



Cultural violence: a South African legal perspective on the practice of child sacrifice

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SOLEMN DECLARATION

I, Karabo Nicole Moremi, with student number **27242935**, declare herewith that the mini-dissertation titled "**Cultural violence: a South African legal perspective on the practice of child sacrifice**", which I herewith submit to the North-West University (Potchestroom Campus) is in partial fulfilment of the requirements set for the degree ***Masters of Law (LLM)*** in International Child Law. I further declare that this mini-dissertation is my own original work and has not already been submitted by me at this university or any other university.

Date: 13 March 2023

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ABSTRACT

Across all ages, religious practices all over the world have included some form of sacrifice to atone for wrongdoing or to ask for blessings, the most common sacrifice being animal sacrifices. Over the years, some societies have descended into the harmful practice of child sacrifice, which is closely tied with religious ancestral worship. Child sacrifice refers to the gruesome act of removing a child's body parts, organs, blood or tissue whilst the child is alive for the purposes of *muthi* to be consumed, or worn. Those who engage in this practice believe that by sacrificing what they regard as something of the purest and highest value, would make them more likely to receive favour from whatever higher power they worship. This harmful practice violates the most fundamental of rights, the right to life. It robs young children of their future, dreams and hopes. Child protection is crucial for the development of South Africa, especially coming from an era of apartheid during which children's rights were undermined. However, societies that practice the heinous crime of child sacrifice under the guise of practicing their religion violate children's rights and contribute to the ever-growing crime of violence against children.

South Africa prides itself in having some of the most progressive child protection legislation and is regarded as having an international-law friendly constitution. Against the background of the above-mentioned, the following question is posed: does the South African legal system adequately protect children from the harmful practice of child sacrifice? This study considered the adequacy of the South African legislation in protecting children from child sacrifice and preventing the practice altogether.

The discussion starts with a background on the practice and origin of child sacrifice, and it delves into the various motives behind this harmful practice. The study identifies and evaluates the international and regional instruments and the domestic legislation that is in place to protect children from violence, more particularly child sacrifice. Thereafter, the study analyses the adequacy of the legislative, administrative and social responses of the South African government to child

sacrifice. This study emphasises how the lack of research on child sacrifice contributes to deficiencies in the legislation and policies meant to protect children from cultural violence, particularly child sacrifice.

Keywords

Child sacrifice; Children's rights; Culture; Cultural violence; Harmful practice; *Muthi*; *Muti*; Ritual; Tradition; Violence

OPSOMMING

Oor die tye heen het godsdienstige praktyke regoor die wêreld nog altyd offers ingesluit as boetedoening vir oortredings of om seënige te vra. Die mees algemene vorm hiervan is diereoffers. Deur die jare het sommige samelewings egter verval in die skadelike praktyk van kinderooffers, wat nou verband hou met godsdienstige voorvaderaanbidding. Kinderooffers verwys na die grusame praktyk om 'n kind se liggaamsdele, organe, bloed of weefsel te verwyder terwyl die kind lewe vir doeleindes van muti wat gedra of ingeneem word. Diegene wat by hierdie praktyk betrokke is, glo dat die offer van iets van die suiwerste en hoogste waarde, hulle 'n groter kans gee om die guns te ontvang van watter ook al hoër mag hulle aanbid. Hierdie skadelike praktyk skend die mees fundamentele van regte: die reg op lewe. Dit beroof jong kinders van hulle toekoms, drome en hoop. Kinderbeskerming is van kardinale belang vir die ontwikkeling van Suid-Afrika, veral gegewe die era van apartheid waartydens kinders se regte ondermyn is. Samelewings wat die grusame misdaad van kinderooffers begaan onder die dekmantel van godsdiensoefening, skend kinderregte en dra by tot die steeds groeiende misdaad van geweld teen kinders.

Suid-Afrika roem homself op van die mees progressiewe kinderbeskermingswetgewing, en word beskou as 'n land met 'n grondwet wat vriendelik staan teenoor die internasionale reg. Teen die agtergrond van die bogenoemde vra hierdie studie of die Suid-Afrikaanse regstelsel kinders voldoende teen die skadelike praktyk van kinderooffers beskerm. Die studie weeg die toereikendheid van die Suid-Afrikaanse wetgewing vir die beskerming van kinders teen kinderooffers en die voorkoming van die praktyk.

Die bespreking bied eerstens agtergrond oor die praktyk en oorsprong van kinderooffers en ondersoek die verskillende motiewe vir die skadelike praktyk. Dit identifiseer en evalueer ook die internasionale en streeksinstrumente, sowel as die binnelandse wetgewing wat daargestel is om kinders teen geweld te beskerm, veral teen kinderooffers. Laastens ontleed die studie die toereikendheid van die

wetgewende, administratiewe en sosiale respons van die Suid-Afrikaanse regering op kinderooffers.

Hierdie studie beklemtoon hoe die gebrek aan navorsing met betrekking tot kinderooffers bydra tot die tekortkominge van die wetgewing en beleid wat kinders teen kulturele geweld moet beskerm, veral kinderooffers.

Sleutelwoorde

Geweld; Kinderopoffering; Kinderregte; Kultuur; Kulturele geweld; *Muthi*; *Muti*; Ritueel; Skadelike praktyk; Tradisie;

LIST OF ABBREVIATIONS

AHRLJ	African Human Rights Law Journal
CRC	Convention on the Rights of Children
ICESCR	International Covenant on Social, Economic and Cultural Rights
ILSHS	International Letters of Social and Humanistic Sciences
S	Section
SALRC	South African Law Reform Commission
SAHRC	South African Human Rights Commission
SAPS	South African Police Services
NGO	Non-government organisations
NPO	Non-profit organisations
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UDHR	United Nations Universal Declaration of Human Rights

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Chapter 1

INTRODUCTION

1.1. Introduction

There is a large array of cultural practices that violate children's rights, some of which also cause mental and/or physical harm. Early child marriage, female genital mutilation and child sacrifice are all examples of these harmful cultural practices.¹ Harmful cultural practices are forms of violence that have been committed over long periods of time, which certain societies and perpetrators consider normative,² and are embraced as tradition, culture, religion or superstition.³ Harmful cultural practices are deemed to be part of the phenomena of cultural violence, defined as any aspect of culture that can be used to legitimise violence in its direct or structural form, whilst making it look or feel acceptable.⁴ Cultural violence, as for harmful cultural practices, is committed over long periods of time, and becomes accepted as a norm or as cultural practice that is acceptable.

A distinction can be drawn between direct and structural cultural violence, where direct cultural violence refers to instances in which the perpetrator can be clearly identified, and where no intervening social structures for the violence to occur is required.⁵ Structural cultural violence refers to instances in which social structures may cause harm to individuals or groups in society, where it is obvious that people are being harmed but at once difficult to identify the perpetrator,⁶ and where perpetrators are rarely held accountable if identified.⁷ Structural violence usually occurs where people are disadvantaged by political, legal, economic, or cultural

¹ United Nations Protecting Children from Harmful Practices in Plural Legal Systems 3.

² Public health Scotland (2021) www.healthscotland.scot/health-topics/gender-based-violence/harmful-traditional-practices

³ UK ActionAid Harmful Traditional Practices 1.

⁴ Harvard Divinity School (date unknown) <https://rpl.hds.harvard.edu/what-we-do/our-approach/peace-violence>.

⁵ Kent Structural Violence 2.

⁶ Saferspaces (date unknown) <https://www.saferspaces.org.za/section/structural-indirect-violence>.

⁷ Masoga and Rugwiji 2018 Scriptura Journals 7.

traditions.⁸ Harmful cultural practices can be defined as practices committed regularly over long periods of time that communities begin to consider acceptable, and as such, can be understood as a form of structural cultural violence.⁹

Human sacrifice stems from the act of ritualistic killing, which involves removing the required body parts from the victim whilst the victim is still alive.¹⁰ The purpose of harvesting the body parts is for use as traditional medicine or witchcraft, which often results in the death of the victim.¹¹ This study makes use of the term 'child sacrifice' as it focuses solely on the practice of human sacrifice perpetrated against children. Child sacrifice constitutes a form of cultural violence that is both physical and mental, which is rooted in the cultural, social practices and beliefs of the communities that practice it.¹²

1.2. Background

It is believed that the practice of human sacrifice has existed from the beginning of time, as there are claims that this practice existed and was practiced in the Biblical era.¹³ Initially, the most common sacrificial offering was an animal, but this has descended into human sacrifice, which is practiced in some societies by individuals and groups who consider it to be acceptable.¹⁴ Those that partake in this practice use culture and tradition as an excuse to legitimise and justify this harmful practice, as it is believed that tradition and culture govern and influence the behaviour of those who follow it.¹⁵

Child sacrifice has been defined as the harmful practice in which a child's body parts, blood, or tissue is removed whilst the child is still alive.¹⁶ The purposes of this

⁸ Saferspaces (date unknown) <https://www.saferspaces.org.za/section/structural-indirect-violence>.

⁹ UNICEF (date unknown) <https://www.unicef.org/protection/harmful-practices>.

¹⁰ Masoga and Rugwiji 2018 *Scriptura Journals* 2.

¹¹ Masoga and Rugwiji 2018 *Scriptura Journals* 7.

¹² KidsRights *No Small Sacrifice Child: Child Sacrifice in Uganda, in a Global Context of Cultural Violence* 3.

¹³ Sales 1957 *Journal of Bible and Religion* 112.

¹⁴ Jjuuko (date unknown) https://hrapf.org/images/researchpapers/child_sacrifice.pdf

¹⁵ Mathews and Benvenuti *Violence Against Children in South Africa: Developing a Prevention Agenda* 28.

¹⁶ HumaneAfrica *Child Sacrifice and the Mutilation of Children in Uganda* 8.

harmful practice includes organ trafficking, ritualistic practices such as cleansing, witchcraft, protection from evil spirits, healing infertility, gaining wealth, preserving wealth, securing relationships and assets, overcoming illnesses, and strengthening the effectiveness of traditional medicine.¹⁷ A real-life occurrence of child sacrifice was reported in Mpumalanga, where community members explain that a couple, who are traditional healers, were caught naked around a fire, with their three-year-old son tied to plank and thrown into the fire.¹⁸ It was alleged that the purpose of this ritual was for the couple to offer their son as a sacrifice in return for riches. Community members were able to save the child, who sustained serious injuries.¹⁹

The practice of child sacrifice has been reported in numerous African countries, including South Africa, Uganda, Tanzania, Nigeria, Swaziland, Liberia, Botswana, Zimbabwe and Namibia.²⁰ The crime statistics of April 2019 to March 2020 indicate that there were 293 incidents of contact crime that were witchcraft- and *muthi*-related, where 11 of 293 incidents resulted in murder.²¹ The statistics do not reveal how many these victims were children, and it is therefore difficult to accurately determine or estimate the number of children that fall victim to this practice.

1.3. Rationale

Harmful cultural practices are rooted in social norms, which uphold cultural ideas and practices about oppressive gender roles and social relations, making it difficult to eradicate, as they are deeply rooted in tradition and culture.²² Statistics on reported incidents of human sacrifice in South Africa could not be obtained, however a study conducted in the Vhembe District of South Africa indicated that between the years 1996 and 2018, 117 cases of human sacrifices had been reported, where the

¹⁷ Bukuluki 2014 *International Letters of Social and Humanistic Sciences* Vol 41 2.

¹⁸ Times Live 2015 <https://www.timeslive.co.za/amp/news/south-africa/2015-10-30-sangoma-couple-in-court-for-trying-to-sacrifice-toddler-in-ring-of-fire/>.

¹⁹ Times Live 2015 <https://www.timeslive.co.za/amp/news/south-africa/2015-10-30-sangoma-couple-in-court-for-trying-to-sacrifice-toddler-in-ring-of-fire/>.

²⁰ KidsRights *No Small Sacrifice Child: Child Sacrifice in Uganda, in a Global Context of Cultural Violence* 6.

²¹ South African Police Services *Crime Statistics* 15.

²² UK ActionAid *Harmful Traditional Practices* 1.

term 'ritual murders' is used to describe the practice of human sacrifice, as the cases reported resulted in the death of the victims.²³

Child sacrifice violates the most fundamental of human rights, namely the right to life, and also violates the right to be protected from all forms of physical violence.²⁴ Children who survive these rituals are left with physical injury, and bear emotional scars, which undoubtedly affects the survivor's physical and psychological well-being long term.²⁵ This harmful practice undermines the development of children, and often disrupts the child's school and social life, leaving the child with serious and/or long-lasting health and psychological consequences that may result in disability or death.²⁶ Child sacrifice can be regarded as an assault on the child's human dignity, which also violates international human rights standards.²⁷

The protection of children from violence, which also includes protection from harmful cultural practices, is enshrined in international human rights standards, which have been adopted by the international community. Article 15 of the Universal Declaration of Human Rights states that no-one shall be subjected to torture, or to cruel inhumane or degrading treatment or punishment.²⁸ The Convention on the Rights of the Child in article 19 states that Parties to the Convention shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.²⁹ However, even with legislation and human rights standards having been adopted, there is still a strong contradiction to the legal and ethical imperative. Harmful practices and cultural violence remain pervasive, and are socially condoned by groups of people in communities, where the acceptance and exercise of these

²³ Masoga and Rugwiji 2018 *Scriptura Journals* 7; Rannditsheni, Masoga, and Mavhandu-Mudzusi 2016 *Journal of Social Sciences* 239.

²⁴ Universal Declaration of Human Rights (1989).

²⁵ United Nations *Protecting Children from Harmful Practices* 3.

²⁶ United Nations *Protecting Children from Harmful Practices* 3..

²⁷ International NGO Council on Violence against Children *Violating Children's Rights: Harmful Practices Based On Tradition, Culture, Religion and Superstition* 10.

²⁸ Article 15 of the Universal Declaration of Human Rights (1948).

²⁹ Article 19 of the Convention on the Rights of the Child (1989).

harmful practices continues to infringe on children's rights, and impedes upon the enjoyment of these rights.³⁰

As this research will be focused on the African context of child sacrifice, specifically the South African context, it is important to note that the African Charter on the Rights and Welfare of the Child (ACRWC) offers children protection against harmful social and cultural practices, article 21 of the ACRWC states that States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child, and in particular, those customs and practices prejudicial to the health or life of the child, and those customs and practices discriminatory to the child on the grounds of sex or other status.³¹

The South African Constitution,³² (the Constitution) affords everyone the right to life,³³ as well as the right to freedom and security, which includes the right to be free from all forms of violence and the right not to be tortured and not to be treated or punished in a cruel, inhuman or degrading way.³⁴ The practice of human sacrifice infringes on the constitutional rights of those against whom it is perpetrated, and often times results in the loss of life. Section 28(1)(d) of the Constitution protects children from maltreatment, neglect, abuse, or degradation,³⁵ and child sacrifice is a violent practice that infringes on the rights afforded to children in section 28(1)(d), leaving the child with serious and/or long lasting health and psychological consequences that may result in disability or death.³⁶ In the year 2000, a commission of inquiry was set up to investigate witchcraft, violence, and ritual murders, after a spike in deaths in Soweto, where young boys between the ages of one and six were being kidnapped and murdered.³⁷ The post mortem results from

³⁰ United Nations *Protecting Children from Harmful Practices in Plural Legal Systems* 2.

³¹ Article 21 of the African Charter on the Rights and Welfare of the Child (1999).

³² *The Constitution of the Republic of South Africa*, 1996.

³³ Section 11 of the *Constitution of the Republic of South Africa*, 1996.

³⁴ Section 12 (c)-(e) of the *Constitution of the Republic of South Africa*, 1996.

³⁵ Section 28(1)(d) of the *Constitution of the Republic of South Africa*, 1996.

³⁶ United Nations *Protecting Children from Harmful Practices in Plural Legal Systems* 3.

³⁷ Vincent 2008 *Tribes and Tribals Special* 43.

these murders indicated that the young boys had their genitals and thumbs cut off, their eyes gouged out, after which they were left to bleed to death.³⁸

1.4. Research Question

Does the South African legal system adequately protect children against child sacrifice?

1.5. Research Methodology

This research is conducted by means of literature review with reference to, primary and secondary sources. The primary sources are legislation, treaties, policies and case law; and secondary sources are books, or chapters in books, and journal articles. These sources will be used for the resolution of the research problem, as well as internet-based resources.

The information and conclusions drawn from primary and secondary sources will be analysed, compared, and combined, in order to answer the research question posed.

1.6. Framework

Chapter One provides a background to the topic of child sacrifice and introduces the research question. Chapter Two will provide a broad definition of what child sacrifice is as well as the origin and nature of the concept. Chapter Three will analyse the existing international and national legal framework with regard to child sacrifice.

Chapter Four will discuss the State's response to child sacrifice and identify and the challenges faced by the South African government in adequately implementing the legislation identified in Chapter Three. Chapter Five will offer recommendations to the State and stakeholders on the protection of children from harmful cultural practices and conclude the study.

³⁸ Vincent 2008 *Tribes and Tribals Special* 43.

1.7. Conclusion

This dissertation focuses on the harmful practice of child sacrifice, and aims to give proper account of the precise nature of the practice, so as to determine the international and domestic legal framework in relation to the protection of children against harmful practices, as well as to evaluate such legal framework and standards and make recommendations on how children can be better protected against forms of cultural violence.

Chapter 2

DEFINING AND UNDERSTANDING CHILD SACRIFICE

2.1. Introduction

Numerous cultures and regions worldwide believe that a blood sacrifice is the most powerful method of appeasing the gods or supernatural beings. In this context, human sacrifice can be understood to indicate the ritualistic killing of people for the purpose of appeasing and propitiating, or forcing a god or a supernatural being with the hope of achieving a desired result.³⁹ Child sacrifice can be understood as a subset of human sacrifice, where it is frequently believed that children are valued highly as sacrificial offerings.⁴⁰ The term 'child sacrifice' raises certain concern, as the concept of sacrifice carries a positive connotation and value in African indigenous religions. Sacrifice is a phenomenon that is commonly practiced in indigenous religions, cultural practices, and conventional religions, and constitutes an important part of worship, prayer, and thanksgiving.⁴¹ This chapter will provide a background into the practice of child sacrifice by providing the history and origin of the practice as well as a detailed definition of child sacrifice. There are several ways in which child sacrifice can occur, and this is because people sacrificed for different reasons and prospective outcomes. This chapter will also identify some of the different reasons why people engage in this practice and how their victims are selected.

2.2. The Origin of Child Sacrifice

There is no simple explanation as to the origin and development of the practice of human sacrifice. It is believed that this practice existed among the ancient people in the Biblical era.⁴² In Genesis 22 verses 1 to 19 God tested Abraham by commanding him to offer his only son as a sacrifice, as Abraham was ready to offer his son as an offering, he was shown that a human sacrifice was not needed, and that an animal

³⁹ McCrary 2014 *International Letters of Social and Humanistic Science* 26.

⁴⁰ McCrary 2014 *International Letters of Social and Humanistic Science* 26.

⁴¹ Bukuluki and Mpyangu 2014 *International Letters of Social and Humanistic Sciences* 12.

⁴² Sales 1957 *Journal of Bible and Religion* 112.

ought to be sacrificed instead.⁴³ This verse is often used as a reference to the origin of animal and human sacrifice in literature.⁴⁴ Historically, sacrifices were performed to atone for wrongdoings, as well as to ask for blessings from the ancestors.⁴⁵ The reason behind sacrifice differs from person to person, and the blessings sought range from material wealth, children, health, land, and prosperity, but are not limited to such.⁴⁶

While ritual killings have occurred throughout history in South Africa, little is known about them, and very little research exists on this practice.⁴⁷ Historically, people performed different rituals in order to attain socio-economic success, and to retain it, where the original context of sacrifice was to atone for wrongdoings and to ensure economic success from the gods.⁴⁸ Originally, the items offered as sacrifice would range from chicken to livestock, such as cows, goats and sheep, the more valuable the request made to the gods, the more expensive the sacrificial item would be.⁴⁹ The principle of sacrifice has gradually evolved and changed, as more people have moved away from using animals to using human body parts.⁵⁰ However, the underlying purpose of value for value remains intact, where change is seen in the processes of wealth creation, acquisition, and accumulation at individual and community levels. The desire to acquire resources and wealth has always been central to human and societal existence, however the processes of acquisition, utilisation, and protection of these resources and the ethical implications of these processes differ from society to society, and between individualised beliefs.⁵¹

An evolutionary theory exists, called the “social control hypothesis”, according to which, social elites or those in power may have used human sacrifice to preserve their power and to cement their status by claiming supernatural approval for their

⁴³ New International Version *Holy Bible* Genesis 22:1-19.

⁴⁴ Kashiri 2022 <https://www.thecollector.com/blood-sacrifice>.

⁴⁵ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 53.

⁴⁶ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 53.

⁴⁷ Labuschagne 2004 *Journal of Investigative Psychology and Offender Profiling* 191.

⁴⁸ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 54.

⁴⁹ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 54.

⁵⁰ HumaneAfrica *Child Sacrifice and the Mutilation of Children in Uganda* 10.

⁵¹ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 54.

acts.⁵² Human sacrifice has been historically known to be practiced by the Zulu tribe, where a King ascending the throne is required undergo strict strengthening procedures.⁵³ For the fortification of a king, human body parts are important, as they are regarded as the most powerful of all medicines, which will be used to strengthen the King and protect him and his tribe against the attacks of enemies.⁵⁴

There are various understandings of sacrifice, and the reasons behind the performance of this practice will always vary, however, what remains constant is the underlying principle of value for value,⁵⁵ where those seeking a high value of blessings will have to give an offering of high value for sacrifice. The practice of human sacrifice is dominated by child sacrifice, as it is believed that children are of higher value, being pure and without blemish.⁵⁶

2.3. The Definition of Child Sacrifice and its Different Forms

Child sacrifice is conceptualised as the harmful practice in which a child's body parts, blood, or tissue is removed whilst the child is still alive.⁵⁷ These body parts are then worn, buried, or eaten, in the belief that these acts will benefit the individual(s) that perform them.⁵⁸ The purposes of this harmful practice includes organ trafficking, ritualistic practices such as cleansing, witchcraft, protection from evil spirits, healing infertility, gaining wealth, preserving wealth, securing relationships and assets, overcoming illnesses, and strengthening the effectiveness of traditional medicine.⁵⁹ Despite economic progression in African countries, which is characterised by sophisticated wealth computations, predictions, and the protection of assets and life through insurance, human sacrifice, particularly child sacrifice, remains an integral part of the social fabric for the acquisition, solicitation, utilisation, maintenance and

⁵² Benson 2016 <https://www.science.org/content/article/human-sacrifice-may-have-helped-societies-become-more-complex>.

⁵³ Nhlapo 2017 *African Human Rights Law Journal* 14.

⁵⁴ Nhlapo 2017 *African Human Rights Law Journal* 14.

⁵⁵ McCray 2014 *International Letters of Social and Humanistic Sciences* 31.

⁵⁶ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 53.

⁵⁷ HumaneAfrica *Child Sacrifice and the Mutilation of Children in Uganda* 8.

⁵⁸ Bukuluki and Mpyangu 2014 *International Letters of Social and Humanistic Sciences* 12.

⁵⁹ Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 2.

protection of wealth.⁶⁰ This could be associated with the dominant cultural value systems that people hold in relation to how to obtain wealth and health, as well as how to protect it. Another dominating belief in human sacrifice that accelerates child sacrifice is the belief that children are pure, without blemish, and of a higher atoning value;⁶¹ this belief drastically increases the number of children being harmed and killed for cultural rituals. It is difficult to ascertain the actual frequency of murders that occur under the guise of human sacrifice, because South Africa has an exceptionally high murder rate, and it is difficult to determine which of these murders are as a result of human and child sacrifice.⁶²

Different societies and individuals have differing perceptions of what wealth is, how it is attained, and how to protect it. Amongst these ways to attain and protect wealth, child sacrifice is used as a way to acquire wealth, protect assets, and escape poverty. The motives behind child sacrifice may vary, but economic prosperity, sexual potency, and success in romantic matters are frequently recurrent themes. It is believed that genitals, breasts, and placentas are said to ward off infertility and bring good luck, where the genitalia of young boys and virgin girls are especially highly prized, as they are believed to be uncontaminated and pure, and thus have more potent medicinal properties.⁶³ In Limpopo Province, 10-year-old Sello Chokoe was a victim of child sacrifice, where his hand, ear, and genitals were chopped off, after which he was left in the bushes to die. The young boy was helped by a passer-by, but unfortunately passed away a few days later in hospital.⁶⁴ Dr. Labuschagne, who was at the time of the murder the head of the Investigative Psychology Unit of the South African Police Services, was of the opinion that Sello's body was mutilated for *muthi* and rituals, and estimated that about 50 to 300 ritualistic killings occur every year.⁶⁵ Two years after the brutal murder of Sello, police were still said to be

⁶⁰ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 53.

⁶¹ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 53.

⁶² Vincent 2008 *Tribes and Tribals Special* 44.

⁶³ Vincent 2008 *Tribes and Tribals Special* 44.

⁶⁴ Peta 2004 <https://www.iol.co.za/news/south-africa/children-mutilated-murdered-for-good-luck-220092>.

⁶⁵ Peta 2004 <https://www.iol.co.za/news/south-africa/children-mutilated-murdered-for-good-luck-220092>.

investigating the murder, and have as yet failed to recover the mutilated parts of his body.⁶⁶

2.4. Causes of Child Sacrifice

In Uganda, the Empower and Care Organisation stated that the practice of child sacrifice has turned into a growing clandestine business,⁶⁷ noting that there are four key economic factors that offset and sustain this practice. These factors can be said to fuel the practice of child sacrifice generally for most African countries, including South Africa.⁶⁸ People who partake in child sacrifice usually have one or more of the following interests: an interest and desire for wealth and business prosperity; insurance; poverty; and trickery and fraud by traditional healers.⁶⁹ These interests are usually interrelated, as those who desire to have wealth and to ensure that their business prospers also want to prevent and/or escape poverty, as well as protect their businesses and assets,⁷⁰ however the practice of child sacrifice and the processes of acquiring and protecting wealth tends to be characterised by treachery and fraud.⁷¹

The fundamental incentive for child sacrifice is to attain a better life, which is characterised by personal health and material possessions, where it is believed that those with more wealth command more social acceptance than those regarded as poor. This belief is a reality for most people living in African countries, and it is this reality that compels humans to strive for a better life and attainment of material possessions.⁷² The forms of securing wealth have moved from religious sacrifices, to more economic and business-orientated forms of physical and human protection,

⁶⁶ Maponya 2007 <https://www.sowetanlive.co.za/news/2007-01-11-mom-hopes-to-find-sons-body-parts/>.

⁶⁷ Empower and Care Organization 2014 <https://eacouganda.org/working-to-abolish-child-sacrifice-in-uganda/>.

⁶⁸ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 59.

⁶⁹ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 54.

⁷⁰ McCray 2014 *International Letters of Social and Humanistic Sciences* 31.

⁷¹ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 54.

⁷² Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 53.

where child sacrifice reflect the normative processes of human existence, including those related to culture, wealth acquisition, utilisation and protection.⁷³

The practice of human sacrifice is a complex violent crime, as it is often carried out by more than three people involved in the practice of human sacrifice, all of whom play different roles, and all of whom receive some form of compensation.⁷⁴ The parties involved are the 'client', which is the person who requires the powers or protection said to be found in human body parts, the traditional healer, who orders that a person or child be mutilated such that he/she can give the body parts or portions made thereof to the client, and the person or people who capture the victim and mutilate him.⁷⁵

All the perpetrators and actors involved in the practice of child sacrifice receive some form of economic gain, although the economic gains of child sacrifice may not always be based on direct economic or financial gain, but also on the beliefs in the outcome of the sacrifice made, such as creating more opportunities, and removing evil spells or bad luck.⁷⁶ The client is believed to receive the gain he/she needs, be it financial gain, protection or curing infertility, where the traditional healer receives money from the client for their services, and the capturers receive remuneration for obtaining the body parts.⁷⁷

2.5. Victims of Child Sacrifice

Strangers are seldom the targets of child sacrifice; instead, these children are often preyed upon by relatives and people they know from their communities.⁷⁸ There is an obvious involvement of parents or guardians in the practice of child sacrifice, where in some cases, parents sell their children, or are the ones who mutilate their own children's bodies, and offer the body parts to traditional healers for money or

⁷³ Atekyerza, Ayebare and Bukuluki 2014 *International Letters of Social and Humanistic Sciences* 55.

⁷⁴ Thenga *The Motive of a South African Male Muti Murder Offender: A Case Study* 6.

⁷⁵ Thenga *The Motive of a South African Male Muti Murder Offender: A Case Study* 6; Jjuuko *The Role of Human Rights Regime in the Fight against Child Sacrifice; A Critical Examination* 4.

⁷⁶ McCray 2014 *International Letters of Social and Humanistic Sciences* 28.

⁷⁷ Thenga *The Motive of a South African Male Muti Murder Offender: A Case Study* 16.

⁷⁸ Jjuuko *The Role of Human Rights Regime in the Fight against Child Sacrifice; A Critical Examination* 5.

for performing rituals.⁷⁹ In South Africa 21-month year old Theophillus Mabuda was murdered for ritualistic purposes, the toddler's father lured his wife into the forest under the pretence of collecting wood, and then demanded that she kill their son; when she refused, she was beaten and forced to hold the toddler, while the father cut his throat.⁸⁰ The father of the toddler, Ernest Mabuda, claimed to be a healer able to cure AIDS.⁸¹ In most cases, others are hired to kill the children. In 2006, Siphso Dube informed the Johannesburg High Court about the amounts he was paid to kill children, claiming that he was paid R50 to strangle a five-year-old and to cut off his ears, earning R100 for killing one boy, and R150 for killing another boy, and drawing his blood.⁸² As discovered from the commission of inquiry held in the year 2000, victims of child sacrifice are mutilated whilst they are alive and left to bleed to death,⁸³ where children who do survive this violent act are left with egregious psychological and physical impairment, which often results in later death, or lifelong disability.⁸⁴

2.6. Conclusion

The definition of child sacrifice underscores just how violent the practice is, and further elaborates on its varying forms and purposes. It is a harmful practice in which a child's body parts, blood, or tissue are removed whilst the child is still alive for purposes of creating *muthi*.⁸⁵ This practice has become a business between traditional healers and those who wish to atone for their wrongdoings, or gain some form of outcome. We have identified the predominant motives of child sacrifice to be economic prosperity, sexual potency, and luck in romantic relationships. Children are targeted because it is believed that they are pure, and without blemish, which makes them of higher value as it is believed that their bodies harbour more potent

⁷⁹ Jjuuko *The Role of Human Rights Regime in the Fight against Child Sacrifice; A Critical Examination* 5.

⁸⁰ Vincent 2008 *Tribes and Tribals Special* 47.

⁸¹ Vincent 2008 *Tribes and Tribals Special* 44.

⁸² Vincent 2008 *Tribes and Tribals Special* 44.

⁸³ Vincent 2008 *Tribes and Tribals Special* 43.

⁸⁴ United Nations *Protecting Children from Harmful Practices* 3.

⁸⁵ HumaneAfrica *Child Sacrifice and the Mutilation of Children in Uganda* 8.

medicinal properties.⁸⁶ As noted, reported cases of child sacrifice indicate that it is seldom strangers that carry out these harmful acts, but rather, that it is undertaken by people who are familiar with the children.

⁸⁶ Vincent 2008 *Tribes and Tribals Special* 44.

Chapter 3

THE LEGAL FRAMEWORK PROTECTING CHILDREN FROM CHILD SACRIFICE

3.1. Introduction

Over the years, there have been questions raised as to whether children are bearers of rights, and whether legally recognised rights ought to be extended and afforded to children.⁸⁷ The South African Constitution, along with international legislation, answers these questions in the affirmative, as it recognises the rights of children, and has set section 28 to cater and protect their rights and best interests.⁸⁸ However, does legislation, both domestic and international, do enough to adequately protect children from violence, particularly the practice of child sacrifice? Statistics show that every five minutes, a child is a victim of violence, where often times, this results in death.⁸⁹ International, regional, and domestic law all regard the killing of humans, especially children, as a human rights issue, as it violates the most sanctified right, which is the right to life.⁹⁰ Child sacrifice is a violation of the fundamental right to life, and also violates a combination of other human rights.⁹¹ The international community and committees on regional and domestic levels condemn violence against children, where, insofar as legislation, policies, and institutions try to protect children against violence, the reality however is that violence against children remains imminent and is only growing.⁹² This chapter will identify, analyse and evaluate the international instruments and domestic legislation that protects children from harmful cultural violence.

⁸⁷ Wald 1979 *University of California Davis* 255-256.

⁸⁸ Section 28 of *the Constitution of the Republic of South Africa, 1996*.

⁸⁹ SOS Children's Villages International on *The Right to Protection Ending Violence Against Children 3*.

⁹⁰ Jjuuko (year unknown) https://hrapf.org/images/researchpapers/child_sacrifice.pdf; Article 3 and 5 of the Universal Declaration of Human Rights (1989).

⁹¹ Jjuuko (year unknown) https://hrapf.org/images/researchpapers/child_sacrifice.pdf.

⁹² SOS Children's Villages International on *The Right to Protection Ending Violence Against Children 3*.

3.2. International Law

The South African Constitution has been regarded as an international law friendly constitution, by virtue of the willingness of South African courts to refer to international law instruments when interpreting South African law.⁹³ Section 39 of the Constitution states that:

(1) When interpreting the Bill of Rights, a court, tribunal or forum—

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- (b) must consider international law; and
- (c) may consider foreign law.⁹⁴

This section requires that the state must consider international law, and may consider foreign law, and section 39(2), which states that

When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights,⁹⁵

requires that these statutes are interpreted in a manner that is sensitive to human and children's rights.

In the Grootboom case, the Constitutional Court held that:

The relevant international law can be a guide to interpretation, but the weight to be attached to any particular principle or rule of international law will vary. However, where the relevant principle of international law binds South Africa, it may be directly applicable.⁹⁶

The international community, its treaties and legislation, recognise the vulnerability of children, and the need to protect them from all forms of violence. International legislation concerning children states outright that States should

⁹³ Tladi 2016 *African Human Rights Law Journal* 310.

⁹⁴ Section 39(1) of *The Constitution of the Republic of South Africa, 1996*.

⁹⁵ Section 39(2) of *The Constitution of the Republic of South Africa, 1996*.

⁹⁶ *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19 para 26.

take *all necessary steps* to protect children from violence.⁹⁷ The following section will analyse international instruments pertaining to children's right and the protection of children against violence.

3.2.1. *The Universal Declaration of Human Rights*

The Universal Declaration of Human Rights (hereafter the UDHR) is an international document that was adopted in 1948 consisting of 30 articles that outline the basic rights and fundamental freedoms of all human beings.⁹⁸ The UDHR is not legally binding, however its contents and articles have been incorporated into a handful of international treaties, regional human rights instruments, and domestic law. There are some who may argue that because States have consistently incorporated the contents of the UDHR into their domestic law, this has become binding as a part of customary international law.⁹⁹ Article 2 of the UDHR states that all persons are entitled to all rights and freedoms stipulated in the UDHR, where article 7 states that everyone is equal before the law and that all are entitled without any discrimination to the equal protection of the law.¹⁰⁰ Article 3 and 5 both address the most fundamental rights that the practice of child sacrifice violates, which is the right to life, and the right to not be subjected to torture or to cruel, inhuman, or degrading treatment.¹⁰¹

South Africa has incorporated the contents of the UDHR into its domestic law, by stating in its Constitution that everyone is equal before the law and has equal protection of the law, the Constitution also protects the right to life and prohibits any type of torture against citizens.¹⁰²

⁹⁷ SOS Children's Villages International on *The Right to Protection Ending Violence Against Children* 3.

⁹⁸ The Universal Declaration of Human Rights (1948).

⁹⁹ Australian Human Rights Commission (date unknown) <https://humanrights.gov.au/our-work/what-universal-declaration-human-rights>.

¹⁰⁰ Article 2 and 7 of the Universal Declaration of Human Rights (1948).

¹⁰¹ Article 3 and 5 of the Universal Declaration of Human Rights (1948).

¹⁰² Section 9 and 13 of *the Constitution of the Republic of South Africa*, 1996.

3.2.2. *The Convention on the Rights of the Child*

Since the adoption of the Convention on the Rights of the Child¹⁰³ in 1989 (‘the CRC’), questions on legitimacy of children as right bearers have subsided, as this treaty has established that children are human beings that are the subject of their own rights, that they are entitled to the same general human rights as adults, and they are also afforded specific rights that recognise the special needs of children and youth.¹⁰⁴ The Convention recognises children’s rights in a particular manner that allows us to focus on the child as a whole, viewing the child as an individual, and as a member of family and community, who has rights and responsibilities that are appropriate to his or her age and stage of development.¹⁰⁵ The Convention seeks to ensure that children’s rights are protected and implemented by States and their governments.¹⁰⁶ While the CRC, and its State Parties, have drafted legislation to protect and recognise the rights of children, children in various states are still waiting for the right to life, equality, and human dignity in order to be fully recognised, respected, and protected.¹⁰⁷

The Committee on the Rights of the Child (the Committee) consists of 18 experts that are entrusted with overseeing the implementation of the CRC.¹⁰⁸ In essence, the Committee promotes the legal implementation of the CRC by ensuring incorporation of the CRC into domestic law at a constitutional level; by making the rights set down in the CRC enforceable; by providing remedies where these rights are breached; and providing children’s rights training to those whose work is to ensure the advancement of children’s rights and access to justice.¹⁰⁹

¹⁰³ United Nations Convention on the Rights of the Child (1989).

¹⁰⁴ UNICEF (date unknown) <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter>.

¹⁰⁵ UNICEF (date unknown) <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter>.

¹⁰⁶ The Preamble of the Convention on the Rights of the Child (1989).

¹⁰⁷ SOS Children’s Villages International on *The Right to Protection Ending Violence Against Children* 8.

¹⁰⁸ United Nations Human Rights Treaty Bodies (date unknown) <https://www.ohchr.org/en/treaty-bodies/crc>.

¹⁰⁹ Kilkelly and Liefwaard 2019 *De Jure* 526.

The Committee is fully aware of the different types of violence committed against children and in a study conducted by the Committee, it was captured that violence takes an extreme toll on children, resulting in fatal or non-fatal injury, cognitive impairment, psychological and emotional consequences, mental health problems, and developmental and behavioural consequences.¹¹⁰ The Committee does not make specific reference to cultural or traditional violence or more specifically child sacrifice, but refers to all forms of violence, to which we can draw an inference that the practice of child sacrifice is covered under the scope of 'all forms of violence'. The CRC sets the stage for all those who have a responsibility in child protection to take an active role,¹¹¹ and requires that States parties put measures in place to ensure that children are provided with the necessary support and protection from all forms of violence.

The CRC places an obligation on States to take all necessary legislative, administrative, social and educational measures to protect children from all forms of violence, abuse, neglect, maltreatment or exploitation.¹¹²

The effectiveness of the CRC in a country should be judged on the State's implementation and incorporation of the children's rights in its legislative measures and other measures.¹¹³ The Committee has highlighted that State's should include children's rights in national constitutions by stating that all State's should ensure that all domestic legislation is fully compatible with the CRC and that the CRC's principles and provisions can be directly applied and appropriately enforced.¹¹⁴ Ratifying states parties are actively taking steps to incorporate the CRC's provisions into domestic law, and there is evidence that by implementing these provisions children's lives are improving and that their rights are recognised and protected.¹¹⁵

¹¹⁰ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13* (2011) par 15.

¹¹¹ Conte *Child Abuse and Neglect Worldwide* 220.

¹¹² Article 19(1) of the Convention on the Rights of the Child (1989).

¹¹³ Kilkelly and Liefaard 2019 *De Jure* 522.

¹¹⁴ *UN Committee on the Rights of the Child, General Comment No. 5 CRC/GC/2003/5* para 1.

¹¹⁵ Kilkelly and Liefaard 2019 *De Jure* 522.

3.2.3. *General Comment No. 13 (2011) The Right of the Child to Freedom from all Forms of Violence.*

The establishment of children's rights and freedoms is half the work done, the other half of which is equally as important, as it is the implementation of these rights which requires the creation of a treaty implementation mechanism.¹¹⁶ General Comment No. 13 is the Committee's interpretation of Article 19, which addresses children's right to protection from all forms of violence.¹¹⁷ The General Comment acknowledges that violence is far more complex, and that it requires early intervention, financial, technical and human resources for prevention, as well as for all the role players to play an active role to ensure prevention.¹¹⁸ The overall vision of the Committee in general comment 13 is that no violence against children is justifiable, and that all violence is preventable,¹¹⁹ where the Committee also considers and recommends measures that ought to be implemented to end violence against children.

The objectives of the general comment are

to guide States parties in understanding their obligation to prohibit, prevent and respond to all forms of violence; to outline the legislative, judicial administrative, social and educational measures that States parties must take; to overcome isolated, fragmented and reactive initiatives to address child protection which have had a limited impact and outcome in preventing and eliminating violence; to promote a holistic approach to the implementation of article 19 based on the CRC's overall perspective on securing children's rights which are threatened by violence; to provide States parties and stakeholders with a basis to develop a coordinating framework for eliminating violence through child rights-based caregiving and

¹¹⁶ Skujyte Rights of African Children Under the African Charter on the Rights and Welfare of the Child: the Addition to the Universal Protection of a Child 42.

¹¹⁷ Conte *Child Abuse and Neglect Worldwide* 220.

¹¹⁸ Svevo-Cianci, Herczog, Krappmann and Cook Child 2011 *Abuse & Neglect The International Journal* 982.

¹¹⁹ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) par 3.*

protection measures; and to highlight the need for all States parties to move quickly to fulfil their obligations under Article 19.¹²⁰

Article 19 of the CRC states the following:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.¹²¹

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.¹²²

In the general comment, the definition of violence includes all forms of violence, which include “physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”¹²³ The Committee warns that the term violence must not be interpreted in such a manner that it minimises the impact of other forms of violence not specifically mentioned in its definition.¹²⁴ By using the term “shall take” in article 19, legislation leaves no room for discretion, instead placing States parties under the strict obligation to *ensure* that all the measures are taken to protect children from all forms of violence and to *implement* this right.¹²⁵

The general comment does not make specific mention of child sacrifice but cautions States that the term “all forms of physical or mental violence” does not leave room for any level of legalised violence against children, and that severity of harm and intent to harm are not prerequisites for the definition of violence.¹²⁶ This is crucial to protecting children from the harmful practice of child sacrifice, as it is not mentioned

¹²⁰ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) par 11.*

¹²¹ Article 19 of the Convention on the Rights of the Child (1989).

¹²² *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 1.*

¹²³ Article 19 of the Convention on the Rights of the Child (1989).

¹²⁴ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 4.*

¹²⁵ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 3.*

¹²⁶ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 17.*

in international law, but the general comment states that definitions must not erode a child's absolute right to human dignity, including physical and psychological integrity by accepting a rigid definition of violence, or by accepting some forms of violence as legally or socially acceptable.¹²⁷

The general comment calls for States to take appropriate measures across all spheres of government which must be used in order to prevent and respond to all forms of violence.¹²⁸ States are to implement legislative measures in their legislature and budget, they should establish policies, programmes and systems that protect children from all forms of violence, provide services that address violence and programs that aim to educate and address customs and behaviours that condone violence.¹²⁹

3.2.4 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)

In 2015 South Africa ratified the Palermo Protocol, which endorses measures to prevent and combat trafficking in persons, especially women and children, to punish the traffickers and to protect the victims of trafficking.¹³⁰ It calls on states to take measures to prevent and combat trafficking as well as to alleviate factors that make women and children vulnerable to trafficking.¹³¹ The Palermo Protocol defines 'trafficking in persons' as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the

¹²⁷ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 17.*

¹²⁸ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 38.*

¹²⁹ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) paras 38-41.*

¹³⁰ Article 2 and the Preamble of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

¹³¹ Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹³²

Child sacrifice fits the definition of trafficking in persons as it includes the removal of a child's organs after abduction of the said child, after which the removed organs are then transported and sold to a traditional healer, this is often the case with ritual killings. In 2007, Save the Children Norway, Mozambique Programme were informed that there had been a number of children's heads that were frozen and wrapped in plastic seen to cross the Mozambican/South Africa border by vehicle.¹³³ There were unfortunately no police reports of these incidents, due to the fact that crimes involving traditional healers or witch doctors evoke fear in the public.¹³⁴ Following these reports, the Save the Children Programme conducted a research study on the trafficking of body parts in South Africa and Mozambique. From this research, there were 44 reports of first hand witnessed incidents where, of the 44 incidents, five could be considered trafficking in persons in terms of the Palermo Protocol and the remaining 39 accounts would be considered trafficking of body parts alone, separate of the victims body.¹³⁵ The Palermo Protocol seeks to protect women and children from such incidents, but it is difficult to prosecute perpetrators of child sacrifice and trafficking of persons and body parts, as communities are afraid to report traditional healers. The Palermo Protocol requires States to establish policies, programmes and measures to prevent and trafficking in persons and to protect victims, especially women and children, it also requires that States adopt and strengthen their legislation to discourage the demand that fosters all forms of exploitation that leads

¹³² Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational organised Crime (2000).

¹³³ Fellows *Trafficking Body Parts in Mozambique and South Africa* 8.

¹³⁴ *Fellows Trafficking Body Parts in Mozambique and South Africa* 8.

¹³⁵ *Fellows Trafficking Body Parts in Mozambique and South Africa* 28.

to trafficking.¹³⁶ South African legislators were mindful of these obligations and other international agreements when enacting the Prevention and Combating of Trafficking in Persons Act, which is concerned with the combating and eradication of trafficking in persons, especially women and children.¹³⁷

3.3. Regional Law

When the CRC came into force, many African States were of the opinion that the CRC did not adequately address African concerns.¹³⁸ During the period when the CRC came into force, African countries were faced with situations of children living under apartheid, difficulties and disadvantages faced by African female children, the conception of duties and responsibilities of communities, and harmful traditional practices.¹³⁹ Most of these situations are still being faced in a lot of African countries. The main reason why the concerns of African countries were not adequately addressed in the CRC is due to the under-representation of African States during the drafting process of the CRC, where the African Charter on the Rights and Welfare of the Child (the African Charter) was first ratified.¹⁴⁰

3.3.1. African Charter on the Rights and Welfare of the Child

In 1990, the African Union adopted the African Charter, which was drafted and adopted as a response to the CRC not adequately addressing the issues faced by children living in Africa,¹⁴¹ thus, it complements the CRC and serves to fill the gaps left by its universal approach.¹⁴² The Charter has been described as a very powerful tool for the enhancement of the lives of African children, and is the most progressive of the treaties on the children's rights.¹⁴³ The Charter is the only comprehensive

¹³⁶ Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational organised Crime (2000).

¹³⁷ Preamble of the *Prevention and Combating of Trafficking in Persons Act* No. 7 of 2013.

¹³⁸ Adu-Gyamfi and Keating 2013 *Sacha Journal of Human Rights* 50.

¹³⁹ Adu-Gyamfi and Keating 2013 *Sacha Journal of Human Rights* 50.

¹⁴⁰ Adu-Gyamfi and Keating 2013 *Sacha Journal of Human Rights* 50.

¹⁴¹ Adu-Gyamfi and Keating 2013 *Sacha Journal of Human Rights* 50.

¹⁴² Skujyte *Rights of African Children Under the African Charter on the Rights and Welfare of the Child: the Addition to the Universal Protection of a Child* 2011.

¹⁴³ Adu-Gyamfi and Keating 2013 *Sacha Journal of Human Rights* 50.

instrument that protects and guarantees children's rights at a regional level.¹⁴⁴ The African Charter mirrors and repeats most of the provisions in the CRC, in a manner that is appropriate and fitting for African culture. Like the CRC, the African Charter also has a Committee dedicated to overseeing the implementation of the African Charter into legislation of States parties. South Africa ratified the African Charter in 2000, with its main obligation under this treaty being to ensure that the rights of children in South Africa are protected and fulfilled.

Article 21 of the African Charter repeats the provision as is in Article 19 of the CRC, which calls States Parties to protect children against all forms of violence. The African Charter contains a provision that call for the protection of children from harmful social and cultural practices.

Article 21(1) of the African Charter states that:

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
 - (a) those customs and practices prejudicial to the health or life of the child; and
 - (b) those customs and practices discriminatory to the child on the grounds of sex or other status.¹⁴⁵

The CRC contains a similar provision, which states that "States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."¹⁴⁶ General comment no. 5 of the African Charter elaborates more on the elimination of harmful social and cultural practices and states that in order to eliminate harmful cultural practices that are inconsistent with legislation, all stakeholders including children need to collaborate in identifying these harmful practices for elimination.¹⁴⁷ The general comment also calls for practices which foster children's enjoyment to be identified for continuance, however

¹⁴⁴ Mezmur 2020 https://brill.com/view/journals/chil/28/4/article-p693_693.xml?language=en.

¹⁴⁵ Article 21(1) of the African Charter on the Rights and Welfare of Children (1999).

¹⁴⁶ Article 24(3) of the Convention on the Rights of the Child (1989).

¹⁴⁷ *African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 5* (2018) par 7.1.

States parties should be aware that all cultural, religious and traditional practices ought to be reviewed continuously, as cultural practices may become vulnerable to distortion over time and may no longer function to foster enjoyment.¹⁴⁸

The African Charter requires that any custom, tradition, cultural or religious practice that is inconsistent with the rights and obligations that are contained in its Charter to be discouraged.¹⁴⁹ It further calls on States Parties to take all appropriate measures to eliminate harmful social and cultural practices that are prejudicial to the health or life of a child and to protect children from all forms of torture, unhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment.¹⁵⁰

The African Charter was a necessary tool to addressing the harmful violent practices against children in Africa, as violence against children manifests differently in the African context due to the multifaceted social-cultural norms, norms, values, practices, power relations, and structures, which are underpinned by longstanding traditional practices and beliefs.¹⁵¹

Since the adoption of the African Charter, the South African government has ratified a number of other regional and international conventions and optional protocols. In 2003, South Africa ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which calls for State parties to undertake measures to guarantee the protection of children from child prostitution, child pornography and the sale of children.¹⁵² This protocol also takes into consideration certain articles in the CRC, especially those recognising the right of children to be protected from economic exploitation, from performing any work that may be hazardous to the child, or may interfere with the child's education or to be harmful

¹⁴⁸ *African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 5* (2018) par 7.

¹⁴⁹ Article 1(3) of the African Charter on the Rights and Welfare of Children (1999).

¹⁵⁰ Article 21(1)(a) and 16(1) of the African Charter on the Rights and Welfare of Children (1999).

¹⁵¹ African Partnership to End Violence Against Children *Violence Against Children in Africa: A Report on Progress and Challenges* xiii.

¹⁵² Preamble of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000).

to the child's health or physical, mental, spiritual, moral, or social development.¹⁵³ In 2000, South Africa ratified the Convention on the Worst Forms of Child Labour, this Convention supports the prohibition and elimination of the worst forms of child labour, which includes slavery, forced labour, trafficking, prostitution, pornography and the use and procuring or offering of a child for illicit activities.¹⁵⁴ South Africa also ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2012, the ICESCR requires States parties to recognise all human rights that derive from the inherent dignity and of the equal and inalienable rights of all members of the human family.¹⁵⁵

3.4 Domestic Law

The protection of children is the responsibility of national and provincial governments, enacting policies and legislation that govern child protection are developed at national level, with input from provincial governments and the consideration of international instruments.¹⁵⁶ The process of constitutionalising children's rights is complex and dynamic, it starts with incorporating children's rights into the Constitution and then requires further measures to promote children's rights and effective remedies where children's rights have been violated.¹⁵⁷ Child protection legislation in South Africa is aimed at addressing the negative effects of apartheid, discrimination, inequality, poverty, and underdevelopment.¹⁵⁸ Children's right to protection are enshrined in the South African Constitution, and reinforced in

¹⁵³ Preamble of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000).

¹⁵⁴ Article 3 of the Convention Concerning the Prohibition and immediate Action for the Elimination of the Worst Forms of Child Labour (1999).

¹⁵⁵ Preamble of the International Covenant on Economic, Social and Cultural Rights (1966).

¹⁵⁶ The Presidency: The Republic of South Africa (2006) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/StudyViolenceChildren/Responses/South%20Africa.pdf> 6.

¹⁵⁷ Kilkelly and Liefaard 2019 *De Jure* 522.

¹⁵⁸ The Presidency: The Republic of South Africa (2006) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/StudyViolenceChildren/Responses/South%20Africa.pdf> 2.

subsequent legislation and policies, and remedies to be effected where children's rights have been violated are also enshrined in legislation.¹⁵⁹

3.4.1. *The Constitution of the Republic of South Africa*

The Constitution is the supreme law of South Africa, and it sets out the rights and duties of the country's citizens and state bodies. The South African Constitution has the highest regard for children and the protection of their rights, so much so that a specific section in the Constitution is dedicated to the protection of children's rights; section 28 of the Constitution gives a non-exhaustive list of rights enjoyed solely by children. This does not mean that children are not able to enjoy the other rights in the Constitution,¹⁶⁰ but that they are still entitled to other rights in the Constitution such as the right to life, the right to be free from all forms of violence, and the right to dignity.¹⁶¹ South Africa is one of the first countries to incorporate children's rights stated in the CRC, in their domestic legislation, the Constitution made children's rights justiciable and made the courts the main enforcers of the Bill of Rights.¹⁶² A link between Article 19 of the CRC, Article 16 of the African Charter and Section 28(1)(c) can be seen as section 28(1)(c) of the Constitution states that "every child has the right to basic nutrition, shelter, health care and social services, as well as the right to be protected from maltreatment, neglect, abuse or degradation."¹⁶³ The Constitution places a duty on citizens and state bodies to ensure that children are protected from maltreatment, neglect, abuse, or degradation.

The right to life is protected in terms of section 11 of the Constitution, which states that "everyone has the right to life".¹⁶⁴ In the case of *S v Makwanyane*, heard in 1995 under the Interim Constitution, the Court abolished the death sentence on any

¹⁵⁹ The Presidency: The Republic of South Africa (2006) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/StudyViolenceChildren/Responses/South%20Africa.pdf> 2.

¹⁶⁰ Section 9 of the *Constitution of the Republic of South Africa*, 1996.

¹⁶¹ Sections 11, 12(c) and 10 of the *Constitution of the Republic of South Africa*, 1996.

¹⁶² Kilkelly and Liefaard 2019 *De Jure* 522.

¹⁶³ Section 28(1)(c) of the *Constitution of the Republic of South Africa*, 1996.

¹⁶⁴ Section 11 of the *Constitution of the Republic of South Africa*, 1996.

prisoners awaiting execution, establishing that capital punishment was inconsistent with human rights, particularly the right to life and dignity.¹⁶⁵ Chaskalson P held that

The carrying out of the death sentence destroys life, which is protected without reservation under section 9 of our Constitution, it annihilates human dignity which is protected under section 10, elements of arbitrariness are present in its enforcement and it is irremediable. Taking these factors into account, as well as the assumption that I have made in regard to public opinion in South Africa, and giving the words of section 11(2) the broader meaning to which they are entitled at this stage of the enquiry, rather than a narrow meaning, I am satisfied that in the context of our Constitution the death penalty is indeed a cruel, inhuman and degrading punishment.¹⁶⁶

The Court in this matter found that everyone has the right to life, the right to be free from any type of torture, and to be free from any cruel, inhuman or degrading treatment or punishment, and that there was no circumstance that could justify these acts.¹⁶⁷ The right to life and to be free from torture and or degrading or cruel treatment cannot be limited in any way, not even by section 33(1) of the Interim Constitution, which is now section 36(1) in our present Constitution. The sections on limitation, permit that a right in the Bill of Rights may be limited by law of general application, provided that such limitation is "reasonable, and justifiable in an open an democratic society based on human dignity, equality and freedom".¹⁶⁸ There is no circumstance that could be reasonable and justifiable to warrant the killing of a child for purposes of making traditional medicine. The practice of child sacrifice violates a child's right to life, and robs them of their entitlement to any other right in the Constitution or supporting legislation. The right to freedom of religion, belief and opinion found in section 15 of the Constitution,¹⁶⁹ cannot be used as means to limit the right to life, as the Constitution requires that whilst recognising the right to freedom of religion, this right must be consistent with other provisions of the Constitution.¹⁷⁰

¹⁶⁵ S v Makwanyane and Another (CCT3/94) [1995] ZACC 3.

¹⁶⁶ S v Makwanyane and Another (CCT3/94) [1995] ZACC 3 para 95.

¹⁶⁷ S v Makwanyane and Another (CCT3/94) [1995] ZACC 3 para 97.

¹⁶⁸ Section 36(1) of *Constitution of the Republic of South Africa*, 1996.

¹⁶⁹ Section 15 of the *Constitution of the Republic of South Africa*, 1996.

¹⁷⁰ Section 15(3)(b) of the *Constitution of the Republic of South Africa*, 1996.

3.4.2 Children's Act 38 of 2005

Section 28 of the Constitution forms the basis of the Children's Act, as the purpose of the Children's Act is to give effect to children's rights contained in the Constitution and to offer protection to these rights.¹⁷¹ The Children's Act protects children from violence, providing a comprehensive framework for the protection of children from all forms of abuse, neglect and exploitation.¹⁷² Section 12 of the Children's Act states that "every child has the right not to be subjected to social, cultural and religious practices which are detrimental to or her well-being".¹⁷³ The right to protection is made up from a collection of rights and responsibilities on the State as well as parents and other stakeholders.¹⁷⁴ The Children's Act always considers a child's best interest, and states that:

the best interests of a child shall be considered when there is a need to protect a child from any physical or psychological harm that may be caused by subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person¹⁷⁵

The Children's Act places a responsibility on the State and stakeholders to ensure the overall welfare, safety, dignity, equality, normal growth and development, as well as health of children.¹⁷⁶ The Children's Act makes specific mention of child marriage, genital mutilation, virginity testing, and circumcision as harmful practices that are prohibited against children or as practices that require the consent of children who are above the age of 16. The Children's Act does not refer to ritualistic killings or child sacrifice; however, it requires that children be protected from violence and harmful behaviour.¹⁷⁷ We have defined child sacrifice to be a harmful practice that violates children's rights to be protected from violence and harmful

¹⁷¹ Preamble of the *Children's Act 38 of 2005*.

¹⁷² Department Women, Children and People with Disabilities *South Africa's Initial Country Report on The African Charter on the Rights and Welfare of the Child* 18.

¹⁷³ Section 12 of the *Children's Act 38 of 2005*.

¹⁷⁴ Save the Children *Children's Protection and Cultural Rights* 3.

¹⁷⁵ S 7(1)(i-ii) of *The Children's Rights Act 38 of 2005*.

¹⁷⁶ Section 6 and 7 of *The Children's Act 38 of 2005*

¹⁷⁷ Section 7(1)(l) of *The Children's Act 38 of 2005*.

behaviour, and as such, it is the responsibility of the State and stakeholders to protect children from this practice.

The Director of the Children's Institute at the University of Cape Town Shanaaz Mathews, who is also an expert on child homicides, is of the opinion that statistics undercount the murder of children, and that many more children fall victim to child murders that are either not reported, not investigated properly, not prosecuted, or in turn, completely missed by authorities.¹⁷⁸ Mathews believes that the official statistics are just the tip of the iceberg. On 27 November 2020, a three-year-old's body was found dumped in a bush with a nail through his skull and eyes, and his genitals removed. The toddler's missing body parts were subsequently found in his father, Themba Majози's, home.¹⁷⁹ The MEC of social development in KwaZulu-Natal called for the maximum sentence for this crime.¹⁸⁰ As with most cases of child sacrifice, it has been difficult to obtain judgment and sentencing for this matter, where Majози was charged with murder and possession of human tissue, but has been sent for mental observation.¹⁸¹ The lack of precedent in convictions for child sacrifice makes it difficult to eradicate this practice, to hold perpetrators accountable, and to successfully implement the laws in place to protect children.

3.4.3 Prevention and Combating of Torture of Persons Act 2013 (the Torture Act)

The Torture Act came into effect in the year 2013, with the purpose of combatting and preventing this crime. The Torture Act seeks to give recognition to the equal and inalienable rights that all persons are entitled to which are foundation of freedom, dignity, justice and peace in the world.¹⁸² The Torture Act defines 'torture' as any act by which severe pain or suffering, whether physical or mental is

¹⁷⁸ Imray and Janssen (2020) <https://apnews.com/article/homicide-cape-town-africa-south-africa-only-on-ap-fb11beaaedfe580c3c3b2c3cd5cbde6d>.

¹⁷⁹ Burke (2020) <https://www.thesun.co.uk/news/worldnews/13399808/boy-dead-nail-skull-eyes-genitals-removed-relative-held/>.

¹⁸⁰ Burke (2020) <https://www.thesun.co.uk/news/worldnews/13399808/boy-dead-nail-skull-eyes-genitals-removed-relative-held/>.

¹⁸¹ Maharaj (2020) <https://www.iol.co.za/news/south-africa/kwazulu-natal/father-charged-with-murder-after-son-3-found-with-nail-in-skull-9c0ee6d4-596e-4927-9eab-320229ee16fb>.

¹⁸² Preamble of the Prevention of Combating and Torture of Persons Act 13 of 2013.

intentionally inflicted on a person.¹⁸³ The practice of child sacrifice can be deemed to fit the definition of 'torture' as the act of inflicting physical pain and suffering on a child for purposes of obtaining their body parts for ritualistic purposes.¹⁸⁴ Where the crime of torture is committed, there is no exceptional circumstance that may be presented as a defence or invoked as a justification for torture.¹⁸⁵

3.4.4 Prevention and Combating of Trafficking in Persons Act No. 7 of 2013

Pursuant to the Palermo Protocol, South Africa enacted the Prevention and Combating of Trafficking in Persons Act No. 7 of 2013, which seeks to combat and prevent the trafficking in persons within or across the borders of South Africa, and to provide an offence for trafficking and offences associated with trafficking.¹⁸⁶ The South African Trafficking Act defines exploitation to include the removal of body parts, which is significant as trafficking in persons is defined as the actions of "any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons".¹⁸⁷ The Trafficking Act protects all persons from the practice of child sacrifice as this is regarded as a crime where a person is transferred to another for purposes of any form of exploitation, which also includes the removal of body parts. The penalty for a person convicted with a section 4 (1) offence of the South African Trafficking Act; which includes the exploitation of children; is a fine not exceeding R100 million or imprisonment, which includes life imprisonment or imprisonment without the option of a fine.¹⁸⁸

¹⁸³ Section 3 of the *Prevention of Combating and Torture of Persons Act No. 13 of 2013*.

¹⁸⁴ HumaneAfrica Child *Sacrifice and the Mutilation of Children in Uganda* 8.

¹⁸⁵ Section 3 of *The Prevention of Combating and Torture of Persons Act 13 of 2013*.

¹⁸⁶ The *Prevention and Combating of Trafficking in Persons Act No. 7 of 2013*.

¹⁸⁷ Section 1 and 4 of *Prevention and Combating of Trafficking in Persons Act No. 7 of 2013*.

¹⁸⁸ S 13(a) of *Prevention and Combating of Trafficking in Persons Act No. 7 of 2013*.

3.5 Conclusion

Ensuring that a child's right to protection is upheld means securing the child's life, physical and mental health, integrity, well-being, and development.¹⁸⁹ International and regional treaties that govern and protect children's rights require that States protect children against violence and harmful behaviour. These treaties and legislation impose obligations on States parties and stakeholders to create a protective environment, which will ensure that the right to protection is realised. Legislation also requires that States and stakeholders protect children from cultural practices that are detrimental to children's well-being and health. In African tradition and custom there are many positive cultural practices that promote children's well-being.¹⁹⁰ However there are other practices that endanger children's lives, and from which children need to be protected, and the Children's Act makes mention of some of these practices to be, female genital mutilation, child marriage, virginity testing, and circumcision.¹⁹¹ Child sacrifice is not mentioned in international or regional treaties or in domestic legislation; however, this is an atrocious crime, and a violation of a collective of children's rights. International law, regional treaties, as well as domestic legislation make no specific mention of child sacrifice when discussing harmful cultural practices. However, the General Comment places an obligation on State parties to take all appropriate measures across all levels of the government to ensure that all forms of violence are prevented, and to respond to all forms violence perpetuated against children.¹⁹² In my opinion, the lack of mention of the harmful practice of child sacrifice can be attributed to the fact that cases of child sacrifice are seldom reported, and there are no convictions for the cases that are reported, due to the fact that society and law enforcement are afraid of prosecuting traditional healers. In cases where the perpetrators are known, they are often not

¹⁸⁹ Save the Children *An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa* 16.

¹⁹⁰ Save the Children *Children's Protection and Cultural Rights* 1.

¹⁹¹ S 12 of the *Children's Act* 38 of 2005.

¹⁹² *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13* (2011) par 38.

arrested, and if they are arrested, they are released shortly after their arrest due to lack of evidence.¹⁹³

¹⁹³ Masoga and Rugwiji 2018 *Scriptura Journals* 7.

Chapter 4

SOUTH AFRICA'S RESPONSE TO CHILD SACRIFICE

4.1. Introduction

Violence against children remains a critical challenge in the South African society, despite many attempts to curb this practice.¹⁹⁴ It manifests differently in every South African society as a result of different socio-cultural, economic and political factors. In South Africa the legacy of crime has been long standing and is deeply rooted in high poverty and unemployment.¹⁹⁵ The crime statistics of April 2019 to March 2020 indicate that there were 293 incidents of contact crime that were witchcraft and muthi-related, 11 of which resulted in murder.¹⁹⁶

In December 2021, crime statistics revealed that the murder rate against children aged between 0 and 17 had increased by 22.6% from quarter to quarter, and a 39.2% increase in attempted murder against children from quarter to quarter.¹⁹⁷ Between October 2021 and December 2021, 352 children were murdered and there were 394 attempted murders.¹⁹⁸ The rise in child murders, and murders overall should prompt the law enforcement to take steps to combat the reoccurrence of this crime. Although it is difficult to give accurate numbers of ritual child murders, the rise in child murders highlights growing violation of children's rights and the loss of life in South Africa.

The South African government recognises and embraces the diverse cultures and heritages of its people, however, it also recognises the individual rights bestowed to its people in the Bill of Rights, which can be seen by the Constitution prohibiting any

¹⁹⁴ UNICEF 2015 <https://www.unicef.org/southafrica/child-protection>.

¹⁹⁵ UNICEF 2015 <https://www.unicef.org/southafrica/child-protection>.

¹⁹⁶ South African Police Services *Crime Statistics* 15.

¹⁹⁷ Timeslive 2022 <https://www.timeslive.co.za/news/south-africa/2022-02-18-crime-states-children-under-siege/>.

¹⁹⁸ Timeslive 2022 <https://www.timeslive.co.za/news/south-africa/2022-02-18-crime-states-children-under-siege/>.

practice that is inconsistent with the Bill of Rights.¹⁹⁹ As established in the previous chapter, the South African government has ratified international and regional treaties and also enacted its own legislative frameworks that seek to protect children from all forms of violence and to safeguard them from cultural violence. This chapter considers how the South African government has responded to the harmful practice of child sacrifice. The chapter furthermore assesses the measures taken by the South African government to prohibit, prevent and respond to violence against children in the form of child sacrifice and child ritual killings.

4.2 Legislative Response to Child Sacrifice

The International and South African legal frameworks on violence against children have been discussed in chapter 3. In the previous chapter we found that international law places an obligation on State parties to implement and enforce measures that ensure the absolute prohibition and prevention of all forms of violence against children in all settings.²⁰⁰ It requires State parties to amend domestic legislation in line with Article 19 of the CRC, and to establish comprehensive policies on children's rights and the prevention of all forms of violence.²⁰¹ The South African Constitution guarantees the equal enjoyment of children's rights provided by international and regional treaties, it seeks to ensure that stakeholders work together to realise the rights of children as enshrined in section 28 of the Constitution.²⁰² The protection of children is the responsibility of national and provincial governments, where legislation and policies pertaining to the protection of children are developed at national level with the input of the provincial government.²⁰³ While it has been established that the South African legislature has promulgated a number of pieces of legislation on the violence against children, this section briefly considers some other law reform proposals still in progress.

¹⁹⁹ Department Women, Children and People with Disabilities *South Africa's Initial Country Report on The African Charter on the Rights and Welfare of the Child* 22.

²⁰⁰ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13* (2011) par 41.

²⁰¹ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13* (2011) par 41.

²⁰² Department: Social Development Republic of South Africa *The National Child Care and Protection Policy* 19.

²⁰³ The Presidency: *The Republic of South Africa The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 6.

The South African judiciary has established a Children's Court, which is a special court established to deal with issues that affect children. It is the duty of the courts to precisely ensure that vulnerable minorities are not deprived of their constitutional rights.²⁰⁴ The Children's Court are tasked with taking care of children who are in need of care and protection and makes decisions about children who are exploited, abandoned, neglected, or abused.²⁰⁵ The Children's Court is, however, not a criminal court and as such does not have jurisdiction over matters of a criminal nature.²⁰⁶ The harmful practice of child practice is a criminal act, and as it often results in the death of the victim, such matters are not dealt with in the Children's Court. The Magistrates' Courts are lower courts, which are divided into Regional Courts, and District Courts. The Regional Magistrates' Court deals only with criminal cases, and crimes such as rape murder, armed robbery and serious assault.²⁰⁷ Under the South African judiciary, all Magistrates' Courts are Children's Courts and are deemed to have the necessary jurisdiction on any matter arising from the application of the Children's Act in the area of its jurisdiction.²⁰⁸ The South African judiciary also has Traditional Courts which have a judicial function in customary law, enjoy jurisdiction over various civil and minor criminal matters.²⁰⁹ Traditional Courts operate in accordance with a system of customary law and custom that seeks to: "prevent conflict; maintain harmony; and resolve disputes where they have occurred, in a manner that promotes restorative justice and reconciliation and in accordance with the norms and standards reflected in the Constitution."²¹⁰ The role of Traditional Courts includes transforming the traditional justice system in line with the constitutional imperatives and values, which includes the right to human dignity.²¹¹

²⁰⁴ S v Makwanyane and Another (CCT3/94) [1995] ZACC 3 para 305.

²⁰⁵ The Presidency: *The Republic of South Africa The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 21.

²⁰⁶ Benita Ardenbaum Attorneys (2022) <https://benitaardenbaum.com/the-role-of-the-childrens-court/>.

²⁰⁷ The South African Judiciary (date unknown) <https://www.judiciary.org.za/index.php/about-us/16-magistrates-courts#:~:text=In%20terms%20of%20the%20Criminal%rape%20to%20imprisonment%20for%20life.>

²⁰⁸ Section 42 of *The Children's Act No. 38* of 2005.

²⁰⁹ Save the Children *An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa* 85.

²¹⁰ Section 7 of the *Traditional Courts Bill* 2008.

²¹¹ Preamble of the *Traditional Courts Bill* 2008.

The Traditional Courts have a judicial function in customary law and, enjoy jurisdiction over various civil and minor criminal matters.²¹² As there is currently no legislation protecting children from child sacrifice, Traditional Courts should take a stance in defining and interpreting customary law to protect children from the harmful practice of child sacrifice, which in turn will impact legislation on a national level to amend existing legislation and enact new laws that protect children from harmful cultural practices, particularly child sacrifice.

The South African Law Reform Commission (the Commission) was established for purposes of conducting research with reference to all branches of the law in order to make recommendations on their findings to the Government in order to develop, improve and reform the law.²¹³ In June of 2022 the Commission prepared a revised discussion paper on the Witchcraft Suppression Act 3 of 1957.²¹⁴ The purpose of the Witchcraft Suppression Act is to provide for the suppression of the practice of witchcraft and similar practices.²¹⁵

In its discussion paper, the Commission recommended that prohibitions against activities associated with harmful witchcraft practices ought to be provided for. The Commission called for the prohibition of witchcraft accusations, witch-finding, crimes associated with harmful witchcraft and muthi killings.²¹⁶ The Witchcraft Suppression Act does not deal with the harmful practice of muthi killings, but the Commission found that in some cases, muthi killings are influenced by traditional healers who advise their clients to obtain body parts for purposes of making muthi.²¹⁷ It was further discovered that the people most significantly affected by *muthi* killings are

²¹² Save the Children *An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa* 85.

²¹³ South African Law Reform Commission (date unknown) <https://www.justice.gov.za/salrc/#:~:text=The%20objects%20of%20the%20South,or%20reform%20of%20the%20law.>

²¹⁴ South African Law Reform Commission Project 135 The Review of the Witchcraft Suppression Act 3 of 1957.

²¹⁵ Preamble of *The Witchcraft Suppression Act No. 3 of 1957*.

²¹⁶ South African Law Reform Commission Project 135 The Review of the *Witchcraft Suppression Act No. 3 of 1957* xxv.

²¹⁷ South African Law Reform Commission Project 135 The Review of the *Witchcraft Suppression Act No. 3 of 1957* xxv.

young children,²¹⁸ making them vulnerable targets of the harmful practice of *muti* killings. The Commission is of the view that focusing on all the role players (the perpetrators of the violence, those who inflict the harm and those with the specialised supernatural knowledge) in crime of human sacrifice or *muti* killings, and criminalising this practice would help reduce prevalence of this crime.²¹⁹ The Commission does not make specific mention of the terms ‘child sacrifice’ or ‘human sacrifice’, but instead refers to killings of humans and children as ‘*muti* killings and *muti* crimes’. The Commission regards the killings and crimes committed under the guise of *muti* killings as a serious societal concern, and recommend that the focus ought to be placed on the perpetrators of this violent act, those who do the actual harm to the victim, those who have supernatural knowledge and contract others to carry out these crimes.²²⁰ The Ministry of Women Children and People with Disabilities has requested that ritual killings be looked into and that legislative amendments be effected to regulate such crimes.²²¹ The Commission has taken the liberty to draft an updated bill titled “Prohibition of Harmful Practices and Unlawful Accusations of Harmful Witchcraft Practices Bill” (hereinafter “the Draft Bill”), which has been published to provide general information to the public and allow the public to comment.²²²

When considering the definition of harmful witchcraft practice in terms of the Draft Bill, we can infer that child sacrifice and ritual killings its entirety are a form of harmful witchcraft practice, as the Draft Bill defines harmful witchcraft practice as:

invoking a claim to the ability to use non-natural or supernatural means (whether that involves the use of physical elements or not) to threaten or to cause:
(i) death or injury or disease or disability to any person; or
(ii) destruction or loss of or damage to property of any kind; or

²¹⁸ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxv.

²¹⁹ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxvi.

²²⁰ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxiv-xxvi.

²²¹ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxvi.

²²² South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxvi.

(iii) severe psychological distress or terror.²²³

The Draft Bill states that any person who unlawfully and intentionally engages in harmful witchcraft practices shall be deemed guilty of an offence. The Draft Bill further states that a person found guilty of a *muti* crime offence, which refers to a person who unlawfully and intentionally purchase, obtains or use any part of a human body for purposes of making *muti*, shall be liable upon conviction to ten years imprisonment.²²⁴

The Draft Bill, as most legislation and policies, unfortunately does not make any specific reference to child sacrifice, even though the Commission has identified that the people most affected by *muti* killings are young children, who should be constitutionally protected from any form of violence.²²⁵ However, we can see that the Draft Bill takes steps into criminalising harmful witchcraft practices, as it imposes a sentence of ten years imprisonment for any person found guilty of *muti* crimes.²²⁶ This will be of assistance when a person is found engaging in child sacrifice, as there will now be legislation that will come into play to particularly protect children from this harmful practice.

The proposed Bill was published on the 24th of June 2022, and the closing date for comments from the public was the 31st October 2022.²²⁷ This allowed interested parties to participate in possible law making with regards to legislation and matters that affect them.

The Criminal Law Amendment Act 105 of 1997,²²⁸ prescribes that a Regional Court or a High Court shall sentence a person convicted of an offence referred to Part 1 of

²²³ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxviii.

²²⁴ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxx.

²²⁵ Section 28 of *Constitution of the Republic of South Africa*, 1996.

²²⁶ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxx.

²²⁷ South African Law Reform Commission Project 135 *The Review of the Witchcraft Suppression Act No. 3 of 1957* xxvi.

²²⁸ *Criminal Law Amendment Act No. 105 of 1997*.

Schedule 2 to imprisonment for life.²²⁹ The practice of child sacrifice falls under the ambit of Part 1 of Schedule 2 under subsections (a), (e) and (f) as murder that was planned or premeditated, where the victim was killed in order to unlawfully remove any body part, and that the death of the victim is directly related to any offence in section 1 (a) to (e) of the Witchcraft Suppression Act.²³⁰ Simon Fellows, who is the author of "*Trafficking Body Parts in Mozambique and South Africa*" believes that the trouble with convicting perpetrators of child sacrifice is that incidences of crime that involve traditional healers or witch doctors evoke fear in the public, and almost all the time go unreported or result in no conviction.²³¹

General Comment No. 13 requires States to implement and enforce legislative measures; it requires States to ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the Optional Protocol on the Involvement of Children in Armed Conflict, Convention on the Rights of Persons with Disabilities and its Optional Protocol and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²³² South Africa as a part of its obligations under the CRC, has ratified these conventions, and their optional protocols and has amended and enacted new domestic legislation in accordance with the framework of the CRC and has established comprehensive policies and legislation on children's rights and the prevention of violence. Other countries regard Section 28 of the Constitution as ground-breaking legislation for the advancement of children's rights when measured against the standards of the CRC and the Committee's recommendations.²³³

²²⁹ Section 51 of the *Criminal Law Amendment Act* 105 of 1997.

²³⁰ Schedule 2 Part 1 of the *Criminal Law Amendment Act* 105 of 1997.

²³¹ Fellows *Trafficking Body Parts in Mozambique and South Africa* 8.

²³² *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13* (2011) para 41.

²³³ Binford 2015 *New York Law School Law Review* 342; Kilkelly and Liefgaard 2019 *De Jure* 527.

4.3. Administrative Response to Child Sacrifice

As established in Chapter 3, South Africa is obligated to take administrative measures that ensure the establishment of policies, programmes, monitoring, and oversight systems to protect children from all forms of violence.²³⁴ The judiciary has an obligation to protect children and establish intervention measures and effective remedies to ensure that children are protected from violence and to establish an independent compliant mechanism where victims can report violence, or concerned parties can lay complaints of violence against children.²³⁵ It is important to note that all South African courts have the responsibility to protect the rights of children, where the High Courts are regarded as upper guardians of children and the Constitutional Court is the highest court in South Africa and has the highest legal authority on all matters.²³⁶

Along with the courts, the National Department of Social Development, Provincial Social Development Departments and NGOs such as Child Welfare or private social workers are tasked with ensuring child protection.²³⁷ This is in line with the guidelines of general comment no. 13, which requires that national, sub-national government levels and stakeholders should establish relationships and work together to ensure children are protected from violence, and that States should work with independent institutions to support and promote the establishment of specific child rights mandates.²³⁸ When developing legislation and policies pertaining to child protection, consultation with civil society organisations and institutions is paramount to all child care and formulation of policies.²³⁹ In accordance with its obligations under the CRC and the Committee, particularly the obligation to provide independent national human rights institutions with support to establish specific child rights

²³⁴ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 42.*

²³⁵ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 46.*

²³⁶ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 21.

²³⁷ The Department of Justice and Constitutional *The Children's Act Explained* 7.

²³⁸ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 42(a)(ii).*

²³⁹ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 6.

mandates,²⁴⁰ the South African government can be seen supporting and promoting the South African Human Rights Commission (SAHRC) which is an organisation that is mainly concerned with the protection and promotion of human rights in the country.²⁴¹ The SAHRC is an organisation that holds offices in all provinces in South Africa to support the constitutional democracy and promote the protection of human rights.²⁴² The SAHRC has established a Children's Rights Unit, that focuses on fulfilling the Section 28 Constitutional mandate of promoting, protecting and monitoring the realisation of the rights of children in South Africa.²⁴³

4.4. Social Response to Child Sacrifice

General Comment 13 requires that the social responses States take to combat violence against children should reflect the States commitment to fulfilling child protection rights and providing basic and targeted services.²⁴⁴ These measures are to be initiated and implemented by the government and civil society actors.²⁴⁵ Civil society comprises of organisations that are not associated with the government, this includes, but is not limited to, school's advocacy groups, churches and non-profit organisations.²⁴⁶ The formal and informal services sector are riddled with a range of social developments organisations, community and faith based organisations, as well as tertiary education institutions.²⁴⁷ An active and independent civil society plays an essential role in ensuring that its government can realise and protect children's rights.²⁴⁸ Civil society consists of organisations that are tasked with holding the State accountable for realising children's rights and advocating for positive changes in

²⁴⁰ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 42(a)(vi).*

²⁴¹ South African Human Rights Commission *Child Friendly Complaints Handling Procedure* 1.

²⁴² South African Human Rights Commission *Child Friendly Complaints Handling Procedure* 1.

²⁴³ South African Human Rights Commission *Child Friendly Complaints Handling Procedure* 1.

²⁴⁴ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 43.*

²⁴⁵ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 43.*

²⁴⁶ Ingram (2020) <https://www.brookings.edu/blog/up-front/2020/04/06/civil-society-an-essential-ingredient-of-development/>.

²⁴⁷ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 41.

²⁴⁸ Save the Children's *Submission for the UN Office of the High Commissioner for Human Rights Report to the Human Rights Council on the Theme: "How to Create and Maintain Civil Society Space? What Works?"* 1.

policies, laws and budgets affecting children.²⁴⁹ In South Africa, civil society plays a significant role in ensuring the promotion and protection of children rights.²⁵⁰ In the formal services sector, civil society engages closely at the policy and programme level with all the relevant government departments, and they further contribute their services over a wide range of service delivery programmes, response interventions, and preventative measures.²⁵¹

By working together, the partnership between the State and civil society has helped improve service delivery solutions for children.²⁵² It is important that civil society and communities participate in defending children against violence, and that initiatives to strengthen the link and trust between government and communities are encouraged. Proper co-operation and a strong partnership between civil society and municipalities are essential in order to address the pressing needs and service requirements of children.²⁵³

The Constitution and the Municipal Systems Act make provision for public participation in the affairs of local government.²⁵⁴ This is in compliance with the Government's obligations under the CRC and the Committee's guidelines, which require that social policies be set in place to reduce risk and prevent violence against children.²⁵⁵ Local governments are tasked with providing essential services to their residents, and serve the purpose of representing and involving citizens in determining specific local public needs, along with how these can be met.²⁵⁶ Civil society which works with local government, has since been described as the

²⁴⁹ Save the Children's *Submission for the UN Office of the High Commissioner for Human Rights Report to the Human Rights Council on the Theme: "How to Create and Maintain Civil Society Space? What Works?"* 1.

²⁵⁰ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 41.

²⁵¹ The Presidency: *The Republic of South Africa The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 41.

²⁵² The Presidency: *The Republic of South Africa The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 41.

²⁵³ Calusa (2019) calusa.co.za/role-civil-society-policy-formulation-implementation-post-1994-south-africa-focus-sakhisizwe-municipality/.

²⁵⁴ Calusa (2019) calusa.co.za/role-civil-society-policy-formulation-implementation-post-1994-south-africa-focus-sakhisizwe-municipality.

²⁵⁵ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13* (2011) para 43.

²⁵⁶ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 41.

'conscience of a country' since its main purpose is to help solve problems and better service residents.²⁵⁷ In terms of promoting awareness of child-related issues, universities, NPOs and NGOs play an important role by doing advocacy work and engaging actively in parliamentary processes to contribute to the reviewing and developing of new legislation and policies.²⁵⁸ Civil society acts as a go between for the public and the Government, and serves the purpose of building the public's trust and confidence in Government. In this instance civil society promotes and raises awareness of and strengthens the capacity of children's rights, and ensures that the Government is responsive and accountable to its duty to the realisation of children's rights and child protection.²⁵⁹

NPO's such as COPESSA (Community-based Prevention and Empowerment Strategies in South Africa) are organisations that provide counselling and community development programmes, founded with the aim of preventing violence against women and children.²⁶⁰ COPESSA reflects the South African government's commitment to protecting children's rights, as it enjoys support from several stakeholders, institutions, eminent persons, universities and the Gauteng Provincial Department of Social Development.²⁶¹ Childline is another example of an NPO that works collectively to protect children from all forms of violence, it offers a crisis line, online counselling, training to parties that have an interest in children's rights and programmes to help orphaned and vulnerable child access assistance.²⁶² Childline enjoys the support and donations of several organisations including businesses, children's rights organisations such as The International Society for the Prevention of

²⁵⁷ Calusa (2019) calusa.co.za/role-civil-society-policy-formulation-implementation-post-1994-south-africa-focus-sakhisizwe-municipality.

²⁵⁸ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 41.

²⁵⁹ Save the Children's *Submission for the UN Office of the High Commissioner for Human Rights Report to the Human Rights Council on the Theme: "How to Create and Maintain Civil Society Space? What Works?"* 2.

²⁶⁰ COPESSA (year unknown) <https://www.copessa.co.za/>.

²⁶¹ COPESSA (year unknown) <https://www.copessa.co.za/>.

²⁶² Childline (year unknown) <https://www.childlinesa.org.za/about/how-we-help/>.

Child Abuse and Neglect (ISPCAN), the Department of Social Development and the Department of Basic Education.²⁶³

As a means to build an inclusive participatory platform for South African citizens and to fulfil its international obligation to fulfil child protection rights hand in hand with civil society, Thusong Service Centres were established.²⁶⁴ Thusong Service Centres were established with the objective of extending government services to rural and under-serviced communities, these centres serve the purpose of building partnerships between the public, private sectors, the government and civil society.²⁶⁵ Thusong Service Centres also play an important role in creating a platform for dialogue between citizens and their government. Citizens are able to access assistance from these centres, and receive information that the Government conveys, these centres also serve as a place where communities can lodge their complaints and needs knowing that it will be conveyed to the various stakeholders and the relevant government departments.²⁶⁶

Thusong Service Centres, unfortunately do not serve the purpose of child protection from violence, particularly child sacrifice. This is unfortunate as these centres could be utilized as grounds to educate communities about children's rights, harmful cultural practices and the protection of children from child sacrifice. Seeing that Thusong Service Centres work with various stakeholders, they would be in the best position to act as a go-to for the Governments, children, traditional healers and other stakeholders that would have an interest in fighting against the practice of child sacrifice.

²⁶³ Childline (year unknown) <https://www.childlinesa.org.za/about/donors/>.

²⁶⁴ Burton and Nel 2012 *Loyola Journal of Social Sciences*. XXV/1 115.

²⁶⁵ Burton and Nel 2012 *Loyola Journal of Social Sciences*. XXV/1 116.

²⁶⁶ Western Cape Government (year unknown) <https://www.westerncape.gov.za/general-publication/thusong-service-centres>.

4.5. Educational Response to Child Sacrifice

In terms of General Comment 13, South Africa has an obligation to take educational measures that address the attitudes, traditions, customs and behavioural practices which condone and promote violence against children.²⁶⁷ South Africa is also obligated to encourage open discussions on violence, this includes engaging media and civil society, to support children's life skills, knowledge and participation and to enhance the capacities of caregivers and professionals in contact with children.²⁶⁸ Harmful cultural practices continue to operate in communities as a result of ignorance, which harnesses fear and superstition that allow these traditions to continue and go unpunished.²⁶⁹ Access to education allows children and societies to understand the dangers of harmful traditional practices, and may help tackle the misplaced beliefs that exist under the guise of culture and tradition.²⁷⁰

At the moment, South Africa does not have educational measures that are aimed at educating children and communities on harmful traditional practices, particularly child sacrifice. Due to the fact that society is not educated on harmful traditional practices, perpetrators of these crimes are continuing their operations with little to no consequence. It is imperative that the South African Government works with stakeholders, community leaders and traditional healers to form programmes that will educate people on the dangers of child sacrifice, where it can be reported and the sanctions imposed on those who engage in this harmful practice.

Traditional healers should be tasked with the role of educating communities on alternative ways to appease their ancestors, such as the use of animals as in the past.²⁷¹ They should also be tasked with the role of creating forums where the community can report practices of child sacrifice and expose traditional healers who require them to kill children for purposes of offering.

²⁶⁷ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 44.*

²⁶⁸ *Committee on the Rights of the Child, General Comment No. 13, CRC/C/GC/13 (2011) para 44.*

²⁶⁹ Bulter (2016) <https://africanchildtrust.org.uk/education-critical-combating-harmful-cultural-practices/>.

²⁷⁰ Bulter (2016) <https://africanchildtrust.org.uk/education-critical-combating-harmful-cultural-practices/>.

²⁷¹ Jjuuko (date unknown) https://hrapf.org/images/researchpapers/child_sacrifice.pdf; HumaneAfrica Child Sacrifice and the Mutilation of Children in Uganda 10.

4.6. Conclusion

In the beginning of this chapter, we set out to consider the legislative, administrative, social and educational measures that the South African Government has taken to prevent and respond to violence against children in the form of child sacrifice. It has been established in previous chapters that the South African government is bound by legislation and policies that serve to provide a continuum of promotive, preventative, and protective services to children to support the fulfilment of their care and protection.²⁷² However, despite the sophisticated legal framework and co-operation of the different levels of government, South Africa is still marked by high levels of violence against, and the exploitation of children.²⁷³ The practice of child sacrifice is a field not often researched, which makes it difficult to formulate policies and laws that protect children from this harmful practice.²⁷⁴

There are policies and laws that are enacted to protect children from violence, which form the framework that the South African Government should use to combat the practice of child sacrifice, however, these policies and laws do not specifically target child sacrifice which makes it difficult to prevent child sacrifice from occurring in communities.

As mentioned above, the role of civil society in combatting child sacrifice is crucial, as civil society and local government are the public's mouth piece in parliamentary processes and bringing forward the issues children face to the provincial and national government.²⁷⁵ A working and stable relationship between civil society and the Government is of paramount importance to the development of legislation and policies pertaining to child protection.²⁷⁶ Due to the fact that child sacrifice is not a topic that is often researched or talked about in communities, it is difficult to take

²⁷² Department: Social Development Republic of South Africa *National Child Care and Protection Policy* 60.

²⁷³ Save the Children (date unknown) <https://www.savethechildren.org.za/what-we-do/our-work/child-protection>.

²⁷⁴ Labuschagne 2004 *Journal of Investigative Psychology and Offender Profiling* 191.

²⁷⁵ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 41.

²⁷⁶ The Presidency: The Republic of South Africa *The UN Study on Violence Against Children Questionnaire to Governments: Response from the Government of South Africa June 2006* 6.

advantage of the role of civil society in protecting children from child sacrifice. There is a need for the formulation of forums and programmes aimed at educating communities on harmful cultural practices. This will allow civil society to get involved and for government to be informed of *muthi* crimes that affect communities and most specifically children.

The South African government has successfully implemented some of its obligations stated in international instruments into its domestic legislation, however, the lack of knowledge, research and teachings about child sacrifice makes it difficult to adequately protect children from the harmful practice. South Africa still has a long way to go in terms of protecting its citizens from practices of harmful cultural practices, particularly child sacrifice. The Draft Bill, is however a good start, as it adequately defines *muti* crimes and *muti* killings, and sets out the sentences for those found guilty of engaging in these acts. Should the Draft Bill be enacted, along with forums, programmes and policies that specifically target child sacrifice this would help citizens gain confidence in the Government and the police force and prompt them to report crimes related to witchcraft.

5. Conclusion and Recommendations

5.1 Conclusion

The rights of children have remained on the global agenda for discussion for a long time. Since at least the beginning of democracy, the discourse on child rights has focused on the realisation of such imperatives.²⁷⁷ Violence against children in South Africa needs to be understood within the context of the country's transition from a past inequality and discrimination; this being said, the formulation of legislation ought to be aimed at ameliorating and addressing the negative impact of apartheid on society.²⁷⁸ The South African Constitution is a testament to the correction of the impact of apartheid on children's rights by incorporating a section that is solely dedicated to children's rights.²⁷⁹ However, as the research question in this study asks, does this legislation adequately protect children from the harmful cultural practice of child sacrifice?

This study has defined in great detail what child sacrifice is: it is a violent and harmful practice in which a child's body parts, blood, or tissue is removed whilst the child is still alive.²⁸⁰ These body parts are then worn, buried or eaten, in the belief that these acts will benefit the individual(s) who perform them.²⁸¹ It has been established that ensuring that a child's right to protection is enforced means securing the child's life, physical and mental health, integrity, well-being and development.²⁸² However, how can we use legislation to protect children from this harmful practice, when there is no specific legislation relating to child sacrifice or criminalizing the practice?

In chapter 3 we considered the relevant international, regional and domestic legislation that relates to protecting children against all forms of violence. We have learnt that South Africa is a signatory to numerous international and regional treaties

²⁷⁷ Abrahams and Matthews *Child Rights Manual: Handbook for Parliamentarians* 1.

²⁷⁸ See para 3.4.

²⁷⁹ Section 28 of the *Constitution of the Republic of South Africa*, 1996.

²⁸⁰ See para 2.3

²⁸¹ See para 2.3.

²⁸² See para 3.5.

that prescribe the standard of children's rights, that have been incorporated into domestic law. The domestication of treaties and their implementation through programmes and services is testament to the Government's commitment to giving effect to the provisions and requirements of the signed treaties and most importantly its high regard for children's rights.²⁸³ The Children's Act which is based on section 28 of the Constitution specifically prohibits and regulates a number of harmful customary practices including child marriages, genital mutilation, circumcision and virginity testing.²⁸⁴ Child sacrifice is a practice not often mentioned in international, regional and domestic legislation, and the lack of research around the practice of child sacrifice allows for this crime to go unpunished and for the misconception surrounding this practice to continuously grow.²⁸⁵

In chapter 4, we discussed South Africa's response to child sacrifice and found that on paper, South Africa's response to violence against children seems adequate in the sense that they have ratified international and regional instruments and have incorporated these into domestic law. However, due to child sacrifice not being mentioned in any legislation, it is difficult to adequately use legislation and polices to protect children from this harmful practice. Civil policy and traditional healers, together with the broader leadership collective, are crucial role players and enforcers of customary law.²⁸⁶ They are in a position to educate society on traditional practices and misconceptions surrounding the practice of child sacrifice. Civil society and traditional healers have the capacity to hold the government accountable for realising children's rights and advocating for positive change in policies, laws, and budgets affecting children.²⁸⁷ Traditional Courts, which have a judicial function in customary law, and jurisdiction over various civil and minor criminal matters,²⁸⁸ should take a stance in defining and interpreting customary law to protect children from the harmful practice of child sacrifice, which will in turn impact legislation on a

²⁸³ Abrahams and Matthews *Child Rights Manual: Handbook for Parliamentarians* 1.

²⁸⁴ Section 12 of *The Children's Act No. 38* of 2005.

²⁸⁵ See para 2.2.

²⁸⁶ See para 4.4.

²⁸⁷ See para 4.4.

²⁸⁸ See para 4.2.

national level to amend existing legislation and enact new laws that protect children from harmful cultural practices, particularly child sacrifice.

Despite the sophisticated legal framework and co-operation of the different levels of government, South Africa is still marked by high levels of violence against children.²⁸⁹ The practice of child sacrifice is a field not often researched, which makes it difficult to formulate policies and laws that protect children from it.²⁹⁰ More conversation is needed regarding this harmful practice to educate people and to encourage researchers to look into the practice.

5.2 Recommendations

To eradicate the practice of child sacrifice, a strong and coherent working relationship between the different spheres of government, families, civil society, community elders, traditional healers and the children is essential. These parties are ultimately the ones that determine and shape the existence of any specific customary practice.²⁹¹ If these parties were to act collectively in consultation with Government, effective programmes policies and laws addressing harmful cultural practices could be developed. The South African Parliament should, after consultation with traditional healers, civil society and other relevant parties, take into consideration the information and research brought to it to formulate and pass laws and policies that will protect children from harmful cultural practices, specifically the practice of child sacrifice.²⁹²

In terms of South Africa's educational response to child sacrifice, the Government ought to facilitate programmes that will educate children of their cultural and Procedures that will ensure the safety of whistle-blowers and the apprehension of perpetrators should also be in place. It is of paramount importance that research programmes are introduced and established to conduct further research on the harmful practice of child sacrifice. Further research would assist in raising awareness

²⁸⁹ See para 4.5.

²⁹⁰ See para 4.5.

²⁹¹ See para 4.4.

²⁹² See para 4.4.

about child sacrifice, and would assist in ensuring that adequate information is provided to communities. The Government should make education on harmful cultural practices, particularly child sacrifice available to communities, especially communities where child sacrifice is still practiced.

Through the use of media, workshops and conferences public awareness about child practice and its effects can be attained. Traditional healers play an important role in educating communities on the appropriate ways to appease their ancestors or to ask for blessings, such as using animals deemed traditionally appropriate to atone for wrongdoings or appease ancestors instead of offering children's body parts as a means of sacrifice.²⁹³

In Chapter 4, we established that a coherent relationship between the government and civil society is vital. The government needs to engage with all the role players that have an interest in child protection and cultural rights to develop laws and policies that will help build society's confidence in our government and its law enforcement. There is also a need for traditional healers to take a stand and assist in eradicating this harmful practice, by educating not only the government, but their communities, on the truth about the practice of child sacrifice, and the harm it carries for its victims. Traditional healers can also raise awareness of this harmful practice by regularly holding community meetings where community members are educated on child sacrifice and other harmful cultural practices. Members of the community should be engaged in forums or tribunals where they can report traditional healers that partake in these harmful practices.

In accordance with its administrative obligations under the CRC, particularly the obligation to provide independent national human rights institutions with support to establish specific child rights mandates,²⁹⁴ the Government provides support to organisations such as the SAHRC and COPESSA. It is crucial that alongside these organisations, forums and tribunals are established for reporting harmful practices. These forums and tribunals ought to have a solid reporting structure, and work in

²⁹³ See para 1.2.

²⁹⁴ See para 4.3.

hand with the SAPS. Communities should be able to work with organisations such as the SAHRC, COPESSA, Thusong Service Centres as well as the SAPS. The police services need to ensure that victims and whistle-blowers are protected and that reports of this harmful practice are thoroughly and carefully investigated to ensure more convictions for this crime. Through healthy relations with stakeholders and children themselves, the State and all its organs can expunge the practice of child sacrifice.

By conducting efficient research, Government would be in a place to challenge the attitudes that condone the practice of child sacrifice, and curb the dissemination of false narratives about the high value of children in ritualistic practices. Legislators should include provisions that deal specifically with harmful cultural practices and penalties for those who choose to engage in them.

Once policies and legislation protecting children from child sacrifice have been formulated and enacted, I believe communities will be able to gain trust in the judiciary and report cases of child sacrifice, as well as known perpetrators of this harmful practice. This may lead to a rise in convictions against those who harm children, and those that instruct perpetrators to remove the body parts of young children. This would send a strong message to perpetrators that no form of violence against children will be tolerated and overall expose the dangers of upholding harmful cultural norms.

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