

The impact of poverty alleviation on the eradication of child labour in South Africa

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Dissertation submitted in fulfilment of the requirements for the
degree *Master of Law* in Comparative Child Law at the
Potchefstroom Campus of the North-West University

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November 2016

ACKNOWLEDGEMENTS

Firstly, I would like to thank God for his unconditional love and faithfulness.

I would like to express my deep appreciation and gratitude to my supervisor, Ms Chantelle Feldhaus. She always took time off her demanding schedule to discuss my progress, give advice and mark my uncountable drafts. The completion of this study would not have been possible without her assistance. I therefore thank her for supervising me with professionalism, perceptiveness, efficacy and humanity. I pray that God blesses her abundantly and grants her favours that she so richly deserves.

I would also like to acknowledge the scholarships I received from the Faculty of Law, North-west University, which enabled me to finance my master's studies.

Special thanks to Molemo Juju Monethi for finding and sourcing some of the materials I needed, his moral support and for walking with me on this incredible journey. The sacrifices he made have opened the doors to a world of opportunities and prospects for me.

I would also like to thank Lehlohonolo Ramokanate for his open assistance with editing this mini-dissertation.

Finally I would like to extend my thanks to my parents for loving me unconditionally. My mother's prayers and my father's adamant demands for academic excellence and discipline have paid off. To my beloved friends, thank you so much for your prayers, support, for your big hearts and for always holding my hand through difficult times.

ABSTRACT

The mini-dissertation will analyse how South Africa complies with international, regional and constitutional obligations to eradicate child labour through poverty alleviation. Poverty is still a problem in South Africa 20 years after the transition to democracy. Before poverty can be alleviated, different concepts of poverty and views on poverty, as well as the nature and distribution of poverty in South Africa, must be reviewed. Lack of access to basic services such as housing/shelter, electricity, water and sanitation aggravate poverty. Socio-economic factors such as unemployment, education levels and health care levels also affect poverty.

International and regional instruments prohibit child labour. These instruments include the United Nations Convention on the Rights of the Child, the International Labour Organisation's Minimum Age Convention, the Convention on the Worst Forms of Child Labour and the African Charter on the Rights and Welfare of the Child. These instruments urge member states to take all possible measures to ensure implementation of international instruments in national laws. South Africa, as a party to all of the instruments, has an obligation to implement these instruments to eradicate child labour.

In post-apartheid South Africa, poverty alleviation strategies have been geared towards the elimination of poverty, creation of employment and economic growth. Economic growth and employment opportunities help the poor to overcome poverty. The study examines government spending on social services on the poverty levels in South Africa. Various poverty alleviation strategies have been implemented. The South African government has allocated considerable amounts of resources to education, housing, welfare and health services, but this on its own is inadequate in combating poverty in South Africa.

Key Words: Poverty, Child Labour and Poverty Alleviation

OPSOMMING

Die doel van hierdie mini-skripsie is om te kyk of Suid-Afrika voldoen aan die internasionale, regionale en grondwetlike verpligtinge om kinderarbeid DEUR die verligting van armoede te elimineer. Armoede is steeds 'n probleem in Suid-Afrika, ten spyte van die afgelope 20 jaar se demokrasie. Nietemin, voordat armoede verlig kan word, moet die aard, konsepte, sienings en verspreiding van armoede bestudeer hersien word. 'n Gebrek aan toegang tot basiese dienste soos behuising, elektrisiteit, water en sanitasie vererger armoede net verder. Verder is daar ook sosio-ekonomiese faktore wat armoede affekteer. Dit sluit in werkloosheid, gebrekkige mediese dienste en verskille ten opsigte van basiese onderrig en opvoeding.

Internasionale en plaaslike regulasies verbied kinderarbeid. Hierdie regulasies sluit die Verenigde Nasies se Konvensie oor die Regte van die Kind, die Internasionale Arbeidsorganisasie se Minimum ouderdomkonvensie en die Afrika handvesoor die Regte en Welvaart vandie Kind in. Die onus rus op die state wat die onderskeie regulasies onderteken het, om alle moontlike stappe te doen om internasionale regulasies te in nasionale wetgewing te inkorporeer. Suid-Afrika het al bogenoemde konvensies onderteken en word dus verantwoordelik gehou vir die implementering van die konvensies, met die doel om kinderarbeid uit die weg te ruim.

Daar bestaan egter sekere maatreëls in post-apartheid Suid-Afrika, met die uiteindelijke doel om armoede uit die weg te maak deur werksgeleenthede te skep en ekonomiese groei te bewerkstellig. Dié mini-skripsie ondersoek hoe staatsbesteding maatskaplike dienste se effek op armoedesyfers in Suid-Afrika raak. Verskeie strategieë word tans geïmplementeer om armoede te beveg. Die Suid-Afrikaanse regering het reeds 'n groot hoeveelheid geld spandeer op onderwys, behuising, welsynsdienste en mediese dienste, maar dit is onvoldoende om die omvang van Suid-Afrikaanse armoede te bekamp.

Trefwoorde: Armoede, Kinderarbeid en Armoedeverligting

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LIST OF ABBREVIATIONS

AHRLJ	African Human Rights Law Journal
ACRWC	African Charter on the Rights and Welfare of the Child
BCEA	Basic Conditions of Employment Act
CLAP	Child Labour Action Programme
CRC	Convention on the Rights and Welfare of the Child
CSG	Child Support Grant
EPWP	Expanded Public Works Programme
FCG	Foster Care Grant
GEAR	Growth, Employment and Redistribution Strategy
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
Hum Rts Q	Human Rights Quarterly
ILO	International Labour Organisation
Int'l Lab Rev	International Labour Review
SADC	Southern African Development Community
SADC Code	SADC Code of Conduct on Child Labour
SEP	Special Employment Programmes
TB	Tuberculosis
OHSA	Occupational Health and Safety Act
PELJ	Potchefstroom Electronic Law Journal
RDP	Reconstruction and Development Programme
UN	United Nations
UNICEF	United Nations Children's Fund

Chapter 1: Introduction

1.1 Introduction and problem statement

In 2014, the International Labour Organisation (hereafter the ILO) estimated that around 250 million children aged between 2 and 14 years were involved in child labour.¹ Child labour has been in existence for centuries, and attempts have been made throughout the years to reduce and eradicate it. It is common cause, however, that child labour is still used frequently in many parts of Africa,² including the Southern African Development Community (hereinafter SADC) region. Internationally and regionally, child labour has been condemned by several organisations, including the ILO, the United Nations (UN), the African Union (AU) and SADC.³

From as early as 1919, the ILO has adopted a number of conventions aimed at protecting children and women from exploitation by their employers.⁴ As far as ILO is concerned, this study will concentrate on the *ILO Minimum Age Convention* 138 of 1973 and the *ILO Convention on the Elimination of the Worst Forms of Child Labour* 182 of 1999. The aim of these conventions is to protect children from exploitation in the working environment, and also to set the minimum age at which children are allowed to work at 15 years.⁵ Children under the age of 15 years are not permitted to work.⁶ As a member state that has ratified these conventions, South Africa has assumed an obligation to implement the provisions in these conventions in its national laws by passing child labour laws.⁷ The implementation of the provisions of the conventions is, however, challenging for South Africa because of the prevalence of poverty, which

¹ ILO 2014 Marking progress against child labour <http://www.ilo.org/global/topics/child-labour/lang-en/index.htm> (accessed 20 September 2016).

² Humphrise " *The World Bank Economic Review*" 175.

³ Humphrise " *The World Bank Economic Review*" 175.

⁴ Rishikesh *A Legal Analysis of ILO Action* 83.

⁵ *ILO Convention 138 on the Minimum Age for Admission to Employment and Work* and *ILO Convention 182 on the Worst Forms of Child Labour*.

⁶ Article 2 of *ILO Minimum Age Convention* (1973).

⁷ *The Constitution of the Republic of South Africa*, 1996 and the *Basic Conditions of Employment Act* 75 of 1997.

often drives families to send their children into labour in order to increase household income.⁸ There is therefore a close causal link between poverty and child labour.⁹

In the 14 countries constituting the SADC region, child labour is admittedly a problem.¹⁰ Child labour is influenced by many economic and social factors and the one cited most often is poverty.¹¹ The *SADC Code of Conduct on Child Labour*¹² (hereinafter the *SADC Code of Conduct*) in the preamble states that labour laws and regulations are important to fight child labour. Section 4.2 of the *SADC Code of Conduct* notes, however, that there is still a great measure of non-compliance among member states regarding the application of national labour legislation and limited capacity to enforce it.¹³ In South Africa there are laws in place prohibiting child labour from a particular age and protecting children from performing work that is detrimental to their well-being and in conflict with their education.¹⁴ The question whether these laws are effective to combat the practice of child labour remains unanswered.

The *SADC Code of Conduct* encourages all member states to ratify the ILO conventions mentioned above, and other instruments relevant to child labour.¹⁵ Member states have also been encouraged to implement these conventions in their national laws.¹⁶ The *SADC Code of Conduct* acknowledges that poverty is a major force that compels children into the workplace.¹⁷ The *SADC Code of Conduct* indicates that poor families use child labour to safeguard themselves against risks such as poverty, malnutrition and other diseases that may be life-threatening.¹⁸ Poverty makes it difficult for families to invest in education, hence the need for governments to develop poverty alleviation strategies aimed at alleviating poverty so as to allow for education.¹⁹

⁸ Huebler *Child Labour and School Attendance* 17.

⁹ Mokoena *A Critical Analysis of Community-driven Development Projects Aimed at Poverty Alleviation in Evaton West* 49.

¹⁰ Murray and Jansen van Rensburg *PELJ* 136.

¹¹ Eldring, Nakanyane and Tshoedi *Child Labour in Tobacco Growing Sector in Africa* 55.

¹² *SADC Code of Conduct on Child Labour* (2000).

¹³ *SADC Code of Conduct on Child Labour* (2000).

¹⁴ *The Constitution of the Republic of South Africa*, 1996.

¹⁵ *SADC Code of Conduct on Child Labour* para 2.

¹⁶ *SADC Code of Conduct on Child Labour* para 2.

¹⁷ *SADC Code of Conduct on Child Labour* para 4.6

¹⁸ *SADC Code of Conduct on Child Labour* para 4.6.

¹⁹ *SADC Code of Conduct on Child Labour* para 4.6.

Even though South Africa has ratified all the aforementioned international treaties, studies show that child labour still prevails.²⁰ Impoverished children in South Africa are willing to engage in harmful, detrimental and even the worst forms of child labour in order to lessen the hardships their families face.²¹ Their families on the other hand condone child labour because working children help to alleviate the hardships they face.²² Children in South Africa are involved in employment mainly in the agricultural sector, which includes forestry, harvesting or reaping sugar cane, mango, lychee, grapes and other fruit.²³ Reports show that these children may be exposed to extreme heat, lengthy working hours, the use of dangerous tools and pesticides harmful to their well-being.²⁴ Children in South Africa also work in domestic occupations, where they similarly work for lengthy hours, perform work for little payment, and are often deprived of decent shelter.²⁵ Another recognisable category of child labour in South Africa is children who work in the landfills and dumpsites gathering recyclable material, where they carry heavy loads and regularly work in dangerous circumstances without protective gear.²⁶

Child labour in South Africa is dominant in the rural areas, especially in the agriculture sector.²⁷ This means that children end up leaving school and putting all their efforts into the labour force to boost their family's income.²⁸ Poor families overlook this because they do not deem education important, as they believe it will not help in meeting their everyday basic needs.²⁹ These families see educating children as a burden, as they have to pay fees and purchase related items.³⁰ Although primary education is free in South Africa, it is common cause that poor families still have to pay for other necessities such

²⁰ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 68.

²¹ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 54.

²² Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 54.

²³ Weiner *International Journal of Children's Rights* 121.

²⁴ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 55.

²⁵ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 67.

²⁶ United States Department of Labour Bureau of International Relations <http://www.dol.gov/ilab/reports/chil-labour/southafrica.htm> (accessed 14 October 2016).

²⁷ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 4.

²⁸ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 4.

²⁹ Weiner *International Journal of Children's Rights* 121.

³⁰ Weiner *International Journal of Children's Rights* 121.

as transport, books, school uniforms and stationery.³¹ Child labour is further worsened by lack of employment opportunities targeting the youth.³² The Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) pandemic may furthermore result in the death of breadwinners who provide for children.³³ This often results in children looking for jobs because of debt or a financial crisis leading to poverty.³⁴

The *Constitution of the Republic of South Africa* 1996, (hereafter the *Constitution*) provides that every child has the right to be protected from exploitative work and prohibited from performing work inappropriate for that child's age or well-being, physically, mentally, spiritually and morally, or his social development.³⁵ Apart from the *Constitution* the parliament of South Africa has also passed laws relevant to child labour, notably the *Basic Conditions of Employment Act* 75 of 1997 (hereafter *BCEA*).³⁶ The *BCEA* provides that 15 years is the age limit under which a child is not permitted to work and also makes provision for sanctions where labour laws have been breached.³⁷

South Africa has furthermore formulated policies, programmes and strategies aimed at combating child labour and addressing poverty.³⁸ These include, inter alia, public works programmes, provision of infrastructure, access to basic services and social grants that benefit children.³⁹ Admittedly, progress has been made in the fight against poverty through the enforcement of the socio-economic rights of children.⁴⁰

³¹ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 154.

³² Weiner *International Journal of Children's Rights* 121.

³³ Roberts *International Food Policy Research Institute* 18.

³⁴ Roberts *International Food Policy Research Institute* 28.

³⁵ Section 28 of the *Constitution of the Republic of South Africa*, 1996.

³⁶ *Basic Conditions of Employment Act* 75 of 1997.

³⁷ Section 43 and 43(3) of the *Basic Conditions of Employment Act* 75 of 1997.

³⁸ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 59.

³⁹ Murray and Jansen van Rensburg *The Utilisation of the Right of Children to Shelter to Alleviate Poverty in South Africa* 2.

⁴⁰ Murray and Jansen van Rensburg *The Utilisation of the Right of Children to Shelter to Alleviate Poverty in South Africa* 1.

1.2 Chapter outline

This study will critically analyse how these poverty strategies assist the government to eradicate child labour in South Africa in order to comply with international, regional and constitutional obligations. In achieving this objective, this study will consider how the problem of child labour has been addressed from the perspective of international and regional legal frameworks which oblige states to take administrative and social measures to combat child labour. The extent to which South Africa has been able to integrate these legal frameworks into its national laws will also be considered. This study will furthermore consider whether South Africa complies with international and regional obligations to eradicate child labour and poverty. In line with the aim of this study, it will be illustrated how the effective implementation of laws, policies and strategies in South Africa have been affected by poverty.

The dissertation has five chapters. The first chapter introduces the dissertation and provides the problem statement. The second chapter will deal with poverty, the approaches to poverty, specific factors that cause poverty, categories of poor people and child poverty. The third chapter will critically analyse the relevant international and regional instruments relevant to the issue of child labour to determine whether they offer sufficient protection to combat poverty and child labour and whether South Africa complies with the standards. The fourth will discuss adopted poverty alleviation strategies in South Africa and how they relate to child labour. Among the efforts made by the government are the introduction of the Reconstruction and Development Programme (RDP), Growth, Employment and Redistribution Strategy (GEAR) and the provision of social grants. The last chapter will conclude the study.

Chapter 2: Poverty as a cause of child labour

2.1 Introduction

Poverty has been defined as the lack of the basic goods and resources that a person needs to survive.⁴¹ Poverty has also been defined as the inability of an individual to function as an active member of society, which inability deprives that individual of his/her dignity.⁴² The definition of poverty is primarily based on the ability of an individual to earn an income from either public or private sources; it is consequently frequently said of those who are unable to meet their basic needs because of lack of income that they are poor.⁴³ It must be noted that there are various approaches to the definition of the concept of "poverty", some of which will be discussed below.⁴⁴

2.2 Main approaches to poverty

There are two predominant approaches in the definition of the concept of poverty, namely the "absolute approach" and the "relative approach".

2.2.1 The absolute approach

Under the absolute approach, poverty is defined as failure or inability to fulfil needs, which inability often weakens an individual's or family's capabilities to function adequately in society.⁴⁵ Inability to meet one's basic needs is usually associated with unemployment or lack of sources of income.⁴⁶ Under the absolute approach, the poverty line is generally regarded as a reliable indicator of whether or not a person is poor.⁴⁷ Common characteristics of people who live below the poverty line are shortage/lack of food, sanitation, shelter and health facilities.⁴⁸ Absolute poverty affects children in that

⁴¹ Mokoena *A critical analysis of community-driven development projects aimed at poverty alleviation in Evaton West* 14.

⁴² Baulmol and Blinder *Economics: Principles and Policy* 448.

⁴³ Baulmol and Blinder *Economics: Principles and Policy* 448.

⁴⁴ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 61.

⁴⁵ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 61.

⁴⁶ Baulmol and Blinder *Economics: Principles and Policy* 448.

⁴⁷ Dixon and Macarov *A Persistent Global Reality* 1.

⁴⁸ Baulmol and Blinder *Economics: Principles and Policy* 448.

they live below the poverty line and their daily basic needs are not met.⁴⁹ The poverty line means having the minimum basic needs to endure life and being below the poverty line means that one does not have enough to meet one's daily basic needs.⁵⁰

This approach does not focus on only basic or fundamental needs such as health, shelter, food, water but the absolute approach also considers matters of luxury such as entertainment, vacations and cars, as far as these are relevant to an individual's life.⁵¹ The absolute approach does not change according to prevailing living standards of society or according to the needs of diverse groups in society. This means that poverty is defined not according to the living standards of society in general, but on the basis of poverty that exists independently.⁵² People who live below the poverty line are regarded as poor.⁵³ Income is of importance in this approach because it is needed in the provision of the basic needs of life, and lack of it is regarded as the main cause of poverty.⁵⁴

From the foregoing, one will be regarded as living in absolute poverty if one does not have access to resources for survival.⁵⁵ Absolute poverty evaluates the cost of goods considered to be basic and deprivation of such needs under this approach refers to poverty.⁵⁶ The absolute poverty approach is however, an unreliable indicator, since levels of subsistence change over time.⁵⁷ Flaws can therefore be caused by the absolute approach.⁵⁸ One of those flaws is that the absolute approach does not take into account socio-cultural needs, because a luxury item in one society is a need in another, depending on the subsistence level of each society.⁵⁹ Acceptability (having adequate

⁴⁹ Engle and Black *Ann NY Acad Sci* 243.

⁵⁰ Alcock *Understanding Poverty* 69.

⁵¹ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 62.

⁵² Holman *Poverty: Explanation of Social Deprivation* 2.

⁵³ Holman *Poverty: Explanation of Social Deprivation* 2.

⁵⁴ Holman *Poverty: Explanation of Social Deprivation* 2.

⁵⁵ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 62.

⁵⁶ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 62.

⁵⁷ Holman *Poverty: Explanation of Social Deprivation* 2.

⁵⁸ Alcock *Understanding Poverty* 69.

⁵⁹ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 63.

resources to satisfy a need) within a culture or community also plays an essential role in the definition of poverty.⁶⁰

2.2.2 The relative approach

Unlike the absolute approach, the relative approach to poverty compares an individual's standard of living to that of the society in which he/she lives.⁶¹ In this approach, if the resources of a person fall below those of the rest of the society, then that person is poor, meaning that the person cannot attain the average standard of living.⁶² As Ramphoma explains:

Relative poverty is defined in three perspectives. Firstly relative approach is defined in relation to living standards of a reference group. Secondly, it is defined in terms of resources required to participate fully in society and thirdly, in a narrower way, by reference to the national income and/or expenditure distribution.⁶³

A defining feature of the relative approach is that individuals and groups are compared according to the resources they have; the poor's resources are far below the resources that the society has attained. This situation reflects inequality in wealth among the society members and leads to unbalanced social classes.⁶⁴ As Jensen explains, "... it is relative to the average standard of living in that person's life ... if a family's income isn't enough to meet the average standard of living, they are considered to be in relative poverty."⁶⁵

2.3 Specific factors that cause poverty in South Africa

Among others, the causes of poverty in South Africa include fluctuations of the economy, unemployment, lack of education, a culture of poverty, epidemic diseases and environmental problems, inability of poor households and sometimes inherited poverty.⁶⁶

⁶⁰ Saunders *Towards a Better Poverty Measure* 39.

⁶¹ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 63.

⁶² Alcock *Understanding Poverty* 69.

⁶³ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 63.

⁶⁴ Townsend *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living* 31.

⁶⁵ Jensen *Teaching with Poverty in Mind* 22.

⁶⁶ Crush and Frayne *The Invisible Crisis: Urban Food Security in Southern Africa* 29.

2.3.1 Unemployment, education, training and skills

Unemployment in South Africa has been linked to poverty and child labour.⁶⁷ In families where parents are unemployed, the possibility is high that their under-aged children will enter the labour force. Compared to parents who have stable jobs, unemployed parents are often likely to permit their children to work. This is understandable, seeing that these children will contribute to the net income of the family.

Unemployment levels are relatively high among uneducated people.⁶⁸ Recent statistics indicate that people with low levels of education are often poor.⁶⁹ The proportion of poor people who matriculated is 15 percent, whereas among those with tertiary education it is less than 5 percent.⁷⁰ Uneducated people are therefore unable to meet the level of education, skills and experience required by employers. It is apparent from the foregoing that educated people are in a better position to apply the knowledge they have to get jobs and eradicate poverty. Moreover, compared to uneducated people, educated people can enhance their livelihoods by accessing information that can point out possible avenues out of poverty.⁷¹ Inadequate education causes a vicious cycle of poverty, because poor families cannot afford to send their children to good schools to acquire quality education, meaning that these children and the generations after them are likely to struggle to find employment.

2.3.2 Low levels of health care

Individuals who lack proper health care are more vulnerable to poverty, in comparison to those who can afford it.⁷² This means that if the household economic prospects are diminished, children will receive inadequate nutrition, which weakens their ability to develop to their full capabilities.⁷³

⁶⁷ Shinns and Lyne *Possible Causes of Poverty within a Group of Land Reform Beneficiaries* 3.

⁶⁸ Shinns and Lyne *Possible Causes of Poverty within a Group of Land Reform Beneficiaries* 3.

⁶⁹ WHO *Poverty and Health* 62. See also Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 65.

⁷⁰ WHO *Poverty and Health* 62. See also Shinns and Lyne *Possible Causes of Poverty within a Group of Land Reform Beneficiaries* 3.

⁷¹ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 67.

⁷² Shinns and Lyne *Possible Causes of Poverty within a Group of Land Reform Beneficiaries* 2.

⁷³ WHO *Poverty and Health* 59.

2.3.3 Infrastructure

In South Africa, in both urban and rural areas, around 7 million people are estimated to be squatters or illegal settlers.⁷⁴ It does not matter much whether an individual lives in a formal or informal dwelling; other considerations examined are the construction of the house, the number of people occupying it and whether sanitation is hygienic and water is safe for consumption.⁷⁵ Poor people survive on contaminated water that is unsafe to drink and conditions relating to public health are unpleasant.⁷⁶

The location, referring here specifically to rural areas and informal settlements, plays an important role as a cause of poverty.⁷⁷ In rural areas and informal settlements, there are inadequate services and poor infrastructure. Even if some manage to get jobs, people in rural areas often earn too little to sustain their livelihood. There is notably also lack of access to health services in these areas.⁷⁸

2.4 Categories of poor people in South Africa

The foregoing paragraphs have discussed the various causes of poverty in South Africa. The various categories of people who are affected most by poverty will subsequently be discussed.

2.4.1 The Rural Poor/urban poor

Poverty is especially widespread in rural areas, particularly among Africans and coloureds.⁷⁹ National data on poverty and unemployment indicates that rural blacks have a high chance of being poor.⁸⁰ Lack of access to employment is one of the greatest causes of rural poverty.⁸¹ Many of them cannot afford decent houses in urban

⁷⁴ May et al *The Composition and Persistence of Poverty in Rural South Africa* 20. A squatter is a settler with no legal title to a building or land occupied, that is, one on land or building not allocated by government.

⁷⁵ May et al *The Composition and Persistence of Poverty in Rural South Africa* 21.

⁷⁶ Shinns and Lyne *Possible Causes of Poverty within a Group of Land Reform Beneficiaries* 2.

⁷⁷ White and Killick *African Poverty at the Millennium, Causes, Complexities and Challenges* 66.

⁷⁸ White and Killick *African Poverty at the Millennium, Causes, Complexities and Challenges* 10.

⁷⁹ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 60.

⁸⁰ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 61.

⁸¹ Brooks et al *Improving Opportunities for the Rural Poor in South Africa through Land Reform and Effective Service Delivery* 12.

areas where the chances of employment are high, and the cost of travelling to their homes in the rural areas and back is sometimes a major problem.⁸²

2.4.2 Households headed by females

The general household survey indicates that 50 percent of African households are female-headed.⁸³ Mostly, poor families are headed by girls aged 18 years and above, and in other instances by grandmothers.⁸⁴ These households, that is, families headed by females, are at risk of poverty because being occupied mainly with household chores and raising children, these women find it difficult to maintain stable employment.⁸⁵ For these families, the only reliable source of income is a grant for either the children or grandparents, which is admittedly not enough for the entire household.⁸⁶

A large number of children from these families will enter the labour force.⁸⁷ This shows that the size of a family has an effect on child labour. In order to manage large households, parents oblige their children to work because they are unable to satisfy the demands of a large family.⁸⁸

2.4.3 People with disabilities

Disability hampers the chances of an individual to find a stable and well-paying job, because most employers are unwilling to spend their capital to accommodate disabled employees.⁸⁹ Disability also hinders people from having their own businesses in the informal sector.⁹⁰ For these reasons, it is immediately clear that families in which parents or breadwinners are disabled will struggle to obtain an income. Therefore

⁸² Brooks et al *Improving Opportunities for the Rural Poor in South Africa through Land Reform and Effective Service Delivery* (unpublished report).

⁸³ *General House Survey 2013*. Brooks et al *Improving Opportunities for the Rural Poor in South Africa through Land Reform and Effective Service Delivery*(unpublished report).

⁸⁴ Roberts *Chronic and Transition Poverty in Post-Apartheid South Africa: Evidence KwaZulu-Natal* 6.

⁸⁵ Aliber M *Chronic Poverty in South Africa: Incidence, Causes and Policies* 479.

⁸⁶ Aliber M *Chronic Poverty in South Africa: Incidence, Causes and Policies* 480.

⁸⁷ Shackelton et al *Re-valuing the Communal Lands of Southern Africa: New Understandings of Rural Livelihoods*3.

⁸⁸ Aliber M *Chronic Poverty in South Africa: Incidence, Causes and Policies* 480.

⁸⁹ Aliber M *Chronic Poverty in South Africa: Incidence, Causes and Policies* 481.

⁹⁰ Shackelton et al *Re-valuing the Communal Lands of Southern Africa: New Understandings of Rural Livelihoods* 4.

children in these families will be forced to work in order to provide for themselves and their entire family.

2.4.4 The elderly, AIDS orphans and households with AIDS sufferers

Elderly people take care of dependants and normally do not get help from others.⁹¹ The elderly cannot find jobs at all as a means to improve their lives or as a way to get out of poverty.⁹² HIV/AIDS sufferers and orphans⁹² have already been discussed above in respect of low levels of health care. AIDS orphans enter the work force in order to support themselves and their siblings.

2.5 Children and poverty in South Africa

Poverty affects children due to the fact that they are the dependants of others.⁹³ In families or households where parents or breadwinners do not have the means to provide for their dependants, children are likely to experience the effects of poverty, such as child labour.⁹⁴ This is so because in order to lessen hardships and assist parents with the means for survival, children in these families are forced by circumstances to engage in harmful and detrimental forms of child labour.⁹⁵

It has been found that poverty affects the child's mind and has a long-lasting psychological influence on it.⁹⁶ It affects the long-term development of the child, but influences children in different ways, including malnutrition, which affects the child's education and health.⁹⁷ UNICEF mentions that child labour prevents the child from enjoying his/her rights, and that children work because they lack food, decent water and sanitation facilities, health services and education.⁹⁸ Poverty and HIV/AIDS are related. Adults, parents and breadwinners infected with HIV/AIDS are likely to die from HIV/AIDS-related illnesses. This implies that there is a high chance of the children who were dependent on those people to hunt for jobs in order to meet their basic needs, as

⁹¹ Aliber M *Chronic Poverty in South Africa: Incidence, Causes and Policies* 481.

⁹² Aliber M *Chronic Poverty in South Africa: Incidence, Causes and Policies* 482.

⁹³ Saunders *Towards a Better Poverty Measure* 39.

⁹⁴ Owolabi *Child Abuse and Sustainable Development in Nigeria* 108.

⁹⁵ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 54.

⁹⁶ Ekepenyong and Sibirri *Street Trading and Child Labour in Yenegoa* 39.

⁹⁷ Orits et al *Child Poverty and Inequality* 15.

⁹⁸ UNICEF *Ending Poverty Begins with Children*; Oritz et al *Child Poverty and Inequality* 15.

they grow up without parents.⁹⁹ Most children who lose their parents through HIV/AIDS and related illnesses become breadwinners in order to support their siblings.¹⁰⁰

Income is vital for South African households, and as illustrated above, lack of income will lead to poverty.¹⁰¹ Decisions on child labour and schooling are generally made by parents, but if the parents do not have enough income and the family lives below the poverty line, the parents see children as contributors to the family income who will help with obtaining basic goods.¹⁰² This means that child labour is often seen as an alternative source of income for the family.¹⁰³ Poverty, lack of income and underdevelopment are therefore the main drivers of child labour.¹⁰⁴

It has been established that children are forced to leave school and look for employment in order to provide for their basic needs and boost the family income.¹⁰⁵ This is despite the government's provision of compulsory education for learners between the ages of seven and 15 years or learners reaching the ninth grade.¹⁰⁶ Because education is not entirely free, the rate at which children might leave school will increase, as parents cannot afford to pay for school fees and educational materials.¹⁰⁷ Primary education is not entirely free¹⁰⁸, as parents still need to buy the materials that the children need to study, such as school uniforms, school shoes and others. In addition, school field trips and sometimes transport need to be paid for. Most poor children have been so used to living with poverty that they find it difficult to get

⁹⁹ Roberts *Chronic and Transition Poverty in Post-Apartheid South Africa: Evidence KwaZulu-Natal* 19.
¹⁰⁰ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour in South Africa, Brazil and India* 34.
¹⁰¹ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 54.
¹⁰² Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 53.
¹⁰³ Shackelton et al *Re-valuing the Communal Lands of Southern Africa: New Understandings of Rural Livelihoods* 2.
¹⁰⁴ Shinns and Lyne *Possible Causes of Poverty within a Group of Land Reform Beneficiaries* 4.
¹⁰⁵ Nakanyane *Employment and Public Works* 35.
¹⁰⁶ Shackelton et al *Re-valuing the Communal Lands of Southern Africa: New Understandings of Rural Livelihoods* 2.
¹⁰⁷ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour in South Africa, Brazil and India* 35.
¹⁰⁸ Shinns and Lyne *Possible Causes of Poverty within a Group of Land Reform Beneficiaries* 4.

out of it; even worse, they grow up as poor adults and earn less than the average income.¹⁰⁹

2.6 Conclusion

Basic needs or necessities differ from one society to another,¹¹⁰ that is, what may be regarded as a need by one person may be regarded as a matter of luxury by another.¹¹¹ Wants, basic and personal needs vary from individual to individual.¹¹² In South Africa, many households in rural areas do not have resources to develop and progress as agriculturalists, which is a means they use to fight poverty.¹¹³

Usually these poor families are child-headed or female-headed, or the elderly look after orphans or families are headed by people with disabilities, who most of the time have absolutely no chance of getting a job.¹¹⁴ These poor people are generally Africans and coloureds, especially in rural areas.¹¹⁵

The poor are exposed to several socio-economic conditions such as unemployment, lack of education or access to basic services and poor living conditions, which affect their everyday lives in a negative way.¹¹⁶ To overcome all these problems and to increase the family income in order to escape poverty traps, poor families send children into the labour market.¹¹⁷ For poverty alleviation to be successful, the causes and determinants of poverty should be taken cognisance of so as to target such causes specifically. The next chapter will discuss the international, regional and national instruments that regulate child labour which in this case is mostly caused by poverty.

¹⁰⁹ Murray and Jansen van Rensburg *The Utilisation of the Right of Children to Shelter to Alleviate Poverty in South Africa* 135.

¹¹⁰ Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 62.

¹¹¹ Shackelton et al *Re-valuing the Communal Lands of Southern Africa: New Understandings of Rural Livelihoods* 4.

¹¹² Ramphoma *Understanding Poverty: Causes, Effects and Characteristics* 63.

¹¹³ Shackelton et al *Re-valuing the Communal Lands of Southern Africa: New Understandings of Rural Livelihoods* 4.

¹¹⁴ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 54.

¹¹⁵ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour in South Africa, Brazil and India* 73.

¹¹⁶ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour in South Africa, Brazil and India* 73.

¹¹⁷ Aliber M *Chronic Poverty in South Africa: Incidence, Causes and Policies* 481.

Chapter 3: International and regional instruments

3.1 Introduction

Child labour is a world-wide problem and South Africa is no exception.¹¹⁸ This chapter will discuss child labour in general in South Africa. It will first define child labour and differentiate it from child work. It will also critically analyse the *Constitution* and relevant international and regional conventions ratified by South Africa. The *Constitution* and international instruments oblige South Africa to adopt poverty alleviation strategies to combat poverty and child labour.

3.2 Definition of Child Labour

A child is defined as any person under the age of 18.¹¹⁹ The *Convention on the Rights of the Child*, (hereinafter the *CRC*) together with the ILO instruments, does not give a definition of child labour.¹²⁰ September, however, defines child labour as work that is harmful to children mentally, physically, socially or morally and interferes with their schooling.¹²¹ It is work that denies children full physical and mental development.¹²²

Child labour in South Africa comes in various forms and may be classified into three groups.¹²³ The first group is work within a family and usually means that the child is engaged in household chores or domestic household tasks.¹²⁴ The second one is work within a family, but outside the home, and it includes agricultural work and informal

¹¹⁸ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 14-15.

¹¹⁹ Article 1 of the UN Convention on the Rights of the Child (1989). It goes further to say that this applies unless majority is attained under any other applicable law.

¹²⁰ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 100.

¹²¹ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* 23.

¹²² Mukherjee *Research Review of the Institute of African Studies* 55.

¹²³ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 160.

¹²⁴ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 161.

occupations.¹²⁵ The third one is work outside the family and includes children who are employed in industrial occupations, prostitution, child soldiery and pornography.¹²⁶

3.2.1 Child labour or child work

Child work is different from child labour. Child work is work that does not interfere with the education of the child, his/her well-being, leisure and play.¹²⁷ If a child works on his/her parents' farm and is still able to go to school, and the work does not affect his well-being, it is not regarded as child labour but child work.¹²⁸ Child work helps children develop mentally, physically and emotionally and helps them learn skills from work and become independent and self-sufficient.¹²⁹ The factors that determine whether a certain activity is child work or child labour are the child's age, the type of work, the hours that such a child works and the conditions under which such work is performed.¹³⁰ This is of relevance, as child work that is for the benefit of the child may be confused with child labour. The worst forms of child labour are the ones most seriously targeted for eradication.¹³¹

3.2.2 Worst forms of child labour and hazardous work

The definition of the worst forms of child labour under *Convention No 182 on the Worst Forms of Child Labour* (hereinafter *Convention 182*) is unclear in that *Convention 182* lists in detail the types of work prohibited for children below the age of 18 years but not the exact definition.¹³² The worst forms of child labour under article 3 of *Convention 182* include all forms of slavery practices or practices similar to slavery, prostitution and production of pornographic performances, illicit activities and hazardous work.¹³³ The worst forms of child labour are usually concealed by parents, employers and children

¹²⁵ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 161.

¹²⁶ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 161.

¹²⁷ Muzvidziwa *Institute of African Studies Research Review* 24.

¹²⁸ Muzvidziwa *Institute of African Studies Research Review* 24.

¹²⁹ *Osment Child Labour: The Effect on the Child, Causes and Remedies to the Revolving Menace* 13.

¹³⁰ Muzvidziwa *Institute of African Studies Research Review* 24.

¹³¹ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* 22.

¹³² Rishikesh *A Legal Analysis of ILO Action 85*.

¹³³ Article 3 of the *Convention 182 on the Worst Forms of Child Labour* 1999.

themselves.¹³⁴ Children are exploited, overworked and denied their basic rights to health, education and adulthood because of the cover up.¹³⁵ The worst forms of child labour include prostitution, slavery, pornography, forced recruitment of children for use in armed conflict, use of children in drug trafficking and other illicit activities.¹³⁶

3.3 Protection against child labour under universal international law

The *Constitution of the Republic of South Africa* provides that the court, tribunal or forum must consider international law while interpreting the Bill of Rights.¹³⁷ South Africa has signed and ratified international and regional conventions on children's rights.

3.3.1 United Nations Convention on the Rights of the Child

The United Nations has adopted several conventions that bear on some aspects of the rights of children. It has nevertheless adopted a convention specifically for children, namely the *CRC*.¹³⁸ The *CRC* lists four principles of children's rights, referred to as the four p's, which include participation of children in any matters affecting them, protection of children against discrimination and all forms of neglect and exploitation, preventing harm to them and provision of the basic needs of children.¹³⁹ The *CRC* also protects children against child labour via article 32, which reads as follows:¹⁴⁰

States 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 development.

States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

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

¹³⁴ Budeli *Children's Rights and Protection against Child Labour in South Africa* 5.

¹³⁵ Budeli *Children's Rights and Protection against Child Labour in South Africa* 5.

¹³⁶ Budeli *Children's Rights and Protection against Child Labour in South Africa* 8.

¹³⁷ Section 39 (2) of the *Constitution of the Republic of South Africa*, 1996.

¹³⁸ Mezmur *SA Public Law* 1.

¹³⁹ Van Bueren *The International Law on the Rights of the Child* 845.

¹⁴⁰ Article 32 of the *CRC* (1989). More concentration will be on the administrative measures that must be undertaken by the state party to ensure implementation of the *CRC*.

Article 4 also provides that state parties must undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the *CRC*.¹⁴¹ The Committee on the Rights of the Child believes that it is an obligation of the member state to review its domestic legislation and administrative guidance to safeguard full compliance with the *CRC*.¹⁴² Member states have to ensure that the provisions of the *CRC* are given legal effect in their national legal systems.¹⁴³ Administrative and other measures mean that there should be visible cross-sectoral coordination to realise children's rights across government and different levels of government and between the government and civil society, including children.¹⁴⁴

The *CRC* mandates that the state or government should protect children from dangerous work or work that may be harmful to their health and education.¹⁴⁵ The *CRC* protects children from exploitative work, but does not prohibit parents from expecting their children to assist at home in ways that are appropriate for their age and safety.¹⁴⁶ Even if the child helps in the family business, the activities involved should be suited to their level of development and in accordance with the national laws.¹⁴⁷ Children's work should not jeopardise other rights, including the right to health, right to education and right to relaxation and play.¹⁴⁸ This means that the *CRC* includes the right of a child to be free from work that interferes with his/her education and the right to be free from work harmful to his/her health.¹⁴⁹ The education of a child is affected by work that demands excessive time during school periods, thereby impeding the child's school work.¹⁵⁰ The child's health is also affected by excessively long working hours.¹⁵¹

¹⁴¹ Article 4 of the *CRC* (1989)

¹⁴² General Comment No 5 General Measures of Implementation of the *Convention on the Rights of the Child* (2003) para 19.

¹⁴³ General Comment No 5 General Measures of Implementation of the *Convention on the Rights of the Child* (2003) para 19.

¹⁴⁴ General Comment No 5 General Measures of Implementation of the *Convention on the Rights of the Child* (2003) para 18.

¹⁴⁵ Article 32 of the *CRC* (1989).

¹⁴⁶ Article 32 of the *CRC* (1989).

¹⁴⁷ Article 32 of the *CRC* (1989).

¹⁴⁸ Article 24, 29 and 33 of the *CRC* 1989.

¹⁴⁹ Ekundayo *International Journal of Humanities and Social Science* 40.

¹⁵⁰ Ekundayo *International Journal of Humanities and Social Science* 44.

¹⁵¹ Ekundayo *International Journal of Humanities and Social Science* 40.

3.4 Protection against child labour under the International Labour Organisation

The ILO is the United Nations' specialist agency that deals with issues of employment relations.¹⁵² Since 1919, the ILO has been key in the campaign against child labour.¹⁵³ One of its aims is the elimination or abolition of child labour.¹⁵⁴ The ILO has adopted instruments dealing with children's employment.¹⁵⁵ For the purpose of this discussion, they are the *ILO Convention 138 Minimum Age for Employment* and the *ILO Convention 182 on the Worst Forms of Child Labour*.¹⁵⁶

3.4.1 The ILO Minimum Age Convention No 138 of 1973

The *Minimum Age Convention* is the first convention to cover all aspects of working children, whether they are in paid employment or working on their own without payment.¹⁵⁷ This convention's aim is the eradication of child labour and the method of ensuring that children do not work by setting and progressively raising a minimum age at which children should legally be allowed to work or be employed.¹⁵⁸ The state parties must draft a policy that is aimed at effective abolition of child labour.¹⁵⁹ Article 1 provides that:

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

South Africa is a signatory to the *Minimum Age Convention*. Article 1 encourages states to draft legislation to ensure the abolition of child labour.¹⁶⁰ In order to comply with the convention, states have to establish the minimum age at which children may work, but

¹⁵² Budeli *Children's Rights and Protection against Child Labour in South Africa* 6.

¹⁵³ The ILO established the *ILO Convention Fixing the Minimum Age for Admission of Children to Industrial Employment* in 1919.

¹⁵⁴ Preamble of the *ILO Constitution* 1919.

¹⁵⁵ ILO Report of 57th Session 1972.

¹⁵⁶ Vambe *Elimination of Child Forced Labour in Zimbabwe* 17.

¹⁵⁷ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* 40.

¹⁵⁸ Article 1 of the *ILO Minimum Age Convention No 138* 1973.

¹⁵⁹ Article 1 of the *ILO Minimum Age Convention No 138* 1973.

¹⁶⁰ Boockmann *World Development* 681.

there are no other activities aimed at abolishing child labour in the article.¹⁶¹ The convention does not guide states on what ought to be done to draft legislation to ensure the achievement of its objectives and this is the reason why legislation may fail in reducing child labour.¹⁶² Drafting of legislation to set a minimum age may leave gaps that permit the continuation of exploitative practices, as no guiding principles are set by the *Minimum Age Convention*.¹⁶³

Article 2(1) of the *Minimum Age Convention* reads as follows:

Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

It is the state's duty to fix a minimum age in any employment or occupation.¹⁶⁴ The minimum age is for all children in any type of work and also extends to those working in family businesses, whether they receive remuneration or not.¹⁶⁵ The main aim of the *Minimum Age Convention* is to ensure that favourable environments are created so that children, no matter what their any age is, cannot work long hours for insufficient pay in unsafe conditions.¹⁶⁶ The minimum work age, according to the *Minimum Age Convention*, cannot be less than 15 years of age, which is the compulsory school-going age.¹⁶⁷ Because of the challenges faced by developing countries, especially in Africa, the ILO provided for the minimum age to be 14 years.¹⁶⁸ The legal age for light work is set at 14 to 15 years, as long as it does not impede children's health, education and

¹⁶¹ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention* 182 of 1999 125.

¹⁶² Boockmann *World Development* 681.

¹⁶³ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention* 182 of 1999 123.

¹⁶⁴ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention* 182 of 1999 126.

¹⁶⁵ Article 2(1) of the *Minimum Age Convention* 138 of 1973. Hobbes 2007 *Children and Society* 124.

¹⁶⁶ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention* 182 of 1999 142.

¹⁶⁷ Article 2(3) of the *Minimum Age Convention* (1973). See also September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* 23.

¹⁶⁸ Article 2(4) of the *Minimum Age Convention* (1973).

safety.¹⁶⁹ The minimum age for hazardous work, which is likely to endanger children's health and safety, is set at 18 years.¹⁷⁰ Light work under the *Minimum Age Convention* is defined as work that is not harmful to children and this implies that children under the age of 13 years are not permitted to work even if the work is not harmful to them, does not jeopardise their health and does not interfere with their education.¹⁷¹ There were still problems even after the adoption of this *Minimum Age Convention*, so the ILO adopted a new convention in 1999, which dealt with the worst forms of child labour.¹⁷²

3.4.2 *Convention No 182 on the Worst Forms of Child Labour 1999*

The *Convention on the Worst Forms of Child Labour (Convention 182)* aims to eliminate the worst forms of child labour.¹⁷³ The elimination of child labour is the priority, as article 1 states that

Each member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.¹⁷⁴

Although the article states that the elimination of the worst forms of child labour is a matter of urgency, the state contradicts article 1 if the worst forms of child labour are not instantly or immediately removed.¹⁷⁵ Immediate measures are the most efficient requirements; that is, states must adopt regulations and laws that will eliminate child labour in future.¹⁷⁶ The worst forms of child labour include child prostitution, work related to the sale and trafficking of children, trafficking of drugs and work that is likely to harm the health, safety or morals of children.¹⁷⁷ *Convention 182* protects children from being used to commit crimes by others, as they may be willing to commit such crimes because of starvation.¹⁷⁸ *Convention 182* offers more protection than the

¹⁶⁹ Article 2(4) of the *Minimum Age Convention* (1973).

¹⁷⁰ Article 3 (1) of the *Minimum Age Convention* (1973).

¹⁷¹ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999* 145.

¹⁷² ILO *Worst Forms of Child Labour Convention 182* (1999).

¹⁷³ Myers *The Right Rights? Child Labour in a Globalising World* 46.

¹⁷⁴ Article 1 of the *Convention 182 on the Worst Forms of Child Labour 1999*.

¹⁷⁵ Buck *International Child Law* 90.

¹⁷⁶ Buck *International Child Law* 89.

¹⁷⁷ Article 3 of the *Convention 182 on the Worst Forms of Child Labour 1999*.

¹⁷⁸ Article 7 of the *Worst Forms of Child Labour Convention 182* (1999).

Convention on the Minimum Age, as it moves towards expressing genuine global consensus on child labour.¹⁷⁹

The determination of hazardous work is encouraged by *Convention 182* at national level and it differs from country to country.¹⁸⁰ This is important, as states will know what to eliminate and what action to take.¹⁸¹ *Convention 182* not only prohibits child labour, but goes further to break the cycle of poverty.¹⁸² It encourages governments to collaborate with workers, employers and other groups, which include non-governmental organisations which donate basic needs to poor children and also assist with reporting cases of child labour. The inclusion of children is also very important, as they know their needs and have the right to be heard in matters affecting them.¹⁸³ The government of South Africa has done this through conferences between the Ministry of Labour and employers, but children have been excluded from those conferences.¹⁸⁴ The convention provides for education, which is very important in the elimination of child labour.¹⁸⁵ According to the article, free education should be provided by states, but not all states provide free basic education.¹⁸⁶

Convention 182 creates a partnership in the form of financial assistance, which could be of great help for poverty eradication, development of communities and reducing the need for families to send their children into the labour market.¹⁸⁷ *Convention 182* disregards the tolerable forms of work that children can benefit from either by developing their skills or becoming independent.¹⁸⁸ In such a case it would be easy for

¹⁷⁹ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 31.

¹⁸⁰ Article 3 of the Convention 182 on the *Worst Forms of Child Labour* 1999.

¹⁸¹ Noguchi *ILO Convention No 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child* 522.

¹⁸² Article 5 of the Convention 182 on the *Worst Forms of Child Labour* 1999

¹⁸³ Article 5 of the Convention 182 on the *Worst Forms of Child Labour* 1999. Grooves *Implementing ILO Child Labour Convention 182: Lessons from the Gold Mining Sector in Burkina Faso* 49-50.

¹⁸⁴ Noguchi *ILO Convention No 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child* 522.

¹⁸⁵ Article 7 of the Convention 182 on the *Worst Forms of Child Labour* 1999.

¹⁸⁶ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999* 153.

¹⁸⁷ Noguchi *ILO Convention No 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child* 365.

¹⁸⁸ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999* 158.

employers to exploit children, as tolerable forms of work would differ from employer to employer or country to country.¹⁸⁹

3.5 Protection against child labour under regional law

After the *CRC* came into force the African Union adopted the *African Charter on the Rights and Welfare of the Child* (hereafter the *ACRWC*).¹⁹⁰ This was adopted because African states felt that they were not involved enough in the drafting of the *CRC*, that the *CRC* missed essential social, cultural and economic realities of the African experience and the *CRC* was inspired by western thinking.¹⁹¹

3.5.1 The African Charter on the Rights and Welfare of the Child

The *ACRWC* defines a child as a person under the age of 18 years.¹⁹² The *ACRWC* is more precise than the *CRC*, which has a limitation because it permits states to reduce the minimum age of childhood below 18.¹⁹³ Just like the *CRC*, the *ACRWC* also contains four principles, namely the right of the child to communicate his/her views, the right not to be discriminated against, the right to survival and development and the best interests of the child.¹⁹⁴ The *ACRWC* also provides that the state parties must take all administrative and social measures to ensure implementation of this convention which covers formal and informal sectors of employment of children.¹⁹⁵

The *ACRWC* states that:¹⁹⁶

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant

¹⁸⁹ Mavunga *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention* 182 of 1999 133.

¹⁹⁰ Mezmur *SA Public Law* 1.

¹⁹¹ Lloyd *The African Regional System for the Protection of Children's Rights* 33.

¹⁹² Article 2 of the *African Charter on the Rights and Welfare of the Child*.

¹⁹³ Article 1 of the *CRC* (1989).

¹⁹⁴ Lloyd *The African Regional System for the Protection of Children's Rights* 34.

¹⁹⁵ Article 15 of the *ACRWC* (1990).

¹⁹⁶ Article 15 of the *ACRWC* (1990).

provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:

- (a) Provide through legislation, minimum wages for admission to every employment;
- (b) Provide for appropriate regulation of hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- (d) Promote the dissemination of information on the hazards of child labour to all sectors of the community.

This article matches the ILO conventions mentioned above which means that the *ACRWC* is on par with the intentions of the ILO instruments.¹⁹⁷ The *ACRWC* also urges states to specify a minimum age for entry into the labour force and come up with programmes and policies to combat child labour.¹⁹⁸ It provides that children must be protected from all forms of exploitative work and perform work that is not harmful to their well-being.¹⁹⁹ This means that a child cannot be used for economic gain, that is, child prostitution and slavery.²⁰⁰ Employers are urged to keep children away from places of work that are known to be hazardous because children are vulnerable and physically weak.²⁰¹ However, the *ACRWC* does not include the minimum age that the member states are bound to follow.²⁰²

The *ACRWC* does not specify the exact minimum age of children in Africa engaged in the worst forms of child labour, especially in agriculture, this must be included in the convention.²⁰³ The *ACRWC* must also include provisions relating to light work following international principles and standards.²⁰⁴ The *ACRWC* adds to the measures provided for or stipulated under the *CRC*, namely to promote the distribution or dissemination of information on hazardous child labour to the community.²⁰⁵ The definition of the *ACRWC* is narrow because it does not include education as one aspect with which any form of exploitation or work might interfere.²⁰⁶

¹⁹⁷ Muzvidziwa *Child Labour or Child Work? Whither Policy* 26.

¹⁹⁸ Muzvidziwa *Child Labour or Child Work? Whither Policy* 26.

¹⁹⁹ Article 15 of the *ACRWC* (1990).

²⁰⁰ Ekundayo *International Journal of Humanities and Social Science* 150.

²⁰¹ Lloyd *The African Regional System for the Protection of Children's Rights* 38.

²⁰² Ekundayo *International Journal of Humanities and Social Science* 152.

²⁰³ Chirwa *International Journal of Children's Rights* 157.

²⁰⁴ Ekundayo *International Journal of Humanities and Social Science* 152.

²⁰⁵ Chirwa *International Journal of Children's Rights* 157.

²⁰⁶ Chirwa *International Journal of Children's Rights* 158.

3.5.2 SADC Code of Conduct on Child Labour

The *SADC Code of Conduct on Child Labour* (hereinafter the *SADC Code*) was developed in 1999 after a study had been conducted by the ILO, which revealed that there was insufficient data on child labour, and that some states had not adopted national strategies to reduce child labour in the region.²⁰⁷ The *SADC Code* and the ILO conventions provide guiding principles in the fight against child labour.²⁰⁸ The *SADC Code* urges all member states to ratify the instruments of the ILO that have been adopted in order to combat child labour.²⁰⁹ South Africa has adopted and ratified them. Implementation of the provisions of all the ratified instruments is urged by the *SADC Code*.²¹⁰

The *SADC Code* urges member states to develop national policies on child labour that work towards the eradication of child labour.²¹¹ The policy should at least contain a definition of the objectives regarding child labour and should describe the nature and context of the problem, identify targeted groups, show the main problem areas and the intervention used and institutional actors to be involved.²¹² Member states, when implementing the national policy, should design strategies and programmes that are time-bound in the elimination of child labour.²¹³ Those strategies and programmes should include collection of information for development and monitoring progress.²¹⁴

The strategies and programmes should include legislation and enforcement, education and training, health, welfare and social protection, advocacy, public awareness and social mobilisation and poverty alleviation and income generation.²¹⁵ Labour laws and regulations are important in combating child labour, and fixing of the minimum age for

²⁰⁷ Preamble of the *SADC Code of Conduct on Child Labour*.

²⁰⁸ Preamble of the *SADC Code of Conduct on Child Labour*.

²⁰⁹ Section 2 of the *SADC Code of Conduct on Child Labour*. Relevant documents include *ILO Minimum Age Convention* No. 138 of 1973, *ILO Convention* No. 182 of 1999 on the *Elimination of the Worst Forms of Child Labour*, *CRC* (1989) and the *ACRWC* (1990).

²¹⁰ Section 2(a), (b), (c) and (d) of the *SADC Code of Conduct on Child Labour*.

²¹¹ Section 3 of the *SADC Code of Conduct on Child Labour*.

²¹² Section 3 of the *SADC Code of conduct on Child Labour*.

²¹³ Section 4 of the *SADC Code of Conduct on Child Labour*.

²¹⁴ Section 4 of the *SADC Code of Conduct on Child Labour*.

²¹⁵ Section 4 of the *SADC Code of Conduct on Child Labour*.

admission to employment is the first essential element.²¹⁶ This is in line with the *ILO Convention on the Minimum Age* and there is a need to review the existing laws in line with the ratified conventions.²¹⁷

Poverty is the main driver of child labour in the SADC region, as poor families send children into the labour force just to meet their basic needs for survival.²¹⁸ The *SADC Code* provides that member states should create poverty alleviation strategies towards the eradication of child labour.²¹⁹ The *SADC Code* is in line with the *ILO Conventions* and the UN instruments on the elimination of child labour.

Even though there are laws in place, child labour is still a problem because of insufficient legislative enforcement.²²⁰ This is reflected in the informal sector, because children usually work without contracts.²²¹ Some work in domestic service, street vending or agriculture and there is no law enforcement in those areas.²²² The breach of child labour laws is normally detected when routine inspections are done by labour inspectors.²²³ *SADC Code* has insinuated that in most SADC countries only a few inspectors do their job.²²⁴ Where such an inspector does his/her job, there is often insufficient material or lack of vehicles to visit the areas where child labour is frequently used.²²⁵

3.6 Protection against child labour under constitutional and municipal law

South Africa has an international obligation to implement the *CRC*, *ACRWC* and the *ILO conventions* mentioned above in its domestic legislation. The *Constitution of the Republic of South Africa* and the *Basic Conditions of Employment Act* address and

²¹⁶ Section 4.2 of the *SADC Code of Conduct on Child Labour*.

²¹⁷ Section 4.2 of the *SADC Code of Conduct on Child Labour*.

²¹⁸ Section 4.6 of the *SADC Code of Conduct on Child Labour*.

²¹⁹ Section 4.6 of the *SADC Code of Conduct on Child Labour*.

²²⁰ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 60.

²²¹ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 190.

²²² Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 190.

²²³ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 190.

²²⁴ Section 4.2 of the *SADC Code of Conduct on Child Labour*.

²²⁵ Section 4.2 of the *SADC Code of Conduct on Child Labour*.

combat child labour in South Africa to the effect that it can be said they comply with international standards to a certain extent.²²⁶

3.6.1 *Constitution of the Republic of South Africa*

The *Constitution of the Republic of South Africa* is the supreme law of the country and it introduces the Bill of Rights, which protects the fundamental rights of the people of South Africa.²²⁷ In South Africa a child is any person under the age of 18 years.²²⁸ Section 28 of the *Constitution* provides for a wide range of children's rights, including socio-economic rights.²²⁹ The *Constitution* establishes the foundation for strategies and policies of government that protect children's rights.²³⁰ For the purpose of this chapter, it provides thus:²³¹

Every child has the right:

- (e) To be protected from exploitative labour practices
- (f) Not to be required or permitted to perform work or provide services that—
 - (i) Are inappropriate for a person of that child's age; or
 - (ii) Place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.

The *Constitution* included these sections even before the *Minimum Age Convention* was ratified by South Africa.²³² The *Constitution* provides that the child's best interests are of paramount importance in all matters or actions concerning the child. This includes that even where the child is employed, the work he/she does must be in his/her best interests.²³³ Section 28 provides that children have the right to be protected from exploitative, hazardous and inappropriate work for their age, detrimental to their social, physical, mental, spiritual or moral development or work that is harmful to their

²²⁶ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 56.

²²⁷ Devenish *A Commentary on the South African Bill of Rights* 371.

²²⁸ Section 1 of the *Children's Act* 2005.

²²⁹ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* 75.

²³⁰ Nicolaou and Durieux *Addressing Child Rights and Child Labour* 9.

²³¹ Section 28(1) (e) and (f) of the *Constitution of the Republic of South Africa*, 1996.

²³² September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* 76.

²³³ Section 28(2) of the *Constitution of the Republic of South Africa*, 1996.

schooling.²³⁴ These rights must be realised immediately, but they are subject to the availability of the state's resources.²³⁵

Although the *Constitution* incorporates certain principles from the *ILO Conventions, CRC* and *ACRWC*, it does not stipulate the minimum age for employment and does not explain what is meant by exploitative or inappropriate work and placing the child's well-being at risk.²³⁶ Although the *Constitution* provides a legal framework for child labour, it does not prohibit it under all circumstances. This is made clear in section 28(1) (f), which requires among others that work must be appropriate to a child's age. The *Constitution* provides a clear framework of child labour but does not prohibit child labour outright.²³⁷

3.6.2 *The Basic Conditions of Employment Act*

The *BCEA* was enacted and came into operation in 1998. It prohibits child and forced labour.²³⁸ The *BCEA* prohibits employment of any person under the age of 15 years or who is younger than the minimum school-leaving age.²³⁹ South Africa has implemented the minimum age as provided for by the *Minimum Age Convention, CRC* and the *ACRWC*. The *BCEA* further protects children from employment that places their well-being, education, physical and mental health or spiritual, moral or social development at risk.²⁴⁰ However, the *BCEA* does not apply to the work of children who work outside formal employment since these instruments are also applicable to the informal sector.²⁴¹ The *BCEA*, thus, does not comply with the *Minimum Age Convention, Convention 182*, the *CRC* and the *ACRWC*.²⁴² The *BCEA* does not provide for appropriate regulation of hours and conditions of employment for children, which is in contradiction to the *CRC*

²³⁴ Nicolaou and Durieux *Addressing Child Rights and Child Labour* 9.

²³⁵ Department of Labour *The National Child Labour Programme* 5.

²³⁶ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 192.

²³⁷ September *Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour Legislation in South Africa, Brazil and India* 76.

²³⁸ Section 43 of the *Basic Conditions of Employment Act* 1997.

²³⁹ Section 43 of the *Basic Conditions of Employment Act* 1997.

²⁴⁰ Section 43(2) of the *Basic Conditions of Employment Act* 1997.

²⁴¹ Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 101.

²⁴² Nhenga *Application of the International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa* 101.

and the *ACRWC*.²⁴³ It is an offence to employ a child under the age of 15 years, according to the *BCEA*, and doing so will be subject to a penalty. The employer will be prosecuted, fined or even jailed for a maximum of three years.²⁴⁴

The *BCEA* and the *Constitution* are concerned about the elimination of child labour.²⁴⁵ The Minister of Labour enacts additional regulations to prohibit or put in place conditions under which children aged 15 years or above or no longer under compulsory schooling may be employed.²⁴⁶ The Minister made regulations such as *Occupational Health and Safety Act*, 1993 called the *OHS Act Regulations* to protect the health and safety of child workers at work.²⁴⁷

Sanctions are put in place to penalise employers who employ children.²⁴⁸ The *BCEA* further provides that it is a criminal offence to assist an employer to employ a child.²⁴⁹ To discriminate against a person who refused to allow the child to be employed is also an offence under the *BCEA*.²⁵⁰

3.7 Addressing child labour in South Africa- The department of labour's Child Labour Action Programme

The *Child Labour Action Programme* (CLAP) derives its obligation from the *Constitution* under section 28 of the *Constitution* that children below the age of 18 have the right to be protected from exploitative work.²⁵¹ CLAP refers to child labour as labour that includes "all forms of work that is detrimental to the child".²⁵² CLAP discusses and addresses all forms of child labour.²⁵³ CLAP also includes activities such as house chores, collecting wood and water as work if they are detrimental to the child's well-

²⁴³ Article 32 of the *CRC* (1989) and Article 15 of the *ACRWC* (1990).

²⁴⁴ Section 43(3) of the *Basic Conditions of Employment Act* 1997.

²⁴⁵ Budeli *Children's Rights and Protection against Child Labour in South Africa* 13.

²⁴⁶ Section 44 of the *Basic Conditions of Employment Act* 1997. The Act echoes the provisions of the *Constitution* by making it an offence to employ a child in work that is inappropriate for a person of that age, which places at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.

²⁴⁷ Section 43 of the *OHS Act* 1993.

²⁴⁸ Section 44 of the *Basic Conditions of Employment Act* 1997.

²⁴⁹ Section 46 of the *Basic Conditions of Employment Act* 1997.

²⁵⁰ Section 46 (b) of the *Basic Conditions of Employment Act* 1997.

²⁵¹ Nicolaou and Durieux *Addressing Child Rights and Child Labour* 11.

²⁵² Department of Labour *The National Child Labour Programme* 21.

²⁵³ Department of Labour *The National Child Labour Programme* 15.

being and education.²⁵⁴ It recognises not only economic activities as work, but also non-economic activities.²⁵⁵

CLAP aims to address work activities that cause harm to children, which include working for long hours and at night, commercial sexual exploitation, working with dangerous tools or chemicals, illegal work, street work or work not easily monitored.²⁵⁶ CLAP is of the view that *BCEA* must include all children who work in section 43(1).²⁵⁷ It also provides that regulations must be drawn up in order to give guidance on what types of work are acceptable or not.²⁵⁸ It further provides that in order for enforcement of child labour provisions to be implemented, child labour inspections and follow-up should be made.²⁵⁹ CLAP provides that labour inspectors should be trained to address child labour.²⁶⁰

3.8 Conclusion

Legislation is important in addressing child labour, but it is still a major problem in South Africa, despite the laws in place. Awareness should be raised in society about the effects of child labour and the laws in place to address it.²⁶¹ The *BCEA* provides for the prosecution of employers who commit offences under its provisions. In practice, prosecution of child labour-related cases, especially on farms, is difficult as affidavits are needed from many people, including a doctor certifying that a child is under the age of 15, the school and the child himself.²⁶²

Society should also help by reporting the violation of child labour laws to the authorities.²⁶³ Therefore, tough implementation mechanisms are needed to enforce the

²⁵⁴ Department of Labour *The National Child Labour Programme* 15.

²⁵⁵ Nicolaou and Durieux *Addressing Child Rights and Child Labour* 11.

²⁵⁶ Nicolaou and Durieux *Addressing Child Rights and Child Labour* 11.

²⁵⁷ Department of Labour *The National Child Labour Programme* 18.

²⁵⁸ Department of Labour *The National Child Labour Programme* 19.

²⁵⁹ Department of Labour *The National Child Labour Programme* 80.

²⁶⁰ Nicolaou and Durieux *Addressing Child Rights and Child Labour* 14.

²⁶¹ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 53.

²⁶² Budeli *Children's Rights and Protection against Child Labour in South Africa* 14.

²⁶³ Budeli *Children's Rights and Protection against Child Labour in South Africa* 14

laws that protect children from child labour. Employers should work together with the government in the monitoring of child labour and employers should assist the government in the articulation of policies on child labour and provide advice and support in the implementation of such policies.²⁶⁴ Poor children are likely to be involved in all forms of work.²⁶⁵ Most SADC countries have ratified most if not all of the conventions, but implementation remains a problem.²⁶⁶ South Africa has an international and regional obligation to eradicate child labour and poverty. As far as South Africa's compliance with the ILO instruments, *CRC* and the *ACRWC* is concerned, legislation has been enacted to bring about some measure of harmonisation between domestic and international law. However, national law still does not reflect the principles and provisions of international law. The next chapter will however, discuss specific existing poverty alleviation strategies to eradicate child labour by government aimed at tackling the causes and impact of poverty in South Africa. The intention in that chapter will be to determine how the government to alleviates poverty.

²⁶⁴ Section 5 (i) and (ii) of the *SADC Code of Conduct on Child Labour*.

²⁶⁵ Department of Labour *The National Child Labour Programme* 12.

²⁶⁶ Eldring et al *Child Labour in the Tobacco Growing Sector in Africa* 54.

Chapter 4: Poverty reduction strategies in South Africa

4.1 Introduction

South Africa has adopted a number of strategies to reduce poverty under international, regional and constitutional obligation. Since 1994, the priority of the South African government has been the protection of human rights, dignity and the enhancement of the livelihood of its citizens.²⁶⁷ The post-1994 government was confronted with major challenges of poverty and improving the economy of those living in poverty.²⁶⁸ It was a strategy of the apartheid regime to concentrate on the improvement of the livelihood of the minority population by providing them with quality services such as health, education and employment opportunities. In contrast, the majority population were marginalised. It is understandable therefore that since the advent of democracy, the post-1994 government has been occupied with undoing the legacy of the apartheid regime by concentrating on the improvement of those who were previously disadvantaged.²⁶⁹

There is a link between poverty and child labour in South Africa, as shown in previous chapters.²⁷⁰ In South Africa many people are unable to fulfil their essential needs, while the minority enjoys prosperity.²⁷¹ The history of South Africa has to be taken into account when adopting policies for poverty reduction and at the centre of fighting poverty should be the creation of economic opportunities and enabling individuals and communities to access these opportunities.²⁷²

The terms poverty eradication, alleviation and reduction have been used, because they may have different implications for how poverty is addressed and this is to emphasise the differences between these concepts.²⁷³ Poverty alleviation refers to public and

²⁶⁷ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 58.

²⁶⁸ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 3.

²⁶⁹ May *Growth, Development, Poverty and Inequality* 5.

²⁷⁰ Edmonds and Schady *Poverty Alleviation and Child Labour* 1.

²⁷¹ Mbilinyi and Nyoni *The Poverty Eradication Strategy* 11.

²⁷² *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 25.

²⁷³ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 24.

private actions that address impoverishment in terms of lack of food, access to water and shelter.²⁷⁴ On the other hand, poverty reduction refers to measures that decrease the complexity of poverty faced by households and individuals.²⁷⁵ These include income transfers, education, employment and trading opportunities.²⁷⁶ Poverty eradication implies that the poor gain political power to determine measures to address the causes of poverty through their social movements, while at the same time addressing poverty.²⁷⁷

As already shown, there is a link between unemployment, adults with low or no educational qualifications, child labour and poverty.²⁷⁸ It has been argued that a more effective and suitable route out of poverty is through income generated by employment.²⁷⁹ Employment plays a key role in the reduction of poverty and employment assistance should be accompanied by support and guidance with regard to education, job search assistance and training for skills development.²⁸⁰

The Bill of Rights in the *Constitution* affords protection to everyone and children are afforded special protection under section 28.²⁸¹ Sections 26, 27 and 28 are also of significant importance.²⁸² These sections provide for socio-economic rights, which rights are poverty reduction strategies and they combat poverty and child labour.²⁸³ These rights ensure that all human beings have access to services, opportunities and resources essential for a satisfactory standard of living, and are enforceable and justiciable.²⁸⁴ Section 28 is important in that it not only protects children from exploitive labour practices; it also guarantees their access to basic needs and services such as

²⁷⁴ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 58.

²⁷⁵ Mbilinyi and Nyoni *The Poverty Eradication Strategy* 13.

²⁷⁶ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 24.

²⁷⁷ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 24.

²⁷⁸ Hulme and Shephard *Conceptualising Chronic Poverty* 404.

²⁷⁹ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 21.

²⁸⁰ May *Growth, Development, Poverty and Inequality* 3.

²⁸¹ *The Constitution of the Republic of South Africa*, 1996.

²⁸² Manamela *Children of Poverty and Child Benefits in South Africa* 164.

²⁸³ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

²⁸⁴ *Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa* 1996 (First Certification Judgement) 1996 10 BCLR 1253 (CC) paras 76-78.

nutrition, health care, shelter and social services.²⁸⁵ By so doing, section 28 appears to combat or lessen elements of poverty in the lives of children. This means that their needs have to be put first in the allocation of resources.²⁸⁶ Section 28 of the *Constitution* makes provision for certain socio-economic rights for children, which complement social security enshrined in sections 26 and 27 of the *Constitution*.²⁸⁷

Section 27 provides for the right to have access to health care services, food, social security and assistance and section 28 provides that a child has the right to basic nutrition, shelter, basic health care services and social services.²⁸⁸ Section 26 provides for adequate housing, which is one of the basic needs of humans.²⁸⁹ The state is obliged to realise these rights within its available resources.²⁹⁰ Section 28, unlike 26 and 27, does not mention "progressive realisation" and "within available resources." These two were explained as follows in the case of *Soobramoney v Minister of Health (KwaZulu-Natal)*:

What is apparent from these provisions is that the obligations imposed on the state by sections 26 and 27 in regard to access to housing, health care, food, water and social security are dependent upon the resources available for such purposes, and that the corresponding rights themselves are limited by reason of the lack of resources. Given this lack of resources and the significant demands on them that have already been

²⁸⁵ Section 28 (c) of the *Constitution of the Republic of South Africa, 1996*.

²⁸⁶ *Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa 1996 (First Certification Judgement) 1996 10 BCLR 1253 (CC) paras 76-78.*

²⁸⁷ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) paras 35-36.

²⁸⁸ Section 27 of the *Constitution of the Republic South Africa, 1996*

(1) Everyone has the right to have access to –

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance...

(2) The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right. Section 28 of the *Constitution of the Republic of South Africa, 1996* provides that:

(1) Every child has the right –

(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;

(c) to basic nutrition, shelter, basic health care services and social services...

²⁸⁹ Section 26

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right...

²⁹⁰ Section 26 (2) and section 27(2) of the *Constitution of the Republic of South Africa 1996*.
Manamela Children of Poverty and Child Benefits in South Africa 165.

referred to, an unqualified obligation to meet these needs would not presently be capable of being fulfilled.²⁹¹

This means in turn that the rights and needs of children must always be given priority in the allocation of resources by the state. Lack of resources is therefore not an excuse or defence on the part of the state in instances of non-fulfilment or realisation of the rights and needs of children. The efforts of South Africa to realise children's socio-economic rights through economic and social measures will be illustrated below. As already mentioned these rights are relevant because their implementation alleviates poverty and combats child labour.

4.2 Specific poverty alleviation strategies in South Africa

4.2.1 Reconstruction and Development Programme

The Reconstruction and Development Programme (herein RDP) was introduced in 1994 by the government and was the first comprehensive development programme and anti-poverty strategy to meet the needs of the poor by providing housing, health, education and services.²⁹² The aim of the RDP programme was to create sustainable growth and development and also address poverty and unemployment.²⁹³ The democratic government faced a challenge of setting up a national anti-poverty programme because of lack of information on the poor.²⁹⁴ The pillars on which the RDP is based are building the economy, meeting basic needs, developing human resources and democratising the country.²⁹⁵

The RDP also focuses on creating services and enhancing already existing ones, such as the electricity, telecommunications, transport, health, education and training sectors.²⁹⁶ Under this strategy the government subsidises houses accommodating over 5 million

²⁹¹ *Soobramoney v Minister of Health (KwaZulu-Natal)* 1998 (1) SA 765 (CC) para 11.

²⁹² Moyo and Mamobolo *Journal of Public Administration* 948.

²⁹³ Moyo and Mamobolo *Journal of Public Administration* 948.

²⁹⁴ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 68.

²⁹⁵ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 68.

²⁹⁶ Lodge *The RDP: Delivery and Performance* 55.

people.²⁹⁷ Around 5 million people have been given access to health care, electricity has been connected to the homes of 1.72 million people and water made accessible in rural areas.²⁹⁸ Specific problems with this strategy are that the houses are of poor quality, there are faults in the water projects and the standards of the medical institutions have declined rapidly.²⁹⁹

4.2.2 *Growth, Employment and Redistribution Strategy*

The Growth, Employment and Redistribution Strategy (herein GEAR) was introduced in June 1996 after the government realised that South Africa needed new initiatives to create sustainable growth.³⁰⁰ This strategy was implemented when it was found that the objectives of the government were not being fulfilled, which included reduction of poverty, income redistribution and provision of social services.³⁰¹ GEAR recognised that what was essential was accelerated job creation that would increase economic growth.³⁰² Reprioritisation of the budget towards social spending and social agreement to facilitate wage and moderation are needed for higher growth rates under this strategy.³⁰³

With this strategy it was predicted that there would be an increase in the growth rate of the economy and unemployment was expected to be reduced and jobs created annually.³⁰⁴ Since the implementation of GEAR, the economy has, however, not grown as much as was anticipated and the rate of employment has declined.³⁰⁵ The objectives of job creation by GEAR were not achieved.³⁰⁶

²⁹⁷ Lodge *The RDP: Delivery and Performance* 57.

²⁹⁸ Phillip *Politics in South Africa* 158.

²⁹⁹ Phillip *Politics in South Africa* 158.

³⁰⁰ Moyo and Mamobolo *Journal of Public Administration* 948.

³⁰¹ Moyo and Mamobolo *Journal of Public Administration* 948. GEAR complemented RDP, which was based on the notion that the creation of economic growth and employment is essential for the reduction of poverty and inequality.

³⁰² Nieuwoudt *A Principle Component Analysis of Input in a Production Function* 277.

³⁰³ Mkhwanazi *Poverty Alleviation* 21.

³⁰⁴ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 7.

³⁰⁵ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 76.

³⁰⁶ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 8.

4.3 Other poverty related programmes

In 1997/98 allocations were made for Special Employment Programmes (hereinafter SEP).³⁰⁷ These allocations were expanded in 1998/99 to include temporary poverty relief.³⁰⁸ The resources were allocated to various government departments, which included the Departments of Agriculture, Education, Environmental Affairs and Tourism, Health and Labour, to mention a few.³⁰⁹ According to Pieterse, SEP was the firmest and fastest route for the poverty alleviation programmes.³¹⁰ Programmes funded by the South African government through its departments supplemented other poverty alleviation interventions such as social security grants, delivery of services to communities such as education, health, welfare, housing, water, electricity, waste removal and municipal roads.³¹¹

The SEP ceased in 2005, as it was a short-term intervention.³¹² It was intended mainly for rural women and young people and the disabled and contributed to infrastructure, which included access to rural areas, schools, services to communities, income-generating activities and service-related activities.³¹³ The programmes created jobs and provided training in business skills, life skills and literacy.³¹⁴

Another short-term strategy introduced by the government was to decrease the gap between unskilled and unemployed people who have not enjoyed the benefits of economic development and the formal economy.³¹⁵ It created temporary work

³⁰⁷ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 96.

³⁰⁸ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 98.

³⁰⁹ May *Growth, Development, Poverty and Inequality* 13.

³¹⁰ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 7.

³¹¹ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 97.

³¹² Pieterse and Van Donk *Capacity Building for Poverty Eradication* 7.

³¹³ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 7.

³¹⁴ Khumalo *The Dynamics of Poverty and Poverty Alleviation in South Africa* 5643.

³¹⁵ Khumalo *The Dynamics of Poverty and Poverty Alleviation in South Africa* 5648.

opportunities for unemployed people.³¹⁶ The Expanded Public Works Programme (EPWP) targeted unskilled people and emphasised unskilled work opportunities.³¹⁷

The aim of the EPWP was to provide training and employment opportunities to at least 1 million unemployed people in the first five years.³¹⁸ The job opportunities were first increased in government-funded infrastructure projects under the Ministry of Public Works, in public environmental programmes under the Department of Environmental Affairs and Tourism and lastly in public social programmes, for example health and social welfare under the Department of Social Development.³¹⁹

4.4 Reprioritisation of the budget

The government prioritises its expenditure on poor individuals and households to give them easy access to certain government services.³²⁰ Only some public expenditure by the government will be discussed.

4.4.1 Education

In the 2016 budget speech the Minister of Finance, Pravin Gordhan, announced that additional money would be injected in education and health.³²¹ It has been argued by Dua-Agyeman that the South African government does not allocate enough resources to pre-primary education and Adult Basic Education and Training.³²² Attention should be paid to pre-primary education and Adult Basic Education and Training, as they are needed in the strengthening of primary and secondary education.³²³ This is important to the underprivileged, given the levels of poverty among them and the fact that women, especially in the rural areas, have very low levels of education.³²⁴

³¹⁶ Khumalo *The Dynamics of Poverty and Poverty Alleviation in South Africa* 5649.

³¹⁷ Simkins *What Happened to Income Distribution and Poverty in Homelands* 144.

³¹⁸ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 34.

³¹⁹ May *Growth, Development, Poverty and Inequality* 16.

³²⁰ Pieterse and Van Donk *Capacity Building for Poverty Eradication* 11.

³²¹ Budget Speech 24 February 2016.

³²² Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 81.

³²³ May *Growth, Development, Poverty and Inequality* 69.

³²⁴ May *Growth, Development, Poverty and Inequality* 69.

The government has committed itself to providing free and compulsory education at primary level for children through the RDP programme.³²⁵ A reduction in or exemption from fees is granted to parents who cannot afford to pay or who can only afford a lower amount.³²⁶ This means that the government assists those who cannot send their children to school because of lack of money especially those that cannot afford school fees.

According to the Provisional Budget and Expenditure Review the expenditure of the South African government on primary education is higher than both secondary and tertiary level.³²⁷ This allocation represents enough funding for basic education and to address poverty.³²⁸ The key measures undertaken in education are upgrading colleges and national youth programmes in order to provide training and work experience to young people without skills who wish to enter the labour market.³²⁹ This is intended to address the shortage of skilled people in labour markets perceived as a "constraint on poverty-reducing, employment and economic growth".³³⁰ The drop-out rate in South Africa is high among children aged 13-18 years and most drop-outs are from poor families.³³¹ It has been suggested that most children from unprivileged families leave school and join the labour market.³³²

4.4.2 Housing

Housing/shelter is one of the basic needs of children. Unfavourable housing conditions have negative effects on the child's emotional, cognitive and physical development.³³³ Unfavourable housing conditions are where housing is in need of repair, structurally unsafe, damp, cold or infested or is lacking everyday basic facilities.³³⁴ The fight against

³²⁵ Mbuli *Poverty Reduction Strategies in South Africa* 161.

³²⁶ Mbuli *Poverty Reduction Strategies in South Africa* 161.

³²⁷ Provisional Budgets and Expenditure Review 2015/16. Mbuli *Poverty Reduction Strategies in South Africa* 121.

³²⁸ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 15.

³²⁹ Mbuli *Poverty Reduction Strategies in South Africa* 134.

³³⁰ Kingdon and Knight *Unemployment in South Africa* 4.

³³¹ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 30.

³³² *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 59.

³³³ Vandivere et al *How Housing Affects Child Well-Being* 2.

³³⁴ Harker *The Impact of Bad Housing on Children's Lives* 8.

poverty means that the poor will have proper houses, clean water, adequate sanitation and heat.³³⁵ The government has initiated the People's Housing Process, which mainly focuses on poor communities to improve their standard of living.³³⁶ In 2016 R61.6 billion was allocated to provincial human settlement departments for low-income subsidy housing programmes and R34.4 billion to municipalities in order to upgrade informal settlements.³³⁷ Social housing was also allocated R2.2 billion, but despite all these measures there are concerns about the underprivileged.³³⁸ Most houses still do not have channelled water or electricity and these places are a burden on women, girls and children who undertake household labour.³³⁹ The state is obliged to realise these rights within its available resources and the government through RDP has enforced these rights.³⁴⁰

4.4.3 Health

Health care is essential in the fight against poverty because it ensures that adults are fit to work and care for children.³⁴¹ Statistically, health care receives a large allocation of funds after education.³⁴² This is because of the expansion of access to primary health care facilities for the poor, bringing health facilities to rural areas, especially poverty-stricken areas and other historically underserved areas.³⁴³ Since the poor could not afford health care services, the government introduced free health care for all citizens and subsidised certain medicines, such as painkillers.³⁴⁴

The poor could also not afford expensive medication for diseases such as HIV/AIDS, tuberculosis (TB) and pneumonia.³⁴⁵ The anti-retroviral programme is the most notable

³³⁵ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 35.

³³⁶ Williams *Issues and Challenges in Addressing Poverty and Legal Rights* 440.

³³⁷ Mubangizi *Know your Rights* 33.

³³⁸ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 36.

³³⁹ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 36.

³⁴⁰ Section 26 (2) and section 27(2) of the *Constitution of the Republic of South Africa* 1996. Manamela *Children of Poverty and Child Benefits in South Africa* 162.

³⁴¹ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 63.

³⁴² Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 58-106.

³⁴³ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 77.

³⁴⁴ May *Growth, Development, Poverty and Inequality* 71.

³⁴⁵ Mbuli *Poverty Reduction Strategies in South Africa* 160.

programme initiated by the government, but most people still die of unnatural causes such as HIV/AIDS, TB and pneumonia and studies show that males in the 15-39 age groups suffer the highest death rate from unnatural causes. Females die mainly of HIV infections.³⁴⁶ The government has also initiated a nutrition strategy, which targets children from poor families.³⁴⁷ This, however, has not reached its target because of under-spending by the government.³⁴⁸ The challenges of under-spending are also endured by public health care facilities, especially clinics in poor communities.³⁴⁹ In those communities people wait in long queues for a very long time, face lack of medicine and poor health services, which deteriorate their lives further.³⁵⁰

As mentioned above, both the state and the caregivers of children have the duty to observe the rights of children. However, in instances where primary caregivers are unable to meet the needs of the children, the obligation will fall on the state.³⁵¹ Alternative care includes the state and individuals who do not respect these rights can be held accountable.³⁵² Legislation should provide that every child has a right to an adequate standard of living for his physical, mental, spiritual, moral and social development.³⁵³ In rural areas more often than not unemployment, poverty and the death of parents as a result of HIV/AIDS leave children with no means of support and therefore the government has the duty to provide for such children.

4.5 Social Security Assistance

Social assistance is another important tool for poverty reduction.³⁵⁴ Prior to South African democracy, there was discrimination in respect of the entitlements of social security.³⁵⁵ Social security assistance helps individuals to escape poverty when they are

³⁴⁶ Mkhwanazi *Poverty Alleviation* 85.

³⁴⁷ Mbuli *Poverty Reduction Strategies in South Africa* 160.

³⁴⁸ Mbuli *Poverty Reduction Strategies in South Africa* 160.

³⁴⁹ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 64.

³⁵⁰ *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 39.

³⁵¹ Section 28 of the *Constitution of the Republic of South Africa*, 1996. Every child has the right to family care or parental care, or to appropriate alternative care when removed from the family environment.

³⁵² Liebenberg and Pillay *Socio-economic rights in South Africa*.

³⁵³ Article 27 of the *UNCRC* 1989.

³⁵⁴ Kaseke *The Role of Social Security in South* 159.

³⁵⁵ Manamela *Children of Poverty and Child Benefits in South Africa* 163.

exposed to social risk and the government should include social assistance in its budget.³⁵⁶ Social assistance is used to reduce poverty among vulnerable individuals or groups in need who have no means to support themselves and studies have shown that most of the beneficiaries of grants are poor and the grants are their only income.³⁵⁷

4.5.1 The Child Support Grant

Since 1994, the expansion of social grants has been a remarkable achievement by the government.³⁵⁸ The primary caregivers of children under the age of 14 years of age who need assistance are paid a child support grant of R300 per month. R1500 is paid to incapacitated persons over the age of 18 years and below retirement age.³⁵⁹ The group most vulnerable to poverty was made up of persons prone to illness and development. This was the group that was given priority and targeted by government for social grants.³⁶⁰ Some authors have suspected that the caregivers use the grants for their own personal use and not for the intended purpose, which is the maintenance of children.³⁶¹ This benefit ensures the minimum standard of living for people by reducing poverty, but it does not cover about 60% of the poor in South Africa.³⁶²

4.5.2 Foster Care Grant

Foster care is "care of children whose parents died or are unable to care for themselves".³⁶³ Foster care status must be established by a court order and this grant has been criticised for not caring for the needy and being ineffective.³⁶⁴ The foster care grant (FCG) is higher than the child support grant (CSG) and pays or compensates non-parents for caring for the child.³⁶⁵ Even though these measures are in place, many children and households lose out on grants, as they sometimes do not know about

³⁵⁶ Kaseke *The Role of Social Security in South* 162.

³⁵⁷ Smit *A South African Perspective on Families, with Particular Reference to Children* 263.

³⁵⁸ *Towards an Anti-Poverty Strategy for South Africa: A Discussion Document* 40.

³⁵⁹ May *Poverty Eradication: The South African Experience* 72.

³⁶⁰ Dua-Agyeman *Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services make a Difference* 85.

³⁶¹ Lulama *Child Grant as Poverty Alleviation Strategy* 31.

³⁶² Triegaart *Accomplishments and Challenges of Social Security in South Africa* 5.

³⁶³ Manamela *Children of Poverty and Child Benefits in South Africa* 171.

³⁶⁴ Schatz and Ogunmefun *Caring and Contributing: The Role of Older Women in Rural South African Multi-generational Households in the HIV/AIDS Era* 1390.

³⁶⁵ Lulama *Child Grant as Poverty Alleviation Strategy* 32.

them and they do not possess essential documentation.³⁶⁶ This means that both grants do not cater for all the needs of children in difficult situations.³⁶⁷ As already shown, not all children from poor families get a CSG or an FCG, which means that children from those families are likely to leave school and work to augment the family income.³⁶⁸ Both grants are not accessible to people under the age of 18 years, which means that child-headed households and children living on the streets cannot access them.³⁶⁹

4.6 Conclusion

In 1994, the post-apartheid government was faced with many socio-economic problems, hence the foundations of the macroeconomic responses, which are the RDP and GEAR. These are vital in fighting poverty, as they influence the government to use policies for the growth of the economy and human development. It is submitted that the government has to expand the policies and programmes targeted at the poor in order to reduce poverty effectively. The poverty alleviation programmes in some instances leak aid to people who do not really need it, which renders such measures and efforts ineffective, as the poor will stay poor without any aid.

Poverty plays a major role in child labour. It is difficult to predict the scale of effect of a reduction in child labour, but there is presumably a good chance that the above poverty alleviation programmes may yield large returns. The state does have an interest in the well-being of the child, but it is not a primary caregiver of the child, therefore the state should only intervene where parents are unable to fulfil their responsibilities and punish them where necessary.³⁷⁰

Child grants should be accessed with ease in order for the government to reach its goal.³⁷¹ Poverty strategies need to be attuned to the needs of the parents who care for the children and are likely to send them into child labour in order to address poverty.³⁷²

³⁶⁶ Schatz and Ogunmefun *Caring and Contributing: The Role of Older Women in Rural South African Multi-generational Households in the HIV/AIDS Era* 1390.

³⁶⁷ Manamela *Children of Poverty and Child Benefits in South Africa* 171.

³⁶⁸ Manamela *Children of Poverty and Child Benefits in South Africa* 172.

³⁶⁹ Lulama *Child Grant as Poverty Alleviation Strategy* 31.

³⁷⁰ Manamela *Children of Poverty and Child Benefits in South Africa* 179.

³⁷¹ Manamela *Children of Poverty and Child Benefits in South Africa* 179.

³⁷² *Towards an Anti-Poverty Strategy for South Africa – A Discussion Document* 72.

The government should make sure that its programmes or policies target the poor effectively. If the measures should be used to benefit those who are not poor in the economy, this will make the government's efforts to alleviate poverty ineffective.

Chapter 5: Conclusion

South Africa has an international and regional obligation to eradicate poverty and child labour. The causes of poverty in South Africa, among others, include unemployment, lack of education, low levels of health care and poor infrastructure. Poor people who are likely to send their children into labour are the rural poor, female-headed households and people with disabilities, the elderly, AIDS orphans and AIDS sufferers. Children are the most vulnerable and most affected by poverty. Children leave school for employment in order to contribute to or improve the family income. This means that children leave school at an early stage, even before they reach the age of 15 years, which is the maximum age for free basic education.

South Africa is a party to ILO conventions, the *CRC* and *ACRWC*, which protect children against child labour by ratifying measures to safeguard them. The *ACRWC* prohibits the economic exploitation of children. Given the multiplicity of approaches to child labour in international instruments, it is unclear what work is unacceptable for the child. The *Constitution* protects the rights of the child under section 28, as already shown. The *Constitution* provides that the child has the right to be protected from any work that is exploitative, inappropriate for his/her age, his/her health and education. The *BCEA* prohibits child labour and all forced labour. Children engaged in illegal activities that could be regarded as work are not generally covered by the *BCEA*; it only protects them where they work as employees or where the work constitutes "forced labour".

Poverty alleviation programmes' obligation is to combat poverty which in turn reduces child labour. Poverty alleviation programmes aim to create an area where all people, including children, have an opportunity to achieve their potential and contribute to society in a prosperous and healthy way. Poverty alleviation programmes, if they are to be effective to combat child labour, have to be enforced and monitored. Poverty reduction strategies must be consistent with South Africa's international and national human rights commitments. This will make the strategies more effective. Since 1994, the government's goal has been to eliminate poverty, but success has been limited. The government's strategies address poverty in terms of lack of food, shelter, access to water, education, health and employment. Specific poverty alleviation strategies

discussed included the RDP and GEAR, which address poverty and unemployment, and SEPs. The RDP also assists poor people by providing them with adequate houses with running water and electricity, building the economy and meeting their basic needs. SEPs are funded by the government and are the fastest technique of poverty alleviation. The government's efforts to address poverty have been partly successful, but to achieve the anticipated results of reducing poverty, government policies have to be more focussed on poor people.

The government must identify poor people, understand their needs and implement programmes that meet their specific needs. The social security system is insufficient to meet the problem of poverty in South Africa. The social security system must be assessed to ensure that the needs of vulnerable groups which include children are prioritised and that they are provided with the required assistance. Poverty alleviation strategies require multidimensional measures to tackle different aspects of poverty and the government alone cannot eradicate poverty. There is a lack of efficient service delivery, knowledge, experience and effective coordination between different levels of government regarding the implementation of poverty alleviation programmes. Partnerships between the government, entrepreneurs and civil society will help in addressing poverty to alleviate child labour in South Africa.

It is submitted that the effectiveness and continuity of the poverty alleviation programmes in South Africa assist in the eradication of child labour. South Africa has programmes that target child labour, but the scope of these programmes is insufficient. The measures that alleviate poverty also become ineffective because they target people who are not underprivileged. The objective of effective poverty alleviation strategies has been restricted by lack of information regarding the degree and persistence of poverty in South Africa.

In conclusion, the goal to protect children against all forms of child labour can be achieved by ensuring that the elimination of all forms of child labour remains a priority in the advancement and promotion of human rights. South Africa has complied with international and regional obligations and has made advancement in efforts to eliminate child labour. However, South Africa's legislation reflects lack of commitment or

reluctance to be bound by the obligations of the treaties or to guarantee the enshrined rights to children. This shows that South Africa lacks motivation to implement the enshrined principles in domestic legislation with urgency. The monitoring and evaluation of the treaties do not provide an effective method for enforcing international child labour prohibitions and guaranteeing accountability when violations occur.

BIBLIOGRAPHY

Literature

Agil 2012 *Good Thinkers Organisation for Human Development*

Agil Z "Nexus between Poverty and Child Labour: Measuring the Impact of Poverty Alleviation on Child Labour" 2012 *Good Thinkers Organisation for Human Development*

Aliber 2002 HSRC Publishers

Aliber M "Poverty Eradication and Sustainable Development" 2002 HSRC Publishers

Aliber 2003 *Human Sciences Research Council*

Aliber M "Chronic Poverty in South Africa: Incidence, Causes and Policies" 2003 *Human Sciences Research Council* 473-490

Alock 1997 *Understanding Poverty*

Alock P "Understanding Poverty" 1997 *McMillian Press*

Baumol and Blinder 2009 *Canada British Library*

Baumol WJ and Blinder AS "Economics, Principles and Policy" 2009 *Canada British Library* 448

Bennet 1993 *Transformation*

Bennet T "Human Rights and the African Cultural Tradition" 1993 *Transformation* 30-40

Berry 1993 *University of Wisconsin Press*

Berry S "No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa" 1993 *University of Wisconsin Press*

Boockmann 2009 *World Development*

Boockmann B "The Effect of ILO Minimum Age Conventions on Child Labour and School Attendance: Evidence from Aggregate and Individual-Level Data" 2009 *World Development* 679-692

Borgza 2008 *Child Labour in a Globalised World*

Borgaza M "Limiting the Minimum Age: Convention 138 and the Origin of the ILO's Action in the Field of Child Labour" in Nesi et al (eds) 2008 *Child Labour in a Globalised World: A Legal Analysis of ILO Action* 39-64

Brooks, Townsend and Van Zyl 2000 *ISRDS*

Brooks K, Townsend R and Van Zyl J "Improving Opportunities for the Rural Poor in South Africa through Land Reform and More effective Service Delivery" 2000 *ISRDS*

Buck 2014 *International Child Law*

Buck T "International Child Law" 3rd ed (Routledge Milton Park 2014)

Budeli 2012 *Commonwealth and Youth Development*

Budeli M "Children's Rights and Protection against Child Labour in South Africa" 2012 *Commonwealth and Youth Development* 1-17

Chirwa 2002 *International Journal of Children's Rights*

Chirwa DM "The Merits and Demerits of the African Charter on the Rights and Welfare of the Child" 2002 *International Journal of Children's Rights* 157-177

Crush and Frayne 2010 *Urban Food Security*

Crush J and Frayne B "The Invisible Crisis: Urban Food Security in Southern Africa" 2010 *Urban Food Security*

Cobbah 1987 *Hum Rts Q*

Cobbah J "African Values and the Human Rights Debate: An African Perspective" 1987 *Hum Rts Q* 309-331

Devenish 1999 *Commentary on the South African Bill of Rights*

- Devenish GEA "Commentary on the South African Bill of Rights" (Butterworths Durban 1999)
- Dixon and Macarov 1998 *A Persistent Global Reality*
Dixon J and Macarov D "A Persistent Global Reality: London" *Routledge*
- Dua-Agyema 2005 *Poverty Alleviation in South Africa*
Dua-Agyema A "Poverty Alleviation in South Africa: Can Government Fiscal Expenditure on Social Services Make a Difference?" (LLM Dissertation University of KwaZulu-Natal 2005)
- Edmonds and Schady 2011 *American Economic Journal*
Edmonds V and Schady N "Poverty Alleviation and Child Labour" 2011 *American Economic Journal* 1-29
- Engle and Black 2008 *Ann NY Acad Sci*
Engle PL and Black MM "The Effect of Poverty on Child Development and Educational Outcomes" 2008 *Ann NY Acad Sci* 243-256
- Ekepenyong and Sibirii 2011 *International Journal of Scientific Research in Education*
Ekepenyong SN and Sibirii AE "Street Trading and Child Labour in Yenegoa" *International Journal of Scientific Research in Education* 36-46
- Ekundayo 2015 *International Journal of Humanities and Social Science*
Ekundayo O "Does the African Charter on the Rights and Welfare of the Child only Underline and Repeat the Convention on the Rights of the Child's Provisions: Examining the Similarities and the Differences between the ACRWC and the CRC" *International Journal of Humanities and Social Science* 143-158
- Eldring, Nakanyane and Tshoaedi *Child Labour in Tobacco Growing Sector in Africa*
Eldring L, Nakanyane S and Tshoaedi M "Child Labour in Tobacco Growing Sector in Africa" Conference on the Elimination of Child Labour (08-09 October 2000 Nairobi) 5-97

Estacio and Marks 2005 *Journal of Health Psychology*

Estacio E and Marks D "Child Labour and the International Labour Organisation's Convention 182: A Critical Perspective" 2005 *Journal of Health Psychology* 475-484

Harper, Marcus and Moore 2003 *HSRC World Development*

Harper C, Marcus R and Moore K "Enduring Poverty and the Conditions of Childhood: Life Course and Intergenerational Poverty Transmissions" 2003 *HSRC World Development*

Hlahla, Hill and Goebel 2014 *No Longer Going to Sleep Hungry*

Hlahla S, Hill TR and Goebel A "No Longer Going to Sleep Hungry" 2014 *The World Bank Review* 66-77

Huebler 2008 *Child Labour and School Attendance*

Huebler F "Child Labour and School Attendance: Evidence from MICS and DHS Surveys" 2008 *Understanding Children's Work Project* 17

Hulme and Shepherd 2003 *World Development*

Hulme D and Shepherd A "Conceptualising Chronic Poverty" 2003 *World Development* 403-423

Humphries 2003 *The World Bank Review*

Humphries J "Child Labour: Lessons for the Historical Experience of Today's Industrial Economies" 2003 *The World Bank Economic Review* 175-196

ILO *Child Labour*

International Labour Organisation *Child Labour: A Textbook for University Students* (ILO Geneva 2004)

Jensen 2009 *Teaching with Poverty in Mind*

Jensen E "A Study Guide for Teaching with Poverty in Mind: What Being Poor Does to Kids' Brains and What Schools Can Do About It" 2009 *Teaching with Poverty in Mind* 1-22

Kaime *African Charter*

Kaime T *The African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective* (PULP Pretoria 2009)

Khan and Rana 2001 *Lahore Journal of Economics*

Khan A and Rana E "Socio-Economic Aspects of Child Labour: A Case Study of Children in Auto Workshops" 2001 *Lahore Journal of Economics*

Kingdom and Knight 2001 *Centre for the Study of African Economics*

Kingdom GG and Knight J "Unemployment in South Africa: The Nature of the Beast" 2001 *Centre for the Study of African Economics*

Khumalo 2013 *Gender and Behaviour*

Khumalo P "The Dynamics of Poverty and Poverty Alleviation in South Africa" 2013 *Gender and Behaviour* 5643-5652

Lloyd 2008 *Children's Rights in African Context*

Lloyd A "The African Regional System for the Protection of Children's Rights" 2008 in Sloth-Nielsen J (ed) *Children's Rights in African Context: A Legal Perspective* 33-51

Lodge 2003 *The RDP: Delivery and Performance*

Lodge T "The RDP: Delivery and Performance" (Oxford Cape Town 2003)

Manamela 2004 *SA Public Law*

Manamela T "Children of Poverty and Child Benefits in South Africa" 2004 *SA Public Law* 161-179

May 2000 *Growth, Development, Poverty and Inequality*

May J "Growth, Development, Poverty and Inequality" 2000 in May J (ed) *Poverty and Inequality in South Africa: Meeting the Challenge* 1-16

May 1998 *Poverty and Inequality in South Africa*

May J "Poverty and Inequality in South Africa" 1998 *Report Prepared for the Office of the Executive Deputy President and the Inter-Ministerial Committee for Poverty and Inequality*

May, Carter and Posel 1995 *Land Agriculture Policy Centre*

May J, Carter M and Posel D "The Composition and Persistence of Poverty in Rural South Africa: An Entitlement Approach to Poverty" 1995 *Land Agriculture Policy Centre*

Mbilinyi and Nyoni 2000 *Institute of Development Studies*

Mbilinyi M and Nyoni T "The Poverty Eradication Strategy" 2000 *Institute of Development Studies*1-25

Mbuli 2008 Poverty Reduction Strategies in South Africa

Mbuli BN "Poverty Strategies in South Africa" (LLM Dissertation University of South Africa 2008

Mavungha 2013 *PELJ*

Mavungha RA "A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" 2013 *PELJ*122-168

Mezmur 2008 *SA Public Law*

Mezmur BD "The African Children's Charter v UN Convention on the Rights of the Child: A Zero Sum Game?" 2008 *SA Public Law* 1-29

Mkhwanazi 2012 *Poverty Alleviation*

Mkhwanazi LV "Assessing the Role of Non-Governmental Organisations in Poverty Alleviation through the Creation of Sustainable Livelihoods in Uthungulu District" (LLM Dissertation University of Zululand 2012)

Mokoena 2004 *A Critical Analysis of Community Driven Developments Projects*

Mokoena TD "A Critical Analysis of Community Driven Developments Projects Aimed at Poverty Alleviation in Evaton West" (LLD-Thesis North West University 2004)

Moyo and Mamabolo 2014 *Journal of Public Administration*

Moyo T and Mamabolo M "The National Plan: A Comparative Study with the Reconstruction and Development Programme, the Growth, Employment and Redistribution Programme and the Accelerated and Shared-Growth Initiative" 2014 *Journal of Public Administration* 946-959

Mukherjee 2008 *Research Review of the Institute of African Studies*

Mukherjee J "Child Labour, Education, Participation and Economic Growth in Sub-Saharan Africa: An Empirical Study" 2008 *Research Review of the Institute of African Studies* 53-70

Murray and Jansen van Rensburg 2004 *PELJ*

Murray MC and Jansen van Rensburg L "The Utilisation of the Right of Children to Shelter to Alleviate Poverty in South Africa" 2004 *PELJ* 108-135

Muzvidziwa 2006 *Institute of African Studies Research Review*

Muzvidziwa VN "Child Labour or Child Work? Whither Policy" 2006 *Institute of African Studies Research Review* 23-33

Myers 2001 *Ann Am Acad Polit Soc*

Myers W "The Right Rights? Child Labour in a Globalising World" 2001 *Ann Am Acad Polit Soc* 38-55

Nakanyane 2000 *Employment and Public Works*

Nkanyane S "Employment and Public Works" (Chapter 3) in Torres L (ed) *We are Emerging, Emerging Slowly and Painfully* 35-59

Nhenga 2008 *Application of International Prohibition on Child Labour*

Nhenga T "Application of International Prohibition on Child Labour in an African Context: Lesotho, Zimbabwe and South Africa" (LLD Thesis University of Cape Town 2008)

Nhenga-Chakarisa 2010 *AHRLJ*

- Nhenga-Chakarisa T "Who does the Law Seek to Protect and from what? The Application of International Law on Child labour in an African Context" 2010 *AHRLJ* 161-196
- Nicolaou and Durieux 2005 *Addressing Child Rights and Child Labour*
 Nicolaou K and Durieux M "Addressing Child Rights and Child Labour: A Poverty Strategy for South Africa" 2005 Children's Institute Seminar 1-28
- Nieuwoudt 1972 *Journal of Agricultural Economics*
 Nieuwoudt WL "A Principle Component Analysis of Inputs in Production Function" 1972 *Journal of Agricultural Economics* 277-283
- Noble, Ratcliffe and Wright 2004 *University of Oxford*
 Noble M, Ratcliffe A and Wright G "Conceptualising, Defining and Measuring Poverty in South Africa: An Argument for Consensual Approach" 2004 *University of Oxford*
- Noguchi 2010 Int'IJ Child Rts
 Noguchi Y "20 years of the Convention on the Rights of the Child and International Action against Child Labour" 2010 Int'IJ Child Rts 515-534
- Orits, Moreira, Engilbertsdottir 2012 *New York UNICEF DPP Working Paper*
 Orits I, Moreira L and Engilbertsdottir S "Poverty and Inequality: New Perspective" 2012 *New York UNICEF DPP Working Paper*
- Osment 2014 *UOLS*
 Osment L "Child Labour; The Effect on Child, Causes and Remedies to the Revolving Menace" 2014 *UOLS* 23-24
- Owolabi 2012 *African Journal of Social Sciences*
 Owolabi E "Child Abuse and Sustainable Development in Nigeria" 2012 *African Journal of Social Sciences* 108-119
- Perocha and Maluccia 2009 *New Jersey Transaction Publishers*

- Perocha W and Maluccia "The Child Welfare Challenge: Policy, Practice and Research" 2009 *New Jersey Transaction Publishers* 91-92
- Phillip 2003 *Politics in South Africa*
Phillip D "Politics in South Africa" (Oxford Cape Town 2003)
- Pieterse and Van Donk 2002 *Isandla Institute*
Pieterse E and Van Donk M "Capacity Building for Poverty Eradication" 2002 *Isandla Institute*
- Ramphoma 2014 *Interdisciplinary Journal*
Ramphoma S "Understanding Poverty: Causes, Effects and Characteristics" 2014 *Interdisciplinary Journal* 59-72
- Rishikesh 2008 *Child Labour in a Globalised World*
Rishikesh D "The Worst Forms of Child Labour: A Guide to ILO Convention 182 and Recommendation 190" in Nesi et al (eds) 2008 *Child Labour in a Globalised World: A Legal Analysis of ILO Action* 83-99
- Robert 2000 *International Food Policy Research Institute*
Robert B "Chronic and Transitory Poverty in Post-Apartheid South Africa: Evidence from KwaZulu-Natal" 2000 *International Food Policy Research Institute* 1-38
- Saunders 1998 *Institute for Research on Poverty*
Saunders P "Towards a Better Poverty Measure" 1998 *Institute for Research on Poverty*
- September 2014 *Children's Rights and Child Labour*
September J "Children's Rights and Child Labour: A Comparative Study of Children's Rights and Child Labour in South Africa, Brazil and India" (LLM Dissertation University of Cape Town 2014)
- Shackleton, Cousins 2000 *Overseas Development Institute*

- Shackleton S and Cousins B "Re-valuing the Communal Lands of Southern Africa: New Understanding of Rural Livelihoods" 2000 *Overseas Development Institute*
- Shinns and Lyne 2005 *Agrekon*
- Shinns LH and Lyne MC "Possible Causes of Poverty within a Group of Land Reform Beneficiaries in the Midlands of Kwazulu-Natal: Analysis and Policy Recommendations" 2005 *Agrekon*157-169
- Simkins 1984 *Development Southern Africa*
- Simkins C "What has Happened to Income Distribution and Poverty in the Homelands" 1984 *Development Southern Africa*19-42
- Swepston 1982 Int'l Lab Rev
- Swepston L "Child Labour: Its Regulation by ILO Standards and National Legislation" 1982 Int'l Lab Rev 577-594
- Thomas 2014 *UCD*
- Thomas C "Addressing Child Labor in Agriculture Supply Chains within the Global Fight against Child Labor" 2014 *UCD*132-148
- Townsend 1979 *University of California Press*
- Townsend P "Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living" 1979 *University of California Press*
- Vambe 2013 *Commonwealth Youth and Development*
- Vambe B "Elimination of Forced Labour in Zimbabwe" 2013 *Commonwealth Youth and Development* 16-31
- Van Bueren 1995 *Fordham International Law Journal*
- Van Bueren G "The International Law on the Rights of the Child" 1995 *Fordham International Law Journal*832- 839
- Vandivere et al 2006 *Funder's Network*
- Vandivere S et al "How Housing Affects Child Well-Being" 2006 *Funder's Network*2-35

Van der Westhuizen and Swart 2015 *Stellenbosch Theological Journal*

Van der Westhuizen M and Swart I "The Struggle against Poverty, Unemployment and Social Justice in Present Day South Africa: Exploring the Involvement of the Dutch Reformed Church at Congregational Level" 2015 *Stellenbosch Theological Journal* 731-759

Weiner 1994 *International Journal of Children's Rights*

Weiner M "Child Labour in Developing Countries: The Indian Case" 1994 *International Journal of Children's Rights* 121-128

Williams 2005 *Issues and Challenges in Addressing Poverty*

Williams LA "Issues and Challenges in Addressing Poverty and Legal Rights: A Comparative United States/South African Analysis" 2005 436-472

White 1994 *Development and Change*

White B "Children, Work and 'Child Labour:' Changing Responses to the Employment of Children" 1994 *Development and Change* 849-878

White and Killick 2001 *IBRD-IDA*

White H and Killick T "African Poverty at the Millennium: Causes, Complexities and Challenges" 2001 *IBRD-IDA*

Case Law

Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa 1996 (*First Certification Judgement*) 1996 10 BCLR 1253 (CC)

Government of the Republic of South Africa v Grootboom 2001 (1) SA 46 (CC)

Soobramoney v Minister of Health (KwaZulu-Natal) 1998 (1) SA 765 (CC)

Legislation

Basic Conditions of Employment Act 1997

Constitution of the Republic of South Africa, 1996

Occupational Health and Safety Act, 1993

International Instruments

African Charter on the Rights and Welfare of the Child (1999)

Minimum Age Convention 138 (1973)

Convention 182 on the Worst Forms of Child labour(1999)

General Comment No. 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5

ILO Constitution (1919)

ILO Convention Fixing the Minimum Age for Admission of Children to Industrial Employment (1919)

SADC Code of Conduct on Child Labour

United Nations Convention on the Rights of the Child (1989)

Internet Sources

ILO Child Labour in Africa <http://www.ilo.org/ipec/RegionalandRegionsandcountries/Africa/langen/index.htm>(accessed 12 October 2016)

Towards a National Child Labour Action Programme for South Africa – A Discussion Document. Department of Labour. South Africa. October 2002 www.ilo.org/public/english/standards/ipec/simpoc/southafrica/index.htm(accessed 14 October 2016)

Marking Progress against Child Labour – Global Estimates as Published on the International Labour Organization website at: <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm>(accessed 20 September 2016)