South Africa¹³⁰.

The government should in order to combat child labour promote new legislative measures against worst forms of child labour. In order to address child labour public awareness and social mobilization should be increased against the worst forms of child labour¹³¹. The consequences of child labour are both immediate and long term in nature. In the short-run, adults are denied jobs and paid less while children work under bad conditions and lead to life of ignorance. Therefore it is suggested that the government should not ignore the long run consequences of child labour for short term advantage and should realize the gravity of the problem. The system of child labour thrust the personal growth of the child in particular and development of the nation in general therefore result oriented should be taken by the State¹³².

Official ideology and legislation on child labour need to be reviewed, in order to countenance more realistically the presence of working children in the informal

¹²⁹ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the international conference commercial law. 3 August 2011, Sandton P 268

¹³⁰ Budeli M. Children's Rights and protection against child labour in South Africa. Paper prepared for the international in conference commercial law. 3 August 2011, Sandton P 268

¹³¹ Child labour in commercial agriculture accessed at <http://www.dol.gov>. accessed on the 29 June 2013 at 1500

¹³² Padhi P.K. Child labour, yesterday, today, tomorrow vol. 29. No.2. May 2004. P 96

and formal sectors of the economy. It is useful to adapt international Conventions, strategies and reactions to local demands and realities¹³³.

The problem of child labour can only be addressed in an integrated approach encompassing legal, economic and social measures¹³⁴. Some of the measures for eliminating child labour should include advocacy, raising public awareness, community mobilization and empowerment, devising strategies for balanced and sustainable economic growth, improving condition in the adult labour market, and finding out more about child labour. Poverty alleviation should occupy an important place in the policy package. Education is probably the most important and powerful tool to combat the problem of child labour¹³⁵.

¹³³Muzvidziwa V.N.. Child labour or child work? Wither policy Research Review.NS 22.1 (2006).p 23-24

¹³⁴Assefa Admassie. Explaining the high incidence of child labour. p 271

¹³⁵ Assefa Admassie. Explaining the high incidence of child labour.P 271

BIBLIOGRAPHY

BOOKS

Davis, L. Youth Employment versus exploitative child labour, first edition, 1998.

Fyfe A. Child Labour. Oxford, Polity Press. First edition 1989.

Watson A. The impact of child labour on the educational achievement of children, first edition. June 2008.

ARTICLES PUBLISHED IN JOURNALS

Assefa A, Explaining the High Incidence of Child Labour. 2002. p 253 - 271.

Bhalotra S. Child labour in Africa. (OECD, social Employment and migration working paper no.428 April 2003 p 4.

Basu K. and Van P. The Economics of Child Labour, American Economic Review 88(3) 1998. p 412 - 427.

Bowman B and Duncan N. Perspective in Education 26(3) September 2008. p 37-40.

Curtin, Hossain and Verghese-Choudhury, Children living and working in the city. In J. Bealled. A City for all Valuing Difference and Diversity. 1997. p 72.

Dogramaci I. Child Labour, 1985. p 9.

Giri V.V. Labour problems in Indian Industry 1958. p 360.

Lansky M. Perspectives: Child Labour: How the challenge is being met. International Labour Review. Vol 136 No 2 1997 p 233

Nkurlu J.I. Child labour. Background paper. Africa Newsletter 2/2000.

Muzvidziwa V.N. Child Labour or child work Whither policy. Research Review, NS.22.1 (2006). p 23-33.

Streak J. Harvesting childhood, causes, nature and impact of child agricultural labour HSRC Review 5(3) 2007 p 6.

Padhi P.K. Child Labour, Yesterday, Today and Tomorrow Volume 29 No. 2 May 2004. P. 78-83.

Shan P.M. Alternative Health Approaches for the health care of working children. Child Labour. Geneva 1985. p 9.

CONFERENCE PAPERS

Budeli M. Children's Rights and Protection against child labour in South Africa, paper prepared for the International Conference in Commercial law. Sandton, Gauteng 3 August 2011. p 259-268.

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

United Nations Children's Fund (UNICEF) child Protection Information Sheet (2006)1, available at http://www.unicef.org/protection/files/child_labour.pdf (accessed 20 August 2011).

DISSERTATIONS

Gallinetti J.S. An assessment of the significance of the International Labour Organisation's convention 182 in South Africa with specific reference to the

international use of children in the commission of offences as a worst form of child labour. A thesis submitted in fulfillment of the requirements for the degree of Doctor of Law in the faculty of Law of Western Cape University, 2007. South Africa.

Luwaga JS Child labour and scholastic retardation. A thematic analysis of the 1999 survey of activities of young people in South Africa. Master of Demography, University of Pretoria. 2005.

Lubaale EC, A human rights-based approach to child labour in Africa: challenges and prospects in South Africa, LLM dissertation, University of Pretoria, 2011.

INTERNET WEBSITES

<http://www.dol.gov>. Accessed on 29 June 2013 at 15h00

<http://www.child-labour-org.za>. Accessed on 29 June 2013 at 15h00

<http://www.labour.gov.za>. Accessed on 07 December 2013 at 15h00

www.occuphealth.filc/info/anl/background

www.localgovernment.co.za, accessed on 7 December 2013 at 15h00