

Children's Rights and Child Labour:
A Comparative Study of Children's Rights and Child Labour
Legislation in South Africa, Brazil and India

By

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The completion of this dissertation is the culmination of a long journey – a journey of doubt, weakness and often the questioning of my ability to live up to the expectations of me, a simple farm boy from Malmesbury in the Swartland region of the Western Cape, South Africa.

God is faithful.

I dedicate this dissertation to my grandmother, Johanna Sopazi (nee September) and my mother, Lindia Abrahams (nee September). Strong, determined women of faith, who started their working lives as child labourers in the kitchens of farm owners. From these kitchens, they raised a son, a farm boy, who through the submission of this dissertation will hopefully obtain a Masters degree in Human Rights Law from the University of Cape Town.

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Jeremiah 29 verse 11

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Glossary of Abbreviations:

ACHR:	American Convention on Human Rights
ACHRP:	African Charter on Human and Peoples' Rights
ACI:	Areas for Critical Importance
ACRWC:	African Charter on the Rights and Welfare of the Child
CLPA:	National Child Labour Action Programme for South Africa
CRC:	Convention on the Rights of the Child
DRC:	Declaration of the Rights of the Child
ECECR:	European Convention on the Exercise of Children's Rights
ECHR:	European Convention on Human Rights
Hiv/Aids:	Human immunodeficiency virus infection / Acquired immunodeficiency syndrome
IBSA:	India, Brazil and South Africa
ICESCR:	International Covenant on Economic, Social and Cultural Rights
IPEC:	International Programme on the Elimination of Child Labour
ILO:	International Labour Organization
UN:	United Nations
UNAIDS:	Joint United Nations Programme on Hiv and Aids
UNDP:	United Nations Development Programme
UNICEF:	United Nations Children's Fund
PETI:	National Programme to Eliminate Child Labour (Brazil)
WFLC:	Worst Forms of Child Labour

Section 1: Introduction

"The true character of a society is revealed in how it treats its children" –

Nelson Mandela

This dissertation will, through the analysis of various pieces of legislation and taking account of the daily realities of children in South Africa, Brazil and India (IBSA), outline the progress made to reduce and eradicate the exploitation of children, through the elimination of child labour. These three countries are chosen because of the particular challenges they face, but also because as part of the IBSA group, they have committed themselves to working together in the advancement of key international matters, including issues of human rights and social justice. The India, Brazil and South Africa (IBSA) group has further recently been held up as a global example for the efforts made by nations in the elimination of the worst forms child labour. The ultimate goal is the total elimination of child labour. This dissertation will draw attention to the complexities and contradictions in policy and practice, with particular reference to concepts such as 'Child Labour' and the 'Worst Forms of Child Labour'. This dissertation will compare [the experience of] childhood in these countries, and explore the risk factors that place particular children, and families, at risk of utilising child labour as a source of income.

Child labour, with particular reference to the 'Worst forms of child Labour' will be explored in detail, and I will pay particular attention to what governments and other institutions (such as the United Nations and the International Labour Organisation) are undertaking to combat this scourge. In this regard, the International Labour Organization (ILO) initiatives will be discussed. It is important, at this stage, to note that, in my view, child labour is not ideal and in most cases not in the best interest of the child, nor does it uphold the human rights and dignity of children. It is thus the intention of this dissertation to highlight the success and the pitfalls in

legislation and practice, and to make recommendations on how to improve current efforts to eradicate child labour.

The dissertation will advance the view that child labour should be viewed from the standpoint of human rights. These rights are fundamental and inalienable and, therefore, are not negotiable. Current law is made up legal instruments, as will be discussed, seeking to ensure these rights, to regulate them with no clear commitment to the total eradication of child labour globally. To this end, I will start by placing the issue of child labour within the broader international legal framework for the advancement of children's rights, thus providing a human rights context and frame for this discussion.

Section 2. The International Legal Framework for Children's Rights

"It was not until the late nineteenth century that a nascent children's rights protection movement countered the widely held view that children were mainly quasi-property and economic assets."¹ Progressive movements in the United States challenged the courts reluctance to deal with what was considered family matters, promoting broad child welfare reforms, and successfully campaigning for laws to be passed which would place children's issues into juvenile courts. Another movement gained prominence in the 1960's and 1970's, this time viewing children as victims of discrimination and/or viewing them as oppressed groups. Internationally, "the growth in children's rights in international and transnational law has been identified as a striking change in the post-war legal landscape"²

This brief overview will locate the advancements made with respect to eliminating child labour within the broader context of the

¹ Zeldin, Wendy. International Laws: Children's Rights, August 2007, The Law Library Congress

² Ibid

development of international laws, which seek to protect society's most vulnerable. By doing this the movement against child labour is positioned within the human rights framework – child labour is a human rights issue. This section will focus on pieces of legislation and/or conventions not covered in sections dealing with child labour specifically, and will also seek to provide an overview, as opposed to a detailed discussion on each. In summarizing the various conventions and treaties, we rely extensively on the work of Wendy Zeldin, as referenced in footnote 1.

2.1 Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights lays down the foundation for all human rights related legislation internationally. It represents an important point in the development of the global human rights legal framework and as such, contains two articles dealing with children "Article 25(2) states: "motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection." Article 26 calls for the right to education for all, and deals both with access to and the aims of education."³ These provisions call for free compulsory education, at least at early childhood development and primary education levels. It establishes the principle that education be directed to the full development of the human being and "directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."⁴ The declaration however also acknowledges the central role of parents in choosing the kind of education they deem appropriate for their children.

2.2 Declaration on the Rights of the Child 1959

The League of Nations Declaration (1924) laid the foundation for the U.N. Declaration of the Rights of the Child (DRC). "The

³ Universal Declaration of Human Rights, 1948

⁴ Ibid

Preamble notes that children need “special safeguards and care, including appropriate legal protection, before as well as after birth,” reiterates the 1924 Declaration’s pledge that “mankind owes to the child the best it has to give,” and specifically calls upon voluntary organizations and local authorities to strive for the observance of children’s rights.”⁵ The principles enshrined in the Declaration on the Rights of Child is that “a child is to enjoy “special protection” as well as “opportunities and facilities, by law and by other means,” for healthy and normal physical, mental, moral, spiritual, and social development “in conditions of freedom and dignity.” The “paramount consideration” in enacting laws for this purpose is “the best interests of the child,”⁶ This standard is a central feature in all children’s rights instruments, and this is a principle that filters through to legislation at national level as well. The various principles include that a “a child is entitled to a name and nationality; to adequate nutrition, housing, recreation, and medical services; to an education; and, for the handicapped, to “special treatment, education and care.”⁷ It further protects children against neglect, cruelty and it prohibits the exploitation, trafficking, and also underage labour, and discrimination.⁸

2.3 International Covenant on Economic, Social and Cultural Rights 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR), is applicable to children in as far as it recognizes the indivisibility of human rights. It as importantly gives “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”⁹ and that “these rights derive from the

⁵ Zeldin, Wendy. International Laws: Children’s Rights, August 2007, The Law Library Congress,

⁶ Declaration on the Rights of the Child, 1959

⁷ Ibid

⁸ Ibid

⁹ The International Covenant on Economic, Social and Cultural Rights, as adopted by the United Nations General Assembly on December 6, 1996, <http://www.ohchr.org/english/law/cescr.htm> (last accessed on 13 February 2013)

inherent dignity of the human person.”¹⁰ Articles 10 and 12 of the ICESCR deals with children’s rights. Article 10 states that “the widest possible protection and assistance should be accorded to the family, ... particularly for its establishment and while it is responsible for the care and education of dependent children.”¹¹ Through further provisions it calls for special measures to provide protection and assistance to children without discrimination; “that they should be protected from economic and social exploitation; that employing them in morally or medically harmful or dangerous work or in work likely to hamper their normal development should be punishable by law; and that age limits should be set below which the paid employment of child labor is prohibited and punishable by law (item 3).”¹² States parties are further called upon to reduce the stillbirth rate, infant mortality and are called upon to implement measures to ensure the healthy development of the child. In terms of article 13(1) of the ICESCR everyone has a right to education, and in more specific terms, “primary education shall be compulsory and available free to all” (article 13(2a)).”¹³

2.4 UN Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child (CRC) is the most comprehensive document and on the rights of children. “Based purely on the number of substantive rights it sets forth, as distinct from implementation measures, it is the longest U.N. human rights treaty in force and unusual in that it not only addresses the granting and implementation of rights in peacetime, but also the treatment of children in situations of armed conflict.”¹⁴ This convention is further important because it provides the principle of “from the child’s perspective” as critical when making decisions affecting children. “The CRC is primarily concerned with four aspects of children’s rights (“the four ‘P’s”): participation by children in decisions affecting them; protection of children against

¹⁰ Ibid

¹¹ Ibid

¹² Zeldin, Wendy. International Laws: Children’s Rights, August 2007, The Law Library Congress

¹³ International Covenant on Economic, Social and Cultural Rights 1966

¹⁴ Zeldin, Wendy. International Laws: Children’s Rights, August 2007, The Law Library Congress

discrimination and all forms of neglect and exploitation; prevention of harm to them; and provision of assistance to children for their basic needs.”¹⁵ In article 1, the CRC establishes as applicable to child legislation, dealing with human beings below the age of 18 years.

The CRC creates rights for children under international law that previously had not existed, such as the child’s “right to preserve his or her identity (articles 7 and 8), the rights of vulnerable children like refugees to special protection (articles 20 and 22), and indigenous children’s right to practice their culture (articles 8 and 30). In some instances, this innovation takes the form of child-specific versions of existing rights, such as those in regard to freedom of expression (article 13) and the right to a fair trial (article 40).”¹⁶ In addition, the CRC enshrines in a global treaty, rights important rights like the children’s right to be heard in proceedings that affect them (article 12), whilst non-binding recommendations become binding for example safeguards in adoption procedures and protection for the rights of disabled children in articles 21 and 23. “New obligations are imposed on States Parties in regard to the protection of children, in such areas as banning traditional practices prejudicial to children’s health and offering rehabilitative measures for victims of neglect, abuse, and exploitation (articles 28(3) and 39).”¹⁷ States may further not discriminate against children’s full enjoyment of these rights and the view is advanced that through these progressive provisions that Convention calls for a world order in which a culture of respect is fostered for all children, and importantly, one in which the views of children are regarded as important, especially in matters pertaining to them.

¹⁵ Ibid, Geraldine Van Bueren refers to this the importance of the four “Ps” and discuss this in *The International Law on the Rights of the Child* (Dordrecht/ Boston/ London, Martinus Nijhoff Publishers, 1995. 35 *International Studies in Human Rights*

¹⁶ UN Convention on the Rights of the Child, 1989

¹⁷ Ibid

2.5 Regional Instruments:

Regional instruments are important; because nations are organized in regional blocks where particular dynamics like, issues of culture, often influence legal instruments. It however also shows the extent of influence that a particular convention may have, and often states are more comfortable being guided by the neighbors at regional level than they are at bigger international level. Regional instruments are further important in a context where regional courts and/or other accountability and support mechanisms are being established. Our three countries under discussion (India, Brazil and South Africa) support efforts in combating the worst forms of child labour, in their regions, sharing best practice models and providing both financial and technical support in advancing the cause of eliminating (for example) worst forms of child labour in their regions.

2.5.1 European Convention on Human Rights, 1950

"The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), the first international human rights agreement to establish supervisory and enforcement machinery, obliges States Parties to "secure everyone within their jurisdiction" the rights and freedoms it sets forth (article 1)."¹⁸ By using the terms "everyone" and "no one" the European Convention on Human Rights successfully brought children into the fold. Specific references to the young are found in two articles of the European Convention on Human Rights (ECHR) and concern legal proceedings. Article 5(1)(d), on the lawful procedures for depriving a minor of his or her liberty, permits the lawful detention of a minor for the purpose of educational supervision or for bringing him before the competent legal authority. Article 6(1) stipulates that everyone is entitled to a fair and public hearing and that judgment will be pronounced publicly, but the hearing may be held in private when

¹⁸ Zeldin, Wendy. International Laws: Children's Rights, August 2007, The Law Library Congress

required by the interests of juveniles or the protection of the parties' private life.¹⁹ The principle of in the interest of the child is further entrenched at European level through this Convention.

2.5.2 European Convention on the Exercise of Children's Rights, 1996

The European Convention on the Exercise of Children's Rights (ECECR) stresses in the Preamble the aim of promoting the rights and "best interests" of children, and as in specific terms states "that children should have the opportunity to exercise their rights, particularly in family proceedings affecting them; they should be provided with relevant information (defined as information appropriate to the child's age and understanding, given to enable the child to exercise his or her rights fully, unless contrary to the welfare of the child) and their views should be given "due weight"; and, "where necessary," States as well as parents, should engage in the protection and promotion of those rights and best interests (Preamble)."²⁰ Children under the age of 18 have a right to be included in proceedings affecting them, this includes being given an opportunity to express their views on the matters at hand, and they may even apply for a special representative to assist them. This Convention also gives children the same or all of the rights of the other parties to the proceedings.

2.5.3 African Charter on Human and Peoples' Rights, 1981

The African Charter on Human and Peoples' Rights (hereinafter ACHPR) (also known as the Banjul Charter) emphasizes the central role of the family, and thus the collective. This reflects the African worldview, and importantly; it gives expression to African customary law. This Charter encompasses civil and political as well as economic, social, and cultural rights. "Thus, the ACHPR makes it incumbent on the individual "to preserve the harmonious

¹⁹ European Convention on Human Rights, 1950

²⁰ Ibid, p5

development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need" (article 29(1)). The ACHPR does not set forth any additional specific rights for children, relying instead on existing international protections regarding children's rights [33] (in article 18(3))."²¹ Flexibility and a possible way in for children in this Charter are however potentially found in wording which refers to "the individual" or "every individual." Critically important, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides important protections for girls. It calls for the elimination and the condemnation of "any practice that hinders or endangers the normal growth and affects the physical, emotional and psychological development of women and girls." It requires States Parties are to "enact and implement legislative measures to prohibit all forms of such harmful practices (article 2(1)(b)); protect women and girls against rape and all other forms of violence, including trafficking;"²² and to "ensure that in times of conflict and/or war, such acts are considered war crimes and are punished as such" (article 4(c) and (d)). States Parties should also condemn harmful practices such as medicalization of female genital mutilation and scarification that affect the fundamental human rights of women and girls and are contrary to recognized international standards, and take measures against them, such as rehabilitation of the victims and granting of asylum to those at risk (article 6(b-d))."²³ The Charter further requires that protection be provided to women and children in both emergency and conflict situations, and yet another important provision that the right to education and training be realized by ensuring that all appropriate measures be taken "to eliminate discrimination against women and girls, with specific positive action to be taken to promote girls' education and training "at all levels and in all disciplines" as well as their retention in schools and other training institutions (article 12)."²⁴ The regional dynamics, and region specific issues clearly come to the fore in the African Charter. Strong emphasis is placed on the girl child, and women, because of the challenges in this respect in Africa. In doing so, women's rights and children's rights are being advanced, and this being done within

²¹ African Charter on Human and Peoples' Rights, 1981 – This is discussed in Zeldin, Wendy. *International Laws: Children's Rights*, August 2007, The Law Library Congress,

²² African Charter on Human and Peoples' Rights, 1981

²³ Ibid

²⁴ Ibid

a common regional framework for human rights. The Charter balances these rights, with African customary law, which places a strong emphasis on the family unit.

2.5.4 African Charter on the Rights and Welfare of the Child 1990

Modeled strongly on the CRC, the African Charter on the Rights and Welfare of the Child (ACRWC), the first regional treaty on children's rights, builds on the 1979 Declaration on the Rights and Welfare of the African Child. "The main difference lies in the existence of provisions concerning children's duties [in article 31], in line with the African Human Rights Charter"²⁵ The position of the child in the African society is highlighted and through the preamble, the Charter makes its intentions clear by stipulating that the child, given its place in African society, requires legal protection as well as "particular care with regard to health, physical, mental, moral and social development."²⁶ The Charter defines a child as a human being below the age of 18, and "sets forth the principles of non-discrimination and the best interests of the child and also provides that children have an inherent right to life, protected by law."²⁷ Further provisions include that; the death sentence shall not apply to children committing crimes (article 3 -5), that children have a right to "have a right to a name and nationality as well as to freedom of expression, association and peaceful assembly; thought, religion, and conscience; privacy; education; and rest and leisure (articles 6-12)."²⁸ Disabled children are protected, and it specifically states that "children should also be protected against all forms of economic exploitation and from performing work likely to be hazardous (article 15) and against all forms of torture, maltreatment, and abuse (article 16); harmful social and cultural practices (article 21); all forms of sexual exploitation or abuse (article 27); the use of narcotics and illicit drugs (article 28); and abduction, sale, trafficking, and use in begging (article 29)."²⁹

²⁵ African Charter on the Rights and Welfare of the Child 1990, as discussed by Zeldin, Wendy. *International Laws: Children's Rights*, August 2007, The Law Library Congress,

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

Child labour issues are here being brought into the collective of general human rights issues facing children. This approach means that States are required develop holistic inventions when seeking to improve the lot of children on the African continent. This approach is very useful in the context of our endeavor, which seeks to eliminate the worst forms of child labor, as a first step towards the total eliminations of child labor, and in the process ensuring that the necessary safety nets are put in place to ensure the full development children.

2.5.5 American Convention on Human Rights, 1969

The American Convention on Human Rights (ACHR) obliges States Parties to respect the rights and freedoms recognized in its provisions and "to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."³⁰ Useful for our purposes is the fact that the ACHR refers to "person" and "very human being" and as such provides that "every person has the right to a legal personality, to life, to humane treatment, to personal liberty, and to a fair trial, among many other rights set forth."³¹ The right to provide for religious and moral education is granted to parents and it stipulates that public entertainment may be subject to censorship for "the sole purpose of regulating access to them for the moral protection of childhood and adolescence," notwithstanding the right to freedom of thought and expression (article 13(4)).³² During a divorce the protection of children is guided purely on the basis of what is in the best interest of the child, and children will have equal rights and status regardless of whether they were born in or out of wedlock (article 17(4) & (5)) and states that "everyone also has the right to a given name and to the surnames of one or both parents

³⁰ American Convention on Human Rights, 1969

³¹ Ibid

³² Ibid

(article 18).” The rights of the child specifically is dealt with a separate provision “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state (article 19).”³³ However, this article may be suspended during times of war, public danger and/ or emergencies.

2.5.6 The Association of South East Nations Declaration on Human Rights, 2012

The Association of South East Nations (ASEAN) Declaration on Human Rights was in adopted in 2012, despite many objections from human rights bodies in the region. A major concern are the provisions in article 6 “The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all Association of South East Nations (ASEAN) Member States to promote and protect all human rights and fundamental freedoms;”³⁴ and article 7 “All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.”³⁵ From the examples quotes, the role of the state is central and human rights are to be enjoyed within the national contexts of the nations involved. Despite these concerns, by using the words “every person” rights are extended to children, furthermore, article 4 states that “The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.” Article 13 “No person shall be held in servitude or slavery in any of its forms, or be subject to

³³ Ibid

³⁴ ASEAN Human Rights Declaration, November 2012

³⁵ Ibid

human smuggling or trafficking in persons, including for the purpose of trafficking in human organs.” The declaration places state and family at the centre of society, however with respect to child labour it states, that national laws will be adopted to ensure that article (27.3) “No child or any young person shall be subjected to economic and social exploitation. Law should punish those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education. ASEAN Member States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.”³⁶ The declaration makes provision for free education, whilst also giving children equal status regardless of the marital status of their parents. These are contained in articles 30 and 31, which places special significance on ensuring that the dignity of all human beings are upheld and promoted.

2.6 Comments on the International Legal Framework

The journey from the Universal Declaration on Human Rights to the ratification of the Worst Forms of Child Labor has been a long one. It’s a journey, which represents a dramatic shift in the thinking about the role of children in society, with the Universal Declaration providing special protection clauses for society’s most vulnerable. Emphasis is placed on special care and assistance, and the right to education plays an important feature, this within the framework of the family with the parent granted the right to choose the appropriate kind of education. Significant is also the equal status granted to children regardless of the marital status of their parents at the time of birth.

By the time the Worst Forms of Child Labor Convention had been adopted, radical shifts in thinking had taken place. This journey includes important provisions, like the principle of the “best interest of the child”, in the Declaration on the Rights of the Child, to strengthen these the voice of and participation of children in

³⁶ Ibid

processes affecting the became important. There was also consensus on the need to eliminate child labor, many seeing the elimination of the worst forms as a stepping-stone to a complete elimination of child labor. The pragmatic approach is recognition of the reality that many children are forced into child labor, due to poverty and historical practices, which sees children as economic commodities and/or as assets. The movement also begins to include much deeper and broader issues, away from typical protections and guarantees to free and compulsory education; to provisions which begins to address some of the deeper, more structural and often more sensitive issues. For example, issues of the sexual exploitation, and children in armed conflict are addressed. Key protective provisions stay in force even during times of war, conflict and emergencies. The development of regional instruments to specifically address the position of children in society is significant in ensuring that regional issues are taken into account. As such, regional instruments ensure greater buy-in and bring a nuanced approach to addressing the myriad of issues facing children. Regional institutions support these regional instruments, which gives muscle to and at regional level assist with monitoring the implementation of commitments made.

Developments within the UN system, and outside the Human Rights Council, indicate strongest the extent to which children's issues have dominated the international agenda. The International Labor Organization is a key role player in the development and advancement of children's rights. This started with efforts to address issues related to minimum age. It first ensured sector specific guidelines and instruments, and over time, by bringing these together, and moving beyond the minimum age approach, it ensured a much more holistic approach to address also the root causes of child labor. The Convention on the Rights of the Child, establishes as a legal principle the notion that issues needs to be tackled from the perspective of the child, which brings with it into the fold the need to ensure the participation of children, children's protection against discrimination and all forms of neglect and exploitation, the prevention of harm to them, and the provision of assistance to meet their basic needs.

Developments in child labour, thus need to be seen within this context. A context that seeks to improve the human rights status of children globally, with the tackling of child labour, and in particular, the worst forms of child labour, as being central to this agenda. Child labour is as such a central human rights issue.

Section 3: Defining Child Labour: An Overview, Exploring Concepts and Contradictions

3.1 Child Labour: A Global overview

According to the International Labour Organization (ILO) 168 million children globally are involved in child labour.³⁷ More than half of these children, 85 million, are in hazardous work. Although this represents a significant decline from 2000, when 246 million children were in the labour force and 171 million in hazardous work, child labour remains a global concern. Asia and the Pacific represents the largest numbers (78 million or 9.3%) of the child population, but Sub-Saharan Africa continues to be the region with the highest incidence of child labour with 59 million or 21% of the global child labour incidents being reported in this region. Latin America and the Caribbean come second with 13 million or 8.8% and the Middle East and North Africa third at 9.2 million or 8.4%. The ILO reports "child labour amongst girls fell by 40% since 2000, compared to 25% for boys".³⁸ It further reports that "agriculture remains by far the most important sector where child labourers can be found (98 million, or 59%), but the problems in are not negligible in services (59 million) and industry (12 million) – mostly in the informal economy"³⁹

"Children in almost every part of the world (including the Western world) have always taken part in social and economic activities as

³⁷ Marking progress against child labour – Global estimates as published on the ILO website, <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm#a2> (last accessed on 21 February 2014)

³⁸ Ibid

³⁹ Ibid

members of the house-hold to which they belong. Given that family and not the individual is the unit of social activity, a child's work in this case is seen as a process of socialization and apprenticeship"⁴⁰ Hasnat argues that "child labour is rooted in poverty, uncontrolled population growth, social customs, migration, lack of facilities for education, and low government spending on education, as can be seen in many developing countries"⁴¹ The notion of child labour as a problem gained importance during the industrial revolution, and "the ILO efforts to combat child labour became evident at the international level in the mid-1980's"⁴² As a human rights issue, the focus on child labour has been intensified especially as consensus are reached around the harmful effects of certain types of labour.

"There have been recent attempts to combat child labour by lowering employment opportunities for children through harmonized international child labour standards and by consumer boycotts of products produced by child labourers"⁴³ One must at this point stop, and ask, what is child labour? "Child Labour refers to work that: is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling: by depriving them of the opportunity to attend school, or by obliging them to leave school prematurely, or by requiring them to attempt to combine school attendance with excessively long and heavy work."⁴⁴ The ILO (2002) further assert that "all children under 15 years of age who are economically active excluding those who are under 5 years and those between 12 – 14 years old who spend less than 14 hours a week on their jobs unless their activities or occupation is hazardous by nature or circumstances, is called "Child Labour."⁴⁵

⁴⁰ Hasnat, B. (1995) International Trade and child labor. *Journal of Economic Issues*, 29, 419 – 425

⁴¹ Ibid

⁴² Ibid

⁴³ Edmonds, Eric and Pavnick, Nina. (2005), *Journal of Economic Perspectives*, Volume 9, Number 1, Winter 2005, 199 – 220

⁴⁴ *Handbook for Parliamentarians*, No 3 – 2002. Eliminating the Worst Forms of Child Labour. A practical guide to ILO Convention No 182, p15

⁴⁵ Hasnain, Ali and Khan, Samsuddin. (2012), *The Overcoming of Child Labour in India: In perspective of constitutional and legislative framework*. *Journal of Business Management and Social Sciences Research*. (JBM&SSR) ISSN No 2319 – 5614, Vol 1, No 3, December 2012, p 83

The ILO continues to define child labour as “work situations where children are forced to work on a regular basis to earn a living for themselves and their families, and as a result they remain backward educationally and socially in a situation which is exploitative and harmful to their health and to their physical and mental development. The children are separated from their families, often deprived of educational and training opportunities and they are forced to prematurely lead adult lives (ILO)”⁴⁶

The next sub-section will explore the various types of child labour, save to note that this definition refers to the negative aspects of child labour. Essential to these definitions is the common thread, which defines child labour as harmful, and as an activity, which is harmful to the full physical and mental development of children.

3.2 Un-harmful Child Labour or Child Work

Only the worst forms of child labour are targeted for elimination. “Children’s or adolescents’ participation in work that does not affect their health and personal development or interfere with their schooling is generally regarded as being something positive.”⁴⁷ Activities such as helping around the parental home, assisting in a family business or earning pocket money during holidays and/or outside school hours, fall in this category. It is argued that “these kinds of activities contribute to children’s development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life”⁴⁸ As such, and given that “family and not the individual is the unit of social activity, a child’s work in this case is seen as a process of socialization and apprenticeship”⁴⁹ On

⁴⁶ Ibid

⁴⁷ Facts about the The International Labour Organization – International Programme for the Elimination of Child Labour, <http://www.ilo.org/ipecc/facts/lang--en/index.htm> (last accessed on 09 February 2014)

⁴⁸ Ibid

⁴⁹ Hasnat, B. (1995) International Trade and child labor. *Journal of Economic Issues*, 29, 419 – 425,

contrast to this, child labour, as discussed, is defined as those activities which are harmful to children and which deprive them of their full physical and mental development. The determining factor as to whether or not a particular activity can be called "work" or "labour" depends on "the child's age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. The answer varies from country to country, as well as among sectors within countries."⁵⁰ However, as discussed, the various international conventions, plays a significant role in determining this, especially with respect to providing clarity and an international standard, which at the very least, gives a clear indication as to the worst forms of child, labour.

3.3 Worst Forms of Child Labour

During the 1990's there was surge in the concern of the international community with the welfare of children generally, and of child labour in particular. The growing concern of child labour was as a result most notably of "growing trend towards greater liberalization of trade and capital movements. This has brought about increasingly vocal demands that children should not be victims of increased competition among countries and firms struggling to obtain comparative advantage in world markets through the cheap and docile labour of children; greater transparency in the world economy and the abolition of blocs after the end of the Cold War; the indignation of consumers at the thought that the good they purchase may have been produced in abusive conditions, including child labour; and the publicity given to the commercial sexual exploitation of children, particularly children in prostitution and pornography and sex tourism"⁵¹ At the same time, this greater focus on children's rights lead to a deeper understanding of the complexities fuelling child labour, "and in particular the fact that it is deeply rooted in poverty, in the lack of inadequacy of schooling and in social and cultural traditions and

⁵⁰ Facts about the International Labour Organization-International Programme for the Elimination of Child Labour, <http://www.ilo.org/ipecc/facts/lang--en/index.htm> (last accessed on 09 February 2014)

⁵¹ Handbook for Parliamentarians, No 3 – 2002. Eliminating the Worst Forms of Child Labour. A practical guide to ILO Convention No 182, p19

structures. Its elimination cannot be achieved merely by a stroke of the legislator's pen, but is recognized to be a very long-term goal. However, growing concern has emerged that certain situations of child labour are so grave and inhumane that they can no longer be tolerated"⁵² A consensus that action be taken to eliminate the worst forms of child labour globally was reached.

The fact that the Worst Forms of Child Labour Convention (WFLC) of 1999, Convention No. 182 in September 2001 "only two years after its adoption... already had achieved a record rate of ratifications – having been ratified by 100 countries, which is well over half of the ILO's members States – demonstrates that countries throughout the world accept it to be a major and urgent priority"⁵³ However, this widespread ratification of the WFLC does not mean that the goal of the complete elimination of child labour had been achieved. "Giving priority to combating the worst forms of child labour is simply a matter of doing first things first. It provides an entry point to promote and facilitate further action to attain the ultimate goal"⁵⁴

The Worst Forms of Child Labour Convention of 1999, defines the worst forms of child labour in article 3 as: "a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children"⁵⁵ The convention further requires each States party in article 7(2) to "adopt measures to: prevent the engagement of children in the worst

⁵² Ibid

⁵³ Ibid, page 20

⁵⁴ Ibid

⁵⁵ Worst Form of Child Labour Convention, 1999, (No.182), www.ohchr.org/EN/Professionalinterest/Pages/ChildLabour.aspx (last accessed on 09 February 2014)

forms of child labour; to provide direct assistance for the removal of children from such labour and for their rehabilitation and social integration; to ensure access to free basic education, and wherever possible and appropriate, to vocational training for all children removed from the worst forms of child labour; to identify and reach out to children at special risk; and to take account of the special situation of girls"⁵⁶ Beyond defining the worst forms of child labour, the WFCL Convention thus also requires proactive action from states parties to eliminate child labour. For the purposes of the convention and in article 2, "the term child applies to all persons under the age of eighteen" ⁵⁷

3.4 Decent Work and Child Labour

"Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men"⁵⁸ Given our definition of child labour, as discussed above, child labour cannot fall under the category of decent work as child labour is defined in the negative and thus as something that prohibits the full development of children, and often within a context where children are forced into labour given family circumstances. One can thus argue that the pursuing of a decent work agenda is in fact also an agenda, which seeks to ensure the elimination of child labour all together as defined by the ILO.

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ International Labour Organization's Decent Work programme, www.ilo.org/global/topics/decent-work/lang-en/index.htm (last accessed on 09 February 2014)

Section 4: India, Brazil and South Africa, and Risk factors: What Contributes to Child Labour?

India, Brazil and South Africa form part of the IBSA group, a trilateral developmental initiative to promote South-South cooperation and trade. The Presidents of these countries created the group in 2003 with the signing of the Brasilia Declaration. "The main principles of the agreement is to promote South - South cooperation and dialogue in order to achieve common positions on issues of international importance, to explore trade and investment opportunities, to promote international poverty alleviation and social development, exchange of information, technologies and skills, as well as to compliment each others competitive strengths into collective synergies."⁵⁹ To this end, India, Brazil and South Africa (IBSA) have become an "instrumental institution for promoting closer coordination on global issues between three large multicultural and multiracial democracies of Asia, South America and Africa... the India, Brazil and South Africa (IBSA) Fund for Poverty Alleviation, the first initiative of cooperation for development on the basis of trilateral South-South cooperation"⁶⁰ funds projects in Haiti, Guinea Bissau and in Laos and this is coordinated by the South-South Unit of the United Nations Development Programme (UNDP). "The principles, norms and values underpinning the IBSA Dialogue Forum are participatory democracy, respect for human right, the Rule of Law and the strengthening of multiculturalism"⁶¹ 2013 marked the tenth anniversary of the IBSA, with the last decade having seen IBSA taking common positions on significant political, economic and social issues.

The 3 IBSA countries also form a part of the very influential BRICS grouping of countries, which consists of Brazil, Russia, India, China and South Africa. This is a multi-lateral group of nations with

⁵⁹ Intellectual Network for the South, www.insouth.org/index.php?option=com_sobi2&sobi2task=sobidetails&sobi2Id=107&temid=68 (last accessed on 09 February 2014)

⁶⁰ Ibid

⁶¹ India, Brazil, South Africa Dialogue Forum, www.ibsa-trilateral.org (last accessed on 09 February 2014)

increasing influence in global affairs, formed with the aim to foster closer ties and to exert their influence on global affairs as a collective. At the India, Brazil and South Africa meeting of 18 October 2011, the group as part of the Tshwane Declaration, "reaffirmed their commitment to eliminate the worst forms of child labour and took note of the ILO Road Map for Achieving the Elimination of the Worst Forms of Child Labour by 2016 and welcomed the convening of the Third Global Conference Against Child Labour to take place in Brazil in 2013."⁶² And as mentioned, the international community hails this group as role models in international efforts to eliminate the worst forms of child labour.

This dissertation seeks to examine the legislative framework of the India, Brazil and South Africa (IBSA) group of countries, noting the extent to which local legal frameworks have been influenced by the commitment of each country to global human rights and social justice issues. Noting children as the most vulnerable members of our society, and the challenge of child labour, especially in emerging economies, the IBSA group presents an interesting study, both in terms of the gains made and the challenges they face as they seek to assert their influence on global affairs. To what extent does this ambition influence their law making at home, and to what extent do they influence each other in this regard? In respect of child labour, to what extent do they live up to their international law obligations to eradicating the worst forms of child labour, and progressively steering their nations towards the International Labour Organization's concept of "decent work".

For now, we ask, what contributes to child labour in these countries? In asking this question, we are mindful that the causes of child labour this is complex, with no easy answers. This dissertation will discuss the role of poverty, and the impact of HIV/AIDS as two of the key contributors to child labour given the India, Brazil and South Africa (IBSA) context, but will also touch on other factors causing child labour. These other factors are significant to IBSA as we navigate the complexity of the issues at play. By doing so, we

⁶² Fifth IBSA Dialogue Forum, Tshwane Declaration, 18 October 2011.
<http://www.mea.gov.in/bilateral-documents.htm?dtl/5321/> (Last accessed on 17 February 2014)

hope to give a sense of the full nature of this global human rights challenge, and especially to highlight the fact that child labour cannot be address in isolation of the myriad of other challenges facing children, and societies at large.

4.1 Poverty

“Poverty is certainly the greatest single force driving children into the workplace. Income from a child’s work is felt to be crucial for his/her own survival or for that of the household.”⁶³ This is especially evident at national level, where “child labour is both a cause and consequence of poverty and squanders a nation’s human capital. It can impede the education of children, particularly girls”⁶⁴ In other words, families often rely on the extra income made by sending their children to work as a means for survival, and to better their economic position. Yet, this very decision often means that the child is denied schooling, which could in the long term pull a family out of poverty. The decision is however often influenced by the family’s immediate circumstances without always taking the longer-term benefits into account. What is the situation in the IBSA?

“Poverty imposes an oppressive weight on India, especially in the rural areas where almost three out of four Indians and 77 percent of the Indian poor live. Although poverty has been reduced during the past four decades, it remains painfully high. Because of India's rapid population growth rate, even that advance, however, has not been sufficient to reduce the absolute number of poor, which increased from around 200 million in the 1950s to 312 million in 1993-94 (most recent Five Year Survey).”⁶⁵ This staggering statistic leaves India with the largest concentration of poor people

⁶³ Handbook for Parliamentarians, No 3 – 2002. Eliminating the Worst Forms of Child Labour. A practical guide to ILO Convention No 182, p25

⁶⁴ Child Protection Information Sheet, UNICEF (May 2006), www.unicef.org (last accessed on 11 February 2014)

⁶⁵ India: Achievements and Challenges in Reducing Poverty, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20208959~menuPK:435735~pagePK:148956~piPK:216618~theSitePK:430367~isCURL:Y~isCURL:Y,00.html> (last accessed on 11 February 2014)

in the world, especially in villages. This does not tell the full story of progress as "Social indicators of well-being, for instance, record a history of progress that has, like the decline of poverty itself, been steady but slow."⁶⁶ The most affected by poverty in India are those living in rural areas, and especially rural women. While the Gini coefficient (the measurement of inequality) varies little from the poorest to the rich, it does not capture the gender and social inequalities that persist in India. "These inequalities severely constrain the extent to which certain groups in the population are able to participate in and benefit from the process of economic growth."⁶⁷ Matters are made worse by a lack of a social security network, resulting in "the worse type of child labour – bonded child labour. For the poor, there are few sources of loans of any type – and even if there are sources available, few Indians living in poverty qualify. For a small amount parents exchange their child's labour for money. Since the salary of a bonded child labourer is less than the interest on the loan, the loan grows"⁶⁸ It is almost impossible for the poor to pay these loans off, and as a result, the child must continue to work until the loan is repaid. In India, the attitude of parents is a major contributor to child labour, with some seeing this as a way of their children developing useful skills. Additionally, "poor schools, a lack of schools, or even the expenses of schooling leaves some children with little else to do but work"⁶⁹ As already alluded to, poor access to schooling leaves little hope for an escape from poverty through education especially for those living in rural areas.

"The level of poverty in Brazil is well above the norm for a middle-income country. Within Brazil, there are wide disparities in the extent of poverty. More than half of all poor Brazilians live in the Northeast. In spite of urbanization, rural and urban areas contribute equally to national poverty."⁷⁰ The youth are disproportionately

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Badiwala, Mitesh. Child Labour in India: Causes, Governmental Policies and the Role of Education. Child Labour Inquiry www.geocities.com/CollegeParkLibrary/9175/inquiry1.htm; (last accessed on 13 February 2014)

⁶⁹ Ibid

⁷⁰ Brazil: A Poverty Assessment by the World Bank

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,.cont>

affected by poverty in Brazil. As a result "the participation of children in the labour force in Brazil is at least twice as high as in any other country in Latin America"⁷¹ In the North and Northeast regions, it is reported that a quarter of children under five suffer chronic malnutrition, especially the rural poor in the Northeast of whom, half are smallholders and sharecroppers. The rest are employees and/or temporary workers. "Poor households are large--they have nearly twice as many children as the better-off. Access to utilities is rare. Poor urban households are evenly dispersed between large cities and small towns; 40 percent live in the Northeast. They have more young children than wealthier households and spouses are not likely to participate in the labor market. The household head tends to be young, does not have a labor card, and most commonly works in services. Many are self-employed. A quarter of these household heads are illiterate; about half attended school for four years or less. These households have significantly less access to water and sanitation services than do better-off urban households."⁷²

In South Africa "the proportion of people living below the poverty line was about 53 percent in 1995; the figure subsequently varied, reaching 58 percent in 2001 and declining to 48 percent in 2008. By international standards, this is a very high level of poverty. Poverty among women-headed households is higher than the average and women continue to earn less than men, even though differences in years of education have largely been narrowed."⁷³ Although Africa's biggest economy, the level of poverty in South Africa is amongst the highest for an upper middle-income country with "...about 61 percent of women live in poverty, and 31 percent live in destitution, compared with 39 percent and 18 percent of men respectively."⁷⁴ Poverty in South Africa has a significant gender dimension, and given South Africa's past, poverty also has a racial

[entMDK:20206734~menuPK:443285~pagePK:148956~piPK:216618~theSitePK:430367.00.html](#) (last accessed on 13 February 2014)

⁷¹ Ibid

⁷² Ibid

⁷³ The South African National Planning Commission Online, Poverty and Inequality, <http://www.npconline.co.za/pebble.asp?relid=123> (last accessed on 13 February 2014)

⁷⁴ Ibid

dimension with the majority black population remaining the poorest, despite various government interventions. "According to the Income and Expenditure Survey, the Gini -coefficient, which measures the gap between the richest and the poorest, increased marginally from about 0.64 to 0.68 between 1995 and 2005. According to the AMPS data, the Gini-coefficient has been broadly constant during the period at about 0.67. South Africa remains one of the world's most unequal societies"⁷⁵ Those worst affected live in the rural areas of South Africa with poor access to basic services, and where these are available, these are often inadequate. "Deprivations in health and education are also linked to a lack of access to other assets such as housing, land, social infrastructure (such as clinics, schools, libraries and cultural resources) and services such as credit facilities. Without access to quality health and education and income-earning opportunities, the lives of the vast majority of the poor wage a daily struggle to simply survive."⁷⁶ As previously discussed, under these conditions, children are often forced into labour to help the family make ends meet. It is again worth noting, that in the South African case these conditions have a particular racialized character given the country's past, which denied opportunities to the black majority, and to especially black women. Child labor is thus especially prevalent in the agricultural sector, and the remote rural areas.

What has become evident through this brief discussion of poverty is that the India, Brazil, South Africa (IBSA) group makes for an interesting case study. They face similar challenges in terms of their poverty profile. All three countries are leading nations in their region, India in Asia; Brazil in Latin America; and South Africa in Africa. As a result, they are often at the forefront of efforts to address challenges at regional level. Yet, they remain plagued by high levels of poverty and inequality, resulting in a high prevalence of child labour, often the worst forms of child labour. The poor find themselves in rural areas, far from basic services. In India, the cast system is a factor, whilst race plays a significant role in South Africa. Under these conditions, the poor have to make choices which impacts on both their immediate well - being, and also their

⁷⁵ Ibid, This is information from the South African Government's National Planning Commission website.

⁷⁶ Ibid

chances of survival in the long term. These choices often results in children being taken from school and “forced” into labour to help the family make ends meat. Limited access to schooling means that the poor is unable to rely on the long-term benefit of education to better their situation. “ Children are more likely to work, for instance, if they are from poor, minority or culturally marginalized populations.”⁷⁷

4.2 HIV/AIDS and the burden of disease

The International Labour Organization recognizes that HIV/AIDS has a direct impact on child labour. “ The tremendous pressure on households and families often forces children to work.”⁷⁸ This is both as a result of children been infected and affected by the virus. These children are often unable to attend school, receive appropriate care and treatment, and as such, they are easy prey to all forms of exploitation.

Millions of Indians, including hundreds of thousands of children, are living with HIV/AIDS. It is believed that India’s incidence of HIV/AIDS is much higher than the reported numbers. “Many more children are otherwise seriously affected by India’s burgeoning epidemic – when they are forced to withdraw from school to care for sick parents, are forced to work to replace their parents’ income or orphaned (losing one or both parents to AIDS)”⁷⁹ Human Rights Watch report that these children are often invisible to government policies, and that “Children affected by HIV/AIDS are being discriminated against in education, health services, denied care by orphanages, and pushed onto the streets and into the worst forms

⁷⁷ Bachman, SL. (2000) *The Political Economy of Child Labour and Its Impact on International Business*. Business Economics, July 2000, p.35

⁷⁸ Noguchi, Yoshie (2005) *ILO Standards on Child Labor in relation to the CRC – enforcement processes and what family law specialists can contribute*, Paper presented at the 4th Law Congress on Family Law and Children’s Rights, Cape Town, South Africa, 20 – 23 March 2005, p6

⁷⁹ Human Rights Watch, *Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India*, 29 July 2004, available at: <http://www.refworld.org/docid/41528d454.html>, (last accessed on 12 February 2014)

of child labour”⁸⁰ Human Rights Watch further estimates are that more than one million children under the age of fifteen in India have lost one or both parents to Aids. “The death of parents or husband may push girls and women into sex work... Discrimination in property and inheritance laws are also a factor”⁸¹ In addition, “United Nations Children’s Fund (UNICEF) researchers in Manipur also found instances in which AIDS-affected families are unable to pay school fees or related costs, or delayed the admission of younger children to school for financial reasons”⁸² In these circumstances children are often forced take up employment to assist the family in making ends meet.

According to UNAIDS (the United Nations Agency tasked with dealing with the Aids epidemic globally), Sub-Saharan Africa is worst affected by HIV and AIDS. “HIV/AIDS in South Africa is a prominent health concern; South Africa has the highest prevalence of HIV/AIDS compared to any other country in the world with 5,6 million people living with HIV, and 270,000 HIV related deaths recorded in 2011.”⁸³ It further reports that the percentage of orphans are between 2-5%, with an expected rise to 9 – 12% of the child population by 2015. This represents a total of between 3.6 and 4.8 million children who are either HIV/AIDS orphans or children vulnerable due to aids in South Africa. “Stigma and denial related to suspected infection cause many people to delay or refuse testing; fear and despair often follow diagnosis, due to poor-quality counselling and lack of support, poverty prevents many infected people from maintaining adequate nutrition to help prevent the onset of illness; limited access to clinics, long waiting lists for treatment, etc”⁸⁴ This situation places a heavy burden on families and children specifically, in a broader national context “where the majority of children live in poverty and 25% of the economically active population is unemployed.”⁸⁵ The impact of this is that

⁸⁰ Ibid

⁸¹ Ibid

⁸² Mehra, *Impact of HIV/AIDS on Children in Manipur*, p. 17

⁸³ AIDS Foundation, South Africa. HIV/AIDS in South Africa, <http://www.aids.org.za/hivaids-in-south-africa/> (last accessed on 16 February 2014)

⁸⁴ Ibid

⁸⁵ Ibid

children are left vulnerable, heading up households and as such exposed to exploitation, especially in the rural areas. Evidence suggests that children as a result, often miss school or are forced by circumstances to work on the streets or sell sexual favours.

Brazil, is a global with UNAIDS applauded the country for it's efforts in the fight against HIV/AIDS. "Brazil's measures against the disease include supplying 97 percent of its HIV-positive population with free drugs."⁸⁶ As a result, it is estimated that the portion of the Brazilian population that is infected or ill is stagnating at 0.6%. The Brazilians are further lauded for the resourceful manner with which they have tackled the disease. It is however reported that many regions in the north and north – east of Brazil still do not have access to rapid testing, treatment for the disease and the most effective prevention measures, with a major challenge lying in the area of (lack of) "support for orphans of families victimized by AIDS."⁸⁷ Given this economic vulnerability, children affected by the impact of the disease, are open to exploitation as they are forced into child labour. "Although the Brazilian program for the fight against HIV is viewed as an international model, there is nonetheless internal criticism from organizations that take care of patients. According to such organizations, a major difficulty that patients are confronted with is a lack of supply of medications"⁸⁸ It is also important to note that Brazil's policy has been the subject of much conflict between itself and pharmaceutical companies over patents for the use of drugs produced in Brazil. This within a context where the makers of HIV/AIDS drugs has been under international pressure "to increase access to their medicines in developing countries for years."⁸⁹

⁸⁶Health, UNAIDS Names Brazil Model Country, <http://www.dw.de/unaid-names-brazil-model-country-in-the-fight-against-hiv-aids/a-15570043> (last accessed on 16 February 2014)

⁸⁷Save The Children, <http://resourcecentre.savethechildren.se/start/countries/brazil> (last accessed on 16 February 2014)

⁸⁸UNAIDS names Brazil Model country, <http://www.dw.de/unaid-names-brazil-model-country-in-the-fight-against-hiv-aids/a-15570043> (last accessed on 16 February 2014)

⁸⁹ Ibid

"The prevalence of AIDS throughout many developing countries has resulted in an enormous number of orphans who are forced to become their own breadwinners"⁹⁰ As reflected through this discussion, the link is often implicit, however, it is commonly understood that "HIV/AIDS in parents increases child labour; HIV/AIDS leads to increased poverty, which leads to increased child labour; Children affected by Aids have an increased risk of engaging in risky livelihood strategies, such as living and working on the streets and informal sex work."⁹¹ Stigma often leads to those infected and affected by HIV/AIDS being ostracised from communities and/or from their families. These children are often denied access to basic services. Children in the circumstances are often lured into the worst forms of child labour as they seek to provide for their families.

4.3 Other causes of child labour

There are many other factors that drive children into employment "none of which is unique to any one country or any one family's circumstances."⁹² These causes include but are not limited to the following: "Cuts in social spending - particularly education and the health services - have a direct impact on poverty. With little or no access to schooling, children are forced into employment at an early age in order to survive; Child labour may not even be recognised when children work as part of the family unit. This is particularly common in agriculture, where an entire family may have to work to meet a particular quota or target and cannot afford to employ outside help; Children may also be expected to act as unpaid domestic servants in their own home, taking care of the family's needs while both parents work."⁹³ Bonded labour also plays a role

⁹⁰Eliminating Child Labour in Tobacco Foundation,
<http://www.eclt.org/about/index.html> (last accessed on 16 February 2014)

⁹¹ Le Baton, Sarah and Brusati, Annelisa (2001) Child Labour and HIV/AIDS: Exploring the interface: A brief overview of recent literature, research and organizational commitment. Save The Children, Policy and Research Unit. October 2001

⁹²Eliminating Child Labour in Tobacco Foundation,
<http://www.eclt.org/about/overview.html> (last accessed on 16 February 2014)

⁹³ Ibid

with children often having to work as a repayment of parental debt. "The parents of child labourers are often unemployed or underemployed, desperate for secure employment and income. Yet it is their children - more powerless and paid less - who is offered the jobs. In other words, says United Nations Children's Fund (UNICEF), children are employed because they are easier to exploit," according to the "Roots of Child Labour" in the United Nations Children's Fund's (Unicef) 1997 State of the World's Children Report."⁹⁴

Women often have fewer choices in an environment, which places high value on men, whilst the international sex trade places great value on child prostitutes. This often results in girls being kidnapped or sold "to networks of child traffickers supplying overseas markets; poverty and sexual and racial discrimination also drive children into the tourist sex trade; Young workers are unaware of their rights and less likely to complain or revolt. In many countries, the legislation is simply not effective enough to support these workers."⁹⁵ The poor state of public education, or access is limited to public education, adding to the problem, as families opt to rather secure work for their children than to struggle with securing access to schools for their children. Traditional attitudes and views on the role of children is also a contributing factor, with the view being held that child labour is an important socialization and development tool, as it gives children skills which they may be able to use in their adulthood.

4.4 Conclusion on causes of child labour

Whilst poverty is undoubtedly the dominant cause of child labour, a host of other factors play a contributing role. "There are many other factors that conspire to drive children into employment, none of which is unique to any one country or any one family's

⁹⁴Web portal for NGO's in India, Child Labour, http://www.ngosindia.com/resources/child_labour.php (last accessed on 16 February 2014)

⁹⁵Eliminating Child Labour in Tobacco Foundation, <http://www.eclt.org/about/overview.html> (last accessed on 16 February 2014)

circumstances.”⁹⁶ Strategies to eliminate child labour must take these factors into account, if the goal of the total elimination of child labour is to be achieved. The factors range from poverty to the impact of Hiv/Aids. It includes traditional understandings of the role and place of children in society, with some believing that child labour forms an important part of the development journey of children. Whilst universal access to education is an important tool in the fight against child labour, access in itself is not enough to ensure that children attend school, given the enormous barriers that poor children and the girl child have to endure. This is especially so for the children in rural areas. The World Report on Child Labour supports this view by arguing that, child labour is driven in part by household vulnerabilities associated with poverty, risk and shocks.⁹⁷

Section 5: International Legislative responses to Child Labour

5.1 International Conventions and Treaties

“International political action against child labor is closely linked to international conventions, which are a form of treaty which is becoming legally binding for signing and ratifying nations...”⁹⁸ Although enforcement mechanisms are often weak, and implementation challenges often exist at national level, “they have powerful influence on policy by forming reference points for international debate and action”⁹⁹ International treaties further establishes a global standard and baseline, and signals an international consensus on how the issues in question, child labour, being the case in point of this discussion. Although the International Labor Organization is not primarily concerned with issues of child labor, “nevertheless, the issue of child labor has become a major

⁹⁶ Ibid

⁹⁷ World Report on Child Labour: Economic vulnerability, social protection and the fight against child labour /International Labour Office. Geneva: ILO, 2013

⁹⁸ Fivat, N. (2008) The International Labor Organization’s Policy on Child Labor: A Critical Review. Free University of Berlin, Germany, February 2008, p6

⁹⁹ Ibid, p7

concern in the course of its history”¹⁰⁰ We will also briefly look developments beyond the ILO to get a broader context of how the international community have responded to children’s issues more broadly, thus creating a context and a framework for the ILO’s work in this respect. It must be noted that the ILO itself played a critical role in bringing world attention to child labour, especially the worst forms of child labour. In doing so, the ILO have become a key player in the advancement of children’s rights globally.

In the international context, “the growth of children’s rights in international and transnational law has been identified as a striking change in the post-war legal landscape”¹⁰¹ Article 25, the Universal Declaration for Human Rights, states “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”¹⁰² Article 26, makes provision for the right to education. The 1959 Declaration of the Rights of the Child notes that special safeguards and care, including appropriate legal protection before and after birth, and reiterates the 1924 League of Nation Declaration pledge that “mankind owes to the child the best it has to give”¹⁰³, thus calling for special protection of children by means of passing laws which considers of “paramount consideration... the best interest of child” as the standard.

5.2 The Minimum Age Convention: No 138 of 1973

In 1973 the landmark Minimum Age Convention was adopted. This convention is significant because for the first time a single convention covered all economic sections and to all working children “whether they are employed for wages or working on their own account. It represents the most comprehensive and authoritative international definition of minimum age for admission to

¹⁰⁰ Ibid

¹⁰¹ Stephen, R. Arnott, *Family Law: Autonomy, Standing and Children’s Rights*, 33 *William Mitchell Law Review* 809 (2007), p808

¹⁰² Universal Declaration of Human Rights, 1948, Article 25

¹⁰³ The United Nations Declaration of the Rights of the Child.

www.unhchr.ch/html.menu3/b/25.htm (last accessed on 17 February 2014)

employment. It is also innovative in that it provides for a progressive and flexible approach to the problem, particularly for developing countries. Thus, it places on ratifying States the obligation to fix a minimum age and defines a range of minimum ages below which no child should be required to work.”¹⁰⁴ Importantly the Convention stipulated that the minimum working age could not be less than the compulsory school going age, and in any case not less than 15 years old. It did however provide for children to do light work from the age of 13, and hazardous work only from 18 (16 in exceptional circumstances). Taking the possible challenges in developing nations into account, the Convention made provision for the minimum age to be 14 in the initial period, and provided for the legal age for light work to be 13, instead of 14. The provision of 18 (16 in exceptional circumstances) for hazardous work remained.

Brazil and South Africa are signatories to the Minimum Wage Convention; India is still not a signatory.

5.3 Convention on the Rights of the Child 1989

“During the late 1980s, there was an unprecedented surge in the concern of the international community with the problem of the welfare of children in general, and of child labor in particular”¹⁰⁵ This concern leads to the adoption of the most comprehensive document on the rights of children, the United Nations Convention on the Rights of the Child, 1989 (CRC).¹⁰⁶ The CRC is a ground breaking Convention that has seen an unprecedented number of countries ratifying the Convention which came into force a mere two years later. The CRC addresses children’s right both during times of peace, and war. “The CRC is primarily concerned with four aspects of children’s rights (the four p’s): participation by children in decisions affecting them; protecting of children against

¹⁰⁴ Handbook for Parliamentarians, No 3 – 2002. Eliminating the Worst Forms of Child Labour. A practical guide to ILO Convention No 182, p16 - 17

¹⁰⁵ Ibid

¹⁰⁶ Van Bueren, Geraldine (1995) The International Law on the Rights of the Child. International Studies in Human Rights.

discrimination and forms of neglect and exploitation; prevention of harm to them; and provision of assistance to children for their basic needs”¹⁰⁷ Importantly, article 1 defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. The accomplishments of the CRC have been described as five fold. “It creates new rights for children under international law that previously had not existed, such as the child’s right to preserve his or her identity (articles 7 and 8), the rights of vulnerable children like refugees to special protection (articles 20 and 22), and indigenous children’s right to practice their culture (articles 8 and 30)”¹⁰⁸ Further provisions includes an obligation on states to protect children against traditional practices which may be harmful to them, and offering rehabilitation services to victims of neglect, abuse and exploitation. “The right to participate in proceedings, it is argued together with the principles of non-discrimination in article 2 and the provision for the child’s best interest in article 3, form the guiding principles of the Convention, which reflect the vision of respect and autonomy which the drafters wished to create for all children”¹⁰⁹

Through the adoption of this Convention, the international community moved beyond the minimum age convention and established a framework that requires all signatories to look at children’s rights in a more holistic manner. Whilst making provision for cultural and/or other aspects of a child’s life, it establishes the “the best interest of the child” principle, and for the first time give voice to children in that ways must be found to ensure that children are able to participate in matters affecting them. The CRC provides a rights framework for children both in times of peace in times of war.

All three our focus countries, India, Brazil and South Africa are signatories to the Convention of the Rights of the Child.

¹⁰⁷ Ibid

¹⁰⁸ Zeldin, Wendy (2007). International Laws: Children’s Rights. Law Library Congress. July 2007, p3

¹⁰⁹ Ibid

5.4 The Worst Forms of Child Labor Convention: No. 182

Having adopted the CRC, the focus shifted to the total elimination of child labor. Public pressure mounted against especially multi-national organizations and consumers became concerned about the conditions under which the goods they purchase were produced. Images of luxury goods being produced by the labor of children in bondage or in near slave like conditions surfaced, highlighting the plight of children in agriculture and factories in many developing countries desperate for the economic prospects increased investment would bring to their shores, and as a results, often neglecting the conditions under which workers were employed. A consensus thus emerged in the 1990's that "the highest priority should be given to eliminating the worst forms of child labour, that visible results should be achieved within a short time-frame rather than in some indefinite future, and that a concerted programme of action should be launched at the national and international levels in order to achieve rapid results."¹¹⁰ It was under these conditions that the Worst Forms of Child Labour Convention: No 182 was prepared. "The elimination of the worst forms of child labour is thus proclaimed to be a major and urgent priority for national and international action."¹¹¹ Within two years almost all countries had adopted this convention, however, does not mean that the ultimate goal to completely eliminate all forms of child labour had been abandoned. "Giving priority to combating the worst forms of child labour is simply a matter of doing first things first."¹¹² It is a means to an end, as already extensively discussed earlier in this paper.

In terms of Article 3, of the Convention, "the term worst forms of child labour comprise: (a) all forms of slavery or practices similar to slaver, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the

¹¹⁰ Handbook for Parliamentarians, No 3 – 2002. Eliminating the Worst Forms of Child Labour. A practical guide to ILO Convention No 182, p19

¹¹¹ Ibid, p21

¹¹² Ibid

use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”¹¹³ It is important to note that the Convention contains no flexibility clauses, and it makes no distinction between developed and developing countries. This convention further applies to all girls and boys under the age of 18.

Brazil and South Africa are signatories to this convention, whilst India is not.

5.5 Commentary on International Conventions and Treaties on Child Labour

An international framework if provided for understanding the legal context. The international context has essentially moved from the minimum age convention and approach, to understanding children’s issues within the broader framework of the international convention on the rights of the child, to eventually an agreement on eliminating the worst forms of child labor. This is a journey from 1973 to 1999. The International Labor Organization played a key role in this development, and while we turn to looking at these issues within the country context, this will be preceded by a closer look at the international child labour prevention strategies employed. The IBSA group of countries is a key player in efforts to combat child labour, these countries India, Brazil and South Africa. Both South Africa and Brazil are signatories to the two conventions in the area of Child Labour, namely: Convention 138, the Minimum Age Convention and also Convention 182, the Worst forms of Child Labour Convention. India is not a signatory to either. This makes for an interesting dynamic amongst a grouping of nations who have committed themselves to working towards maximizing their collective influence

¹¹³ The Worst Forms of Child Labour Convention – C182, 1999.
www.ohchr.org/english/law/childlabour.htm (last accessed on 17 February 2014)

in the international arena, in areas, which includes human rights issues. Our specific focus will be on the worst forms of child labour, this is simply because international focus is on eradicating this and as such, country reports focus on advancements made in this regard.

Section 6: International Child Labour Prevention Strategies in Action

6.1 The United Nations

The United Nations was founded after the Second World war in 1945, with the following four purposes: "to keep peace through the world; to developing friendly relations amongst nation; to help nations work together to improve the lives of poor people, to conquer hunger, disease and illiteracy, and to encourage respect for each other's rights and freedoms; and promoting social progress, better living standards and human rights; to be centre for harmonizing the actions of nations to achieve these goals; "¹¹⁴ The powers of the United Nations are vested in its founding Charter, allowing the organization to take action on a range of issues and "provide a forum for its 193 members states to express their views, through the General Assembly, the Security Council, the Economic and Social Council and other bodies and committees."¹¹⁵

The work of the United Nations reaches every corner of the globe. Although best known for peacekeeping, peace building, conflict prevention and humanitarian assistance, there are many other ways the United Nations and its System (specialized agencies, funds and programmes) affect our lives and make the world a better place. The Organization works on a broad range of fundamental issues, from sustainable development, environment and refugees

¹¹⁴About the United Nations, <http://www.un.org/en/aboutun/index.shtml> (last accessed on 17 February 2014)

¹¹⁵ Ibid

protection, disaster relief, counter terrorism, disarmament and non-proliferation, to promoting democracy, human rights, gender equality and the advancement of women, governance, economic and social development and international health, clearing landmines, expanding food production, and more, in order to achieve its goals and coordinate efforts for a safer world for this and future generations.

The United Nations response to international labour issues, are driven through the International Labour Organization. This includes child labour. This dissertation discusses the ILO separately.

6.1.1 The United Nations Global Compact

Under the United Nations system, matters are dealt with through governments, as key partners and drivers at national level of UN conventions, resolutions and/or declarations. Increasingly recognition is given to the role, power and influence of business in international affairs, especially multi-national companies. Some of these companies have annual turn -overs larger than those of some smaller countries, and through their activities, profoundly influence domestic affairs. Given their influence and role as the primary drivers of globalization, the United Nations developed the Global Compact, "a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption."¹¹⁶

According to the United Nations, the Global Compact is the largest voluntary corporate responsibility initiative in the world with over 10 000 corporations from over 130 countries participating. This is in recognition that social, political and economic challenges affect

¹¹⁶ About the Global Compact, <http://www.unglobalcompact.org/AboutTheGC/index.html> (Last accessed on 17 February 2014)

businesses more than ever before, and these corporations thus acknowledge the need for them to partner with the United Nations, governments, civil society, labour and governments. "The UN Global Compact works toward the vision of a sustainable and inclusive global economy which delivers lasting benefits to people, communities, and markets. To help realize this vision, the initiative seeks to: mainstream the global compact's ten principles in business strategy and operations around the world; and catalyze business action in support of UN goals and issues, with emphasis on collaboration and collective action."¹¹⁷ According to the United Nations, through this initiative business is brought into the global partnership of nations, which seeks to build a better world. The Compact is as such global and local, private and public. The initiative is voluntary, yet accountable. The compact is complementary to regulatory regimes. The Global Compact's ten principles in the areas of "human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from: The Universal Declaration of Human Rights, The International Labour Organization's Declaration on Fundamental Principles and Rights at Work, The Rio Declaration on Environment and Development, the United Nations Convention Against Corruption."¹¹⁸ Significant, is the commitments made by way of principles in the areas of Human Rights and Labour. A total of six principles cover these areas, which within the context of this dissertation is significant, as it commits companies to addressing child labor, and specifically, the elimination of the worst forms of child labour in line with global efforts at governmental level in this regard. The key principles for our purposes are "Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: make sure that they are not complicit in human rights abuses; Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; Principle 4: the elimination of all forms of forced and compulsory labour; Principle 5: the effective abolition of child labour; and Principle 6:

¹¹⁷ Ibid

¹¹⁸About the Global Compact,

<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>, (last accessed on 17 February 2014)

the elimination of discrimination in respect of employment and occupation”¹¹⁹

Through this compact and The Human Rights and Business Dilemmas Forum, the world’s corporations are given the opportunity “to address human rights issues within their own activities and their business relationships. At the same time they are confronted with a number of challenges. For example, there is the need to come to grips with the human rights framework and how a company’s own activities might relate to it. In addition, companies are often uncertain of how to avoid complicity in human rights abuse and where the boundaries of their human rights responsibility lie.”¹²⁰

A multi-sector, multi-stakeholder forum, the Child Labour Platform, was created under the auspices of the Global Compact as a platform through which the global ambition to eliminate the worst forms of child, (and in the longer term, child labour all together) could be addressed and advanced through the business sector. The objectives are: “1. Dialogue and collective learning: Foster the exchange of business, government, workers’ and employers’ organizations and civil society experience in addressing child labour, particularly in supply chains, to support collective learning among Platform members; 2. Implement Principle 5: Identify obstacles for business in implementing the Global Compact principle on child labour, and advise on practical ways to overcome key dilemmas faced by business; 3. Cooperate and link efforts: Catalyze cooperative approaches to address child labour in selected communities and countries, and link efforts undertaken by companies to existing and future country-level institutions and programmes; 4. Develop a global knowledge base: Contribute to building a knowledge base on child labour in supply chains through research and development of general and sector-specific tools and

¹¹⁹ Ibid

¹²⁰ About the Global Compact,

http://www.unglobalcompact.org/Issues/human_rights/index.html (last accessed on 17 February 2014)

documentation of good practice, and provide input on Global Compact and ILO strategies for mainstreaming good practices.”¹²¹

6.2 The International Labour Organization

The International Labour Organization (ILO) “was created in 1919, as part of the Treaty of Versailles that ended World War 1, to reflect the belief that universal and lasting peace can be accomplished only if it based on social justice”¹²² and “upon the decent treatment of working people”¹²³ The ILO “is devoted to advancing opportunities for working people to perform work in conditions of freedom, equity, security and human dignity.”¹²⁴ As such the ILO is an international organization promoting social justice, international human rights, and labour rights. The ILO is a tripartite organization bringing together representatives of governments, employers and workers at an international level to advance the ideals. It is the only one of this kind.

The importance of social justice in securing peace, was important especially “again a background of exploitation of workers in the industrializing nations of that time.”¹²⁵ In 1946, the ILO became a specialized agency of the United Nations. The preamble to the ILO founding statement states: “Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; Whereas

¹²¹About the Global Compact, http://www.unglobalcompact.org/Issues/Labour/child_labour_platform.html, (last accessed on 17 February 2014)

¹²²International Labour Organization, www.ilo.org/global/about-the-ilo/history/lang-en/index.htm (last visited: 14 February 2014)

¹²³ Fivat, Noemi. (2008) The International Labor Organization’s Policy on Child Labour: A Critical Review, p4

¹²⁴ Ibid

¹²⁵International Labour Organization, www.ilo.org/global/about-the-ilo/history/lang-en/index.htm (last visited: 14 February 2014)

also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.”¹²⁶ The economic interdependence and thus the need for cooperation on issues related to the working condition of workers was increasingly acknowledged, especially in a context where global markets meant increased competition between countries.

“The ILO develops standards, which affect child labor, disabled workers, discrimination in the workspace, equality of treatment, freedom of association, human rights, social protection, pensions and the abolition of forced labor.”¹²⁷ The ILO concerns itself with labour related issues generally, but has become the main actor in dealing with child labour issues at an international level, and as such, controls the enforcement of existing conventions; and additionally serves its constituents in a variety of ways, including, “Formulation of international policies and programmes to promote basic human rights, improve working and living conditions, and enhance employment opportunities; Creation of international labour standards backed by a unique system to supervise their application; An extensive programme of international technical cooperation formulated and implemented in an active partnership with constituents, to help countries put these policies into practice in an effective manner; Training, education and research activities to help advance all of these efforts”¹²⁸

The most important conventions dealing with child labour is, the Minimum Age Convention of 1973 and the Worst Forms of Child Labour Convention of 1999. Additionally, the United Nations Convention on the Rights of the Child “has also become a main global reference point for national and international policy regarding child labor. Together, these three conventions reflect competing and progressively changing notions of childhood and the role of work for

¹²⁶ Ibid

¹²⁷ Fivat, Noemi. (2008) The International Labor Organization’s Policy on Child Labor: A Critical Review, p4

¹²⁸ International Labour Organization, www.ilo.org/global/mission-and-objectives/lang--en/index.htm (Last accessed on 14 February 2014)

children.”¹²⁹ To give meaning to these conventions, the ILO, adopted the Child Labour Programme of Action, which will be discussed under 6.3 below; and the World Day Against Child Labour, which will be discussed briefly under 6.2.1

6.2.1 World Day Against Child Labour

The International Labour Organization launched the World Day Against Child Labour to focus global attention on the extent of child labour and the actions and efforts needed to eliminate it. The 2013 World Day Against Child Labour focused on domestic labor. This was in recognition of the fact that “around the world, large numbers of children are engaged in paid or unpaid domestic work in the home of a third party or employer. These children can be particularly vulnerable to exploitation.”¹³⁰ The day also focuses the world attention on the ILO’s action plan, which, “proposes that the International Labour Organization and its member States continue to pursue the goal of the effective abolition of child labour by committing themselves to the elimination of all worst forms of child labour by 2016.”¹³¹ Although discussed in greater detail below, it is important to note that the World Day Against Child Labour gives the ILO an opportunity to contribute towards consigning child labor to history by committing to the following specific actions: “Universal ratification of the ILO Child Labour Conventions and all the ILO core Conventions; Ensuring a new focus on national policies and programmes to promote an integrated approach to all fundamental principles and rights at work; Broadening integrated area based approaches to tackle the root causes of child labour; Aligning the minimum age for admission to employment and the age for completion of compulsory schooling; Strengthening workplace safety and health for all workers, but with specific safeguards for children between the minimum age for admission to employment

¹²⁹ Ibid, p6

¹³⁰United Nations, Events, <http://www.un.org/en/events/childlabourday/> (last accessed on 14 February 2014)

¹³¹United Nations, Events, <http://www.un.org/en/events/childlabourday/action.shtml> (last accessed on 14 February 2014)

and the age of 18 by preparing and/or updating hazardous workplace lists; Continuing development of advocacy and strategic partnerships at international, national and community level and promoting the worldwide movement against child labour; Replicating and expanding good practices that have produced sustainable results.”¹³² The World Day Against Child Labour forms part of a broader ILO Programme of Action to combat and eventually eliminate child labour, to which we now briefly turn our attention.

6.3 Child Labour Programme of Action 2008 – 2012

In 1992, the ILO created the International Programme on the Elimination of Child Labour (IPEC) as an important aspect of the decent work agenda. Child labour perpetuates poverty, affects economies through losses in potential income, productivity and future income potential. “Withdrawing children from child labour, providing them with education and assisting their families with training and employment opportunities contribute directly to creating decent work for adults.”¹³³ The goal of this programme is thus to progressively eliminate all forms of child labour, “to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour.”¹³⁴ The IPEC has programmes in 88 countries, including India, Brazil and South Africa and is the largest programme of its kind in the world, and as such, also the single biggest programme of the ILO. “The number and range of IPEC’s partners have expanded over the years and now include employers’ and workers’ organizations, other international and government agencies, private businesses, community-based organizations, NGOs, the media, parliamentarians, the judiciary, universities, religious groups and, of course, children and their families.”¹³⁵

¹³² Ibid

¹³³ International Labour Organization-International Programme for the Elimination of Child Labour, <http://www.ilo.org/ipec/programme/lang--en/index.htm> (Last accessed on 14 February 2014)

¹³⁴ Ibid, this information is accessed from the ILO website directly

¹³⁵ Ibid

The IPEC projects works at national level across stakeholders, including ministries of labour and education, national statistical offices and national social partners “to implement one or more of the following interventions to target child labour in different sectors: Direct Action, Legislation & Policy Development (Including Statistical Survey, Rapid Assessments, Baselines), Advocacy & Awareness Raising, Institutional Development, Social Services, Livelihood Schemes and Poverty Alleviation.”¹³⁶ National Steering Committees and Project or Programmes Advisory Committees are set up ensuring overall coordination and implementation. These projects are targeted at grassroots level, providing these specific projects “with technical advice, data collection, research and evaluation to create a comprehensive body of knowledge on child labour and the best way to tackle it.”¹³⁷ This very comprehensive strategy ensures that nations are given the necessary support to live up to their international law obligations. The multi-stakeholder approach ensures that nations adopt all encompassing approaches, which seeks to plug any gaps. In doing so, the interventions ensure that all parties appreciates and gives attention to the multiple factors causing child labour, at national level.

These “actions on child labour also fully support a number of the ILO’s Areas for Critical Importance (ACI’s)”¹³⁸ These areas for critical importance are: 1) Protection of workers against unacceptable forms of work. There is no doubt that child labour is an acceptable form of work, eliminating child labour thus adds value to this areas; 2) Decent work in the rural economy. This area is addressed through protecting children from hazardous work in agriculture, and by “facilitating their access to agricultural skills development and promoting better rural livelihoods”¹³⁹ ; 3)

¹³⁶International Labour Organization- International Programme for the Elimination of Child Labour, <http://www.ilo.org/ipec/projects/lang--en/index.htm>, (Last accessed on 14 February 2014)

¹³⁷International Labour Organization-International Programme for the Elimination of Child Labour, <http://www.ilo.org/ipec/projects/national/lang--en/index.htm>, (Last accessed on 14 February 2014)

¹³⁸ International Labour Organization- International Programme on the Elimination of Child Labor’s Strategies and Priorities for Addressing Child Labour and its Resource Needs, October 2013, p7 www.ilo.org/ipec (Last Accessed on 15 February 2014)

¹³⁹ Ibid, p1

Formalization of the informal economy. This is achieved as the ILO will under this ACI “will promote the move towards formalization of workplaces by promoting better and more productive work for adults and youth affected by child labour, by facilitating consultations on the transition to formality, and by supporting workers to exercise their rights through self- organisation.”¹⁴⁰; 4) Jobs and skills for youth. This is addressed by ensuring that children are kept out of hazardous work, and by promoting access to skills development and decent work for youth above the minimum age set for work.

6.4 Conclusion on International Child Labour Prevention Strategies

The ILO is the key United Nations agency in the global efforts to eliminate, in the first instance, the worst forms of child labour, and ultimately, all forms of child labour. It plays a critical role in both developing global understanding of the problem, and in providing technical support to nations. The IPEC is the global response to fighting this problem. In the process, important lessons are being learnt from the ILO’s various initiatives to fully eliminate the worst forms of child labour, globally. “The ILO must re-double its resource mobilization efforts; at the same time, harnessing and supporting the increased political will to eliminate child labour at the international, sub- regional, national, sectoral and community levels, and recognizing the primacy of nationally determined policies, which are essential to ensure national ownership in the struggle against child labour.”¹⁴¹ As a result of these lessons and experiences, the IPEC seeks to focus on the following priorities going forward: leveraging impact from social protection programmes, pursuing education as the most meaningful alternative to child labour, supporting families through better livelihoods, targeting actions to meet the needs of vulnerable and hard-to-reach children, targeting actions to eliminate the worst forms of child labour in hazardous work, especially in agriculture, targeting actions to meet the needs of child soldiers and children

¹⁴⁰ Ibid, p1

¹⁴¹ ILO International Programme on the Elimination of Child Labor’s Strategies and Priorities for Addressing Child Labour and its Resource Needs, October 2013, p7 www.ilo.org/ipec (Last Accessed on 15 February 2014)

affected by conflict, bringing business on board with respect to them playing a key role in addressing human rights issues, developing responses and/ or responding to ILO supervisory mechanisms, with the problem of child labour being worst in Africa, the ILO will need to focus many of its efforts on the African continent.¹⁴² The IPEC is supporting by the ILO World Day Against Child Labour and the new United Nations Global Compact which brings business into the global human rights community, and more importantly, into efforts which seeks to eliminate the worst forms of child labour and over time the elimination of child labour all together. The Global Compact together with the IPEC is a critical step in realizing this goal.

Section 7: India

"In 2012, India made a moderate advancement in efforts to eliminate the worst forms of child labour... Legislation to prohibit work for children under the age of 14 and to proscribe hazardous work for children under 18 has been introduced in Parliament but has not yet been passed."¹⁴³ It was also found that the worst forms of child labor continue to exist in many sectors, "particularly in dangerous activities in agriculture and the manufacturing of goods in the informal economy"¹⁴⁴ It is further reported that children are also trafficked and form forced or indentured labor. These children may use dangerous tools, carry heavy loads, and apply harmful pesticides, while children also "work under hazardous conditions manufacturing a variety of products, quarrying stone and other materials, breaking stones, and pushing gems"¹⁴⁵ Children are also employed in the service industry including hotels, food service and certain tourism related occupations. Children in these sectors are "vulnerable to physical violence, mental trauma, and sexual abuse"¹⁴⁶ Some more children work on streets selling food and other goods, repairing vehicles and tires, scavenging and rag

¹⁴² Ibid, p7-11

¹⁴³ United States Department of Labour's Bureau of International Labour Affairs. 2012 Findings on the worst forms of child labour, p1 www.dol.gov/ilab/reports/child-labor/india.htm (last accessed on 10 February 2014)

¹⁴⁴ Ibid

¹⁴⁵ Ibid

¹⁴⁶ Ibid

picking. "In 2012, a government official estimated that 4 million children work in domestic service across India. Many work for very long hours and suffer abusive treatment"¹⁴⁷ It is also reported that significant barriers exist to accessing the education system in India including that underprivileged children being denied access to schooling. Where access to schools is possible, schools often lack proper sanitation facilities, thus making it difficult for especially girls to attend to school. "More than eight million children between the ages of 8 and 14 were in school during the reporting period (2012)"¹⁴⁸

We must note again at this point that India is not a signatory to C138, the Minimum Age Convention and also not a signatory to C182, the Worst Forms of Child Labor Convention. Despite this and the 2012 conditions reported above, Pankaj Singh¹⁴⁹ argues that India has a long proactive policy with respect to tackling the problem of child labor. He argues, that the "Constitution of India in Article 39 of the Directive Principles of State Policy pledges that "the State shall, in particular, direct its policy towards securing ... that the health and strength of workers, men and women, and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, that children are given opportunities and facilities to develop in a healthy manner, and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation, and against moral and material abandonment."¹⁵⁰ The Indian Constitution further guarantees compulsory elementary education for all children as well as labour protection is guaranteed. Extensive recommendations have been made by labour commissions, in line with post independence commitments made to the cause of children through constitutional provisions, legislation, policies and programmes.

¹⁴⁷ *ibid*, p2

¹⁴⁸ *Ibid*

¹⁴⁹ Singh, Pankaj. (2005) From the Selected Works of Pankaj Singh: Child Labour in India. http://works.bepress.com/pankaj_singh/4 (last accessed on 15 February 2014)

¹⁵⁰ *Ibid*, p7

India is party to the UN Declaration on the Rights of the Child 1959, and "India adopted the National Policy on Children in 1974. The policy reaffirmed the constitutional provisions and stated "it shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that within a reasonable time all children in the country enjoy optimum conditions for their balanced growth."¹⁵¹ India has also ratified on December 2, 1992, the Convention on the Rights of the Child, which came into force in 1990. "This ratification implies that India will ensure wide awareness about issues relating to children among government agencies, implementing agencies, the media, the judiciary, the public and children themselves."¹⁵²

It is further argued that India's policy on child labour is "pragmatic" and as such, consistent with the International Labor Conference resolution of 1979. This ILO resolution "calls for a combination of prohibitory measures and measures for humanizing child labor, wherever such labor cannot be eliminated altogether in the short term. It should also be mentioned that India is second to none in its commitment to and in the upholding of the core international labor standards such as freedom of association, collective bargaining, non-discrimination, etc. India is signatory to a record 36 ILO labor conventions."¹⁵³ This is against a backdrop of no legislated minimum age for work, the minimum age for hazardous work being 14, the compulsory age for education is 14 and free public education is available, albeit against the enormous constraints alluded to earlier.

From two arguments advanced, it is clear that there is a difference between government policy and intent, and what is experienced daily. Whilst the policy commitments are sound, reports up to 2012, indicate a very different picture of the child labour reality, and it may be the economic realities (in other words poverty), which may explain the "pragmatic" approach taken. Having briefly looked at

¹⁵¹ Ibid, p8

¹⁵² Ibid

¹⁵³ Ibid

the constitution, we now turn to key pieces of legislation to assist us in understanding the legal framework:

7.1 Child Labour Prohibition and Regulation Act, 1986

The Child Labor (Prohibition & Regulation) Act, 1986 of India prohibits the employment of children below the age of 14 in factories, mines and in other forms of hazardous employment, and regulates the working conditions of children in other employment. It further provides that children may be employed, "provided employers adhere to restrictions, including a maximum 6-hour workday with a 1-hour rest period, at least 1 day off per week, and no night or overtime work."¹⁵⁴ In enacting this piece of legislation, India became the first developing country to have such a progressive policy. Singh argues that this announcement reflects the national commitment spoken about earlier and this legislation was followed by several declarations announcing initiatives taken by the Indian government to tackle this problem. In very specific terms, "the Act aims to prohibit the entry of children into hazardous occupations and to regulate the services in non – hazardous occupations. The Act in particular... lays down a procedure to make additions to the schedule of banned occupations and processes; regulates the working conditions of children in occupations where they are not prohibited from working; lays down penalties for the employment of children in violation of provisions of this Act, and other Acts which forbid the employment of children; bring uniformity in the definition of the "child" in related laws."¹⁵⁵

There are however certain shortcomings in this act, for example, this Act was passed with the objective firstly to prohibit, and secondly to regulate child labor. By reading the Act, it is clear that

¹⁵⁴Child Labour Prohibition and Regulation Act, 1986 as discussed in 2012 Findings on the worst forms of child labour, p2 www.dol.gov/ilab/reports/child-labor/india.htm (last accessed on 10 February 2014)

¹⁵⁵ Singh, Pankaj. (2005) From the Selected Works of Pankaj Singh: Child Labour in India. http://works.bepress.com/pankaj_singh/4, p10 (last accessed on 15 February 2014)

the Act is more concerned with regulating child labor, than it is with prohibition of child labor all together. Furthermore, there is an absence of measures for the rehabilitation of the child, although it provides for compensation for families. "The proviso annexed to section 3 is abused by employing children in respect of families and work experience acquired by children. This proviso helps employers to pose as family members of the children working in their premises and thus continued to exploit the children; this is how the employer escapes from prosecution. Hence burden of proof is to be fixed on the occupier to prove that the child is a member of his or her family."¹⁵⁶

Despite these shortcomings, this Act remains an important piece of legislation, as it begins to provide clearer stipulations regulating child labor, it introduces penalties, including a prison sentence, for non – compliance. We now turn to important further legislative developments in this regard.

7.2 The Factories Act, 1948

This act simply bars children under the age of 14 from working factories. In terms of this act, employing children under the age of 14 may lead to fines and imprisonment. In terms of this act, the Government must either compensate the family of the child or find employment for an adult member of the family.¹⁵⁷ For the first time, employing children becomes a criminal offence, and given the reality of poverty, the government takes the burden of ensuring that the family is compensated for the loss of income. Through this act, State governments are also given the authority to pass legislation establishing a minimum age for work at State level. "In

¹⁵⁶ Legal Framework for Child Labour in India, a discussion, http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/8530/16/16_chapter%208.pdf, p32 (last accessed on 19 February 2014)

¹⁵⁷ The Factories Act, 1948 as discussed in 2012 Findings on the worst forms of child labour, p2 www.dol.gov/ilab/reports/child-labor/india.htm (last accessed on 10 February 2014)

2012, the State of Rajasthan passed legislation establishing a legal minimum working age of 18 years"¹⁵⁸ Although this is a positive development, the reality is that many young children may engage in activities that jeopardize their health and safety, as there is no national minimum age for employment given that this is left for the legislative processes at State level. "The minimum age for hazardous work is (also) not consistent with international standards and may likewise jeopardize the health and safety of young ages between 14 and 17" ¹⁵⁹ Although yet again, a very positive development, gaps exist in relation to international standards in this regard, especially around minimum age provisions for hazardous work.

The Indians courts have however assisted in the development of this legislation. "In *M.C. Mehta v. State of Tamil Nadu*, it was held that children can be employed in the process of packing, but the packing should be done in an area away from the place of manufacture to avoid exposure to accident. The minimum wages for child labour should be fixed. The tender hands of the young workers are more suited to sorting out the manufactured product and processing it for the purpose of packing." ¹⁶⁰ and in "*Walker T.Ltd. v. Martindale*, the court held that, prohibition is absolute and not restricted to employment in one of the manufacturing process. Thus a child employed as a sweeper to clean up the floor of a factory is also in contravention of provisions of Factory Act, even though he is not employed in any of the manufacturing process."¹⁶¹ These are two cases in which the courts assisted with ensuring that the conditions of children in employment are improved by setting clear standards for the enforcement of the legislation, and by ensuring that harmful effects of labor is minimized on children.

¹⁵⁸ Ibid

¹⁵⁹ Ibid

¹⁶⁰ *MC Mehta vs State of Tamil Nadu and Others* (1996) 6 SCC 756

¹⁶¹ *Walker T. Ltd vs Martindale* (1961) 85 JLRB 1543

7.3 Bonded Labour System (Abolition) Act, 1976

“The Indian Bonded Labour System Abolition Act of 1976 prohibits any service arising out of debt, including forced labor and bonded labor. The legal definition of ‘the bonded labor system’ recognizes force as including not only physical or legal elements, but also including deprivation of alternative choices, economic circumstances, and a derived compulsion to choose a particular course of action, such as providing underpaid or unpaid labour(1).”¹⁶² In simple terms, and as previously discussed, bonded labor often manifests itself in the poor being offered loans, in exchange for the their children being employed. The wages in these situations are however often so low, that the chances of the child ever being able to repay this loan, is very slim, leaving the child bonded to the employer, and thus deprived of education. This Act provides for district-level vigilance committees to investigate allegations of bonded laborers. The Act further provides for rehabilitation assistance payments for released bonded laborers. However, it stipulates that persons found guilty of this practice may be fined or even face imprisonment. “In April 2013, the Criminal Law (Amendment) Act was passed, which amended the Indian penal code to protect children and adults from being trafficked into exploitative situations, including forced labor situations. Penalties include fines and up to lifetime imprisonment”¹⁶³ This is especially significant to root out this practice in “a number of occupations including agriculture, brick kilns, stone quarries, carpet weaving, bidi (cigarette) rolling, rearing of silk cocoons, production of silk sarees, production of silver jewellery, gem cutting, diamond cutting, manufacture of leather products, in circuses, fisheries, shops and tailoring establishments, and domestic work (5).”¹⁶⁴

¹⁶² International Dalit Network. Dalit and Bonded Labour in India. <http://idsn.org/index.php?id=377> (last accessed on 15 February 2014)

¹⁶³ United States Department of Labour Bureau of International Labour Relations. 2012 Findings on the worst forms of child labour, p3 www.dol.gov/ilab/reports/child-labor/india.htm (last accessed on 10 February 2014)

¹⁶⁴ <http://idsn.org/index.php?id=377> (last accessed on 15 February 2014)

7.4 Other Important Legislation

The Protection of Children from Sexual Offence Act was passed in 2012 to protect children from sexual assault, sexual harassment and pornography and establishes Special Courts for these trials. The amendment includes penalties for those who employ children or adults who have been trafficked, may include fines or life imprisonment. Through the Juvenile Justice (Care and Protection of Children) Act employers are prohibited from exploiting juvenile employees under the age of 18, through practices like keeping children in bonded labour conditions and/or by garnishing their wages. Violators may be fined and/or imprisoned for "any person who publishes, collects, seeks or downloads child pornography in electronic format"¹⁶⁵ is made possible through the Information Technology (Amendment) Act. And lastly, the Narcotic Drugs and Psychotropic Substance Act No. 61, makes it illegal "to cause any person, including children, to produce or deal in narcotic or psychotropic substances, punishment consists of fines and imprisonment"¹⁶⁶ Through these pieces of legislation seeks to ensure that any gaps are plugs and are important developments to ensuring a more comprehensive legislative approaches to combating child labour, and to ensuring that children's rights are entrenched across industries and sectors.

7.5 Government programmes

The National Authority for the Elimination of Child Labour is a high-level government body, chaired by the Ministers of Labour and Employment. The role of the Authority is to review, monitor and coordinate policies and programmes on child labor in India. The steering committee consists of representatives from a broad range of stakeholders including government, employers and workers. Various other government agencies exist to monitor and evaluate progress, and then make recommendations to the relevant authorities, like the National Human Rights Commission is charged

¹⁶⁵ Juvenile Justice (Care and Protection of Children) Act

¹⁶⁶ Narcotic Drugs and Psychotropic Substance Act No. 61

with monitoring the implementation of the Bonded Labour System (Abolition) Act, and it “monitors state level action against bonded labor through its review of quarterly reports by state governments on bonded labor and through exploratory investigate missions”¹⁶⁷ The challenge with bonded labour unfortunately is that despite these monitoring mechanisms, prosecutions have not always taken place.

“The National Commission for the Protection of Child Rights investigates cases that may involve a violation of a child’s rights or a lack of proper implementation of laws relating to the protection and development of children, including those related to child labor.”¹⁶⁸ At state government level labor inspectors are employed to help enforce these laws. Eight of the state governments have by 2012 adopted action plans for the elimination of child labor. Complaints about hazardous child labor can be made through a toll-free helpline, Child Line, which operates in 193 cities across India. Other initiatives and/or policies includes the: Crime and Criminal Tracking and Networking System, National Skills Development Policy which includes provisions for child labourers, the National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children.

Through National Policy on Child Labor, initiatives running at district level are able to “identify working children under 14, withdraw them from hazardous work, and provide them with education and vocational training. The projects set up schools, mainstream children into formal education and provide them with stipends, meals and health checkups. Between April 1, 2011 and March 31, 2012 the Government reported the rescue, rehabilitation and mainstreaming of 125 716 children into these schools in 266 districts across India”¹⁶⁹ These are special schools set up under the National Policy on Child Labor. Under this policy, children are provided meals at mid-day, a national tracking system is being

¹⁶⁷ United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the worst forms of child labour, www.dol.gov/ilab/reports/child-labor/india.htm (last accessed on 10 February 2014)

¹⁶⁸ Ibid

¹⁶⁹ Ibid, p4

piloted to monitor children in these schools, and efforts are being rolled out to increase their families' access to social protection and welfare programs. This includes the National Rural Empowerment Guarantee Scheme, the Rashtriya Swasthya Bima Yojna Health Insurance Scheme, Education for All Scheme, and the Skills Development Initiative Scheme.¹⁷⁰ The Indian government also provides grants to a number of NGO's who provide rehabilitation services to working children.

This list of initiatives is not exhaustive, but gives one a sense of the many efforts in place to address the challenges of child labor in India.

7.6 Conclusion on India

In concluding the specific focus on India, we note that there is no compulsory military service in India with voluntary recruitment being 17 years and 6 months. The minimum age for serving in combat is 18 years. The Right to Free and Compulsory Education Act outlines India's commitment lays to provide universal access to primary education with a focus on children from disadvantaged social groups. The Act provides for free and compulsory education to all children ages 6 to 14. Even more important to note, is that the Act "prohibits denying admission to children who lack a birth certificate, allows children to transfer schools, requires local authorities to identify out-of-school children, forbids discrimination against disadvantaged groups, and prescribes quality education standards"¹⁷¹ These legislative provisions creates a legal framework which seeks to advance and protect the rights of children, and seeks to provide for access to opportunities, like education, to ensure that long term well being of children in India. To this end, the legislative framework is far-reaching, and inclusive of a number of key areas with flexibility in the system to allow for regional dynamics, and/or local realities.

¹⁷⁰ Ibid, p5

¹⁷¹ The Right to Free and Compulsory Education Act, No 35 of 2009

However, contrary to India's international commitments, the country's constitution and all the legislative measures in place, Singh concedes, "child labour is a harsh reality. Due to lack of political will and in absence of realistic measures to tackle the problem, the percentage of child labour in the total labour force of the country kept on increasing over the years. In fact, the evil of child labour has not only survived but has become deep rooted and multi-dimensional."¹⁷² He however argues for a this problem to be seen in perspective, as child labour is "Typically, it is first and foremost a function of poverty, under-development and the employment market, rather than a willful violation of the human rights of the child though this distinction blurs as we move towards the more extreme forms of child labour such as forced or bonded child labour, child prostitution etc. where the element of abuse becomes more pronounced. Priority needs to be given to the more extreme, exploitative and hazardous forms of child labor."¹⁷³ This paper agrees with this approach, especially given that it is critical to address the root causes of poverty, which fuels child labour.

Section 8: Brazil

"Child labour is a social phenomenon that has been present throughout Brazilian history. Its origins go back to the Portuguese colonization and the introduction of slavery. Native children and black boys were the first to suffer from the rigors of child labour in a country which from the start, established a wealth production and distribution structure based on social inequality"¹⁷⁴ This economic structure led to Brazil being recognized worldwide as one of the countries with highest rates of social inequality, "expressed in the concentration of income in the economically protected classes"¹⁷⁵ This is a direct result of Brazil's colonial past. It is this highly unequal economic structure in terms of income distribution together

¹⁷² Singh, Pankaj. (2005) From the Selected Works of Pankaj Singh: Child Labour in India. http://works.bepress.com/pankaj_singh/4, p10 (last accessed on 15 February 2014)

¹⁷³ Ibid, p22

¹⁷⁴ Prevention and Eradication of Child Labor and Protection of Adolescent Work, National Plan, Brasilia, Ministry of Labor and Employment, Labor Inspection Secretariat, 2004, p9

¹⁷⁵ Ibid, p10

with the growth of the child population; most of them socially excluded, that has led to the dramatic increase of children under 18 years of age, working in Brazil.

However, "Brazil made significant advancement in efforts to eliminate the worst forms of child labour. To eradicate extreme, the Government increased the budget for its flagship social protection program, Bolsa Familia, from \$8 billion in 2011 to \$9.8 billion, and launched the Caring Brazil Program to lift 16.2 million Bolsa Familia beneficiaries with children ages under 15 out of extreme poverty."¹⁷⁶ Despite this bold initiative, children continue to engage in the worst forms of child labour, "including in hazardous activities in agriculture and street work. Some children are engaged in the production of cashews, cotton, manioc, pineapple, rice, sisal and tobacco. Although the extent of the problems unknown, there are reports that children are also found working in the production of apples, *babassu* (palm used to produce oil), beans, citrus, coffee, cocoa, mate tea, sugarcane, tomatoes, and strawberries."¹⁷⁷ It is reported that these children work long hours, use dangerous tools and are exposed to the elements, pesticides and physical injuries. Additionally some children in Brazil also work in animal slaughter, exposing them to unsanitary conditions and the use of sharp knives. "A 2010 study found more than 23,000 street children, predominantly males, working in 75 cities in Brazil. They perform hazardous work in construction, automobile washing and repair, and garbage scavenging; they also work in the production of garments and footwear."¹⁷⁸ These children work long hours, and according to the "Ministry of Health children who work in the footwear sector in the State of São Paulo suffer more occupational injuries than do children working in other sectors."¹⁷⁹

¹⁷⁶ United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the Worst Forms of Child Labor, www.dol.gov/ilab/reports/child-labor/brazil.htm, p1 (last accessed on 10 February 2014)

¹⁷⁷ Ibid, the Prevention and Eradication of Child Labour and Protection of Adolescent Work, National Plan, Brasilia, Ministry of Labour and Employment, Labour Inspection Secretariat, 2004 discusses this in further greater detail.

¹⁷⁸ Ibid

¹⁷⁹ Ibid

Children as young as 14 are often recruited for professional soccer teams, living apart from their families and often not attending school. Many children also perform at artistic events and may end up working 8 hours without breaks. Many children in Brazil work as domestic servants. A 2013 report found that more than 258 000 children, ages 10 to 17, work in domestic service in third-party homes, requiring long hours of work, "performing strenuous tasks without sufficient food or shelter. These children may be isolated in private homes and are susceptible to physical and sexual abuse. Children and adolescents are also engaged in prostitution and sex tourism, including along highways, at truck stops and bus stations, and in brothels near mining settlements in the Amazon region... Children are reportedly engaged in pornography. Children are trafficked internally and internationally for the purposes of commercial sexual exploitation and forced labor... In the cities of São Paulo and Rio de Janeiro, children are sometimes recruited into criminal gangs to work in the drug trade."

Further challenges for children, especially in rural areas, include poor school infrastructure with some school not have running water, electricity, or toilets, and "transportation is not always available because of aging buses, long distances, and bad road conditions. Some children do not have birth certificates, which hinders their access to education."¹⁸⁰ According to the 2010 World Bank study, only 60% of youth enrolled in secondary education complete their schooling.

It is important to note that Brazil is a signatory to the C138, the Minimum Age Convention, C182, Worst Forms of Child Labour Convention and the Convention on the Rights of Child, amongst a number of other international treaties. There minimum age for work is 16 years of age, the minimum age for being employed in hazardous work is 18 years, 17 is the age up to which compulsory education applies to the Brazilian child, and public education is free. These are commendable government interventions and protections, unfortunately government intent and the reality on the ground is very different. The influence of the international conventions are however noticeable in the legislation as will now be discussed.

¹⁸⁰ Ibid

8.1 The Federal Constitution of 5 October 1988 (as amended in 2000)

"All Brazilian legislation to with children is guided by the principles established in the 1998 Constitution, which, in turn, are matched with the current provisions of the Convention on the Rights of the Child and the ILO conventions nos. 138 and 182."¹⁸¹ Both the Constitution and the Labour Code set the minimum age for work at the age 16, with an exemption applied to apprenticeships where 14 is the minimum age. Given the reality of poverty, "Judges have the authority to grant work authorizations for adolescents under the age of 16 to perform work, as long as it is not harmful to their development and it is vital for their family's survival."¹⁸² This provision protects children by ensuring a judicial requirement and process for exceptional circumstances where the reality of a family's situation may justify a child under 16 working. This provision is however also open to judicial review by the Minister of Labour, to ensure that duly apply their minds and consider the best interest of the child, when cases like this appear before the courts.

Brazil is commitment to protect children, and Brazil's overall consideration of child labour is within a human rights framework. In the Brazilian constitutional context, "these rights are fundamental and inalienable and, therefore, are not negotiable."¹⁸³ Brazil's legal framework is thus set up to ensure these rights and it is as such a very advanced legal structure developed to govern child labour. As such, for example, article 227 of the Federal constitution states that "Ensuring children and adolescents have, as an absolute priority, the right to life, health, food, education, leisure, professional

¹⁸¹ Prevention and Eradication of Child Labor and Protection of Adolescent Work, National Plan, Brasilia, Ministry of Labor and Employment, Labor Inspection Secretariat, 2004, p14

¹⁸² United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the Worst Forms of Child Labor, www.dol.gov/ilab/reports/child-labor/brazil.htm, p2 (last accessed on 10 February 2014)

¹⁸³ Prevention and Eradication of Child Labour and Protection of Adolescent Work, National Plan, Brasilia, Ministry of Labour and Employment, Labour Inspection Secretariat, 2004, p14

training, culture, dignity, respect, freedom, and family and community life, as well as making them free from any form of negligence, discrimination, exploitation, violence, cruelty and oppression are duties of the family, of society and of the State”¹⁸⁴ Through this article, guidelines are provided to legislators on public policy and also on governmental and non-governmental action with regards to the rights of children.

8.2 Decree No. 6.481 of 2008

This decree prohibits “hazardous work for children under the age of 18; it lists 93 hazardous activities within 13 occupational categories from which children are barred. These categories include agriculture, livestock raising, fishing, mining, car repair, manufacturing, construction, transport, domestic work, and health services. Hazardous activities include garbage scavenging, fertilizer production and street work.”¹⁸⁵ In line with the constitutional provisions, and as a sign of Brazil’s commitment to the enforcement of it’s legislation, is the manner in which the Brazilian handled reports on the Brazilian News Agency that between 2005 and 2010, judges had “authorized more than 33 000 children under the age of 16 to work. Some of these authorizations were for children performing hazardous activities such as scavenging, construction and fertilizer production.”¹⁸⁶ To address this, the relevant judges were required to submit their authorizations for review by the National Council for the Public Ministry, and the judges were requested to reconsider such authorizations. “Judges who revoke the authorizations can request that the Federal Labour Prosecutor place the affected children in apprenticeships programs.”¹⁸⁷ This has had a positive impact with the Ministry for Labour and Employment reporting in 2012 that judges granting authorizations for children under 16 had decreased by 58% between 2010 and 2011; and that only 3 134 authorizations were issued in 2011 compared to the

¹⁸⁴ Ibid, p16

¹⁸⁵ United States Department of Labour Bureau of International Labour Relations ,2012 Findings on the Worst Forms of Child Labor, www.dol.gov/ilab/reports/child-labor/brazil.htm, p2 (last accessed on 10 February 2014)

¹⁸⁶ Ibid

¹⁸⁷ Ibid, p3

7421 issued in 2010. To minimize this occurrence even further, the "Forum for the Eradication and Elimination of Child Labour has requested that the National Justice Council provide guidelines to judges on issuing work authorizations"¹⁸⁸

8.3 The Children's and Adolescents Statute (Act No. 8069 of 13 July 1990):

This Statute, "enables the introduction of a System of Guaranteeing Rights and a Protection System, detailing how the rights of children and adolescents will be implemented, for whomever guarantees these rights, also establishing a complaints system."¹⁸⁹ The Statute of the Child and Adolescent also prohibits child pornography, and "implicitly, expects that the municipal, state and federal governments will adopt policies that remove children below 16 years of age from the labour market."¹⁹⁰ As a result various programmes supported by budget allocations, are put in place to give meaning to the intent expressed through this Statute and constitution. Various stakeholders have, as such, come to the party to also contribute to the eradication of child labor in Brazil, including private institutions and even trade unions. Including private institutions is critical in the fight against child labour, and as will be discussed, the United Nations is spearheading an international initiative to include corporations in global efforts to eliminate the worst forms of child labour. "Article 248 (of the Statute) provides for a fine for those who fail to present to the judicial authority, at its place of work, within five days, evidence regularizing the safekeeping of adolescents brought from another judicial district in order to provide domestic services, event with the authorization of the parents or the guardian."¹⁹¹ Whilst the intent of this Statute is clear, and noble, critics often note that the Statute assumes that placing the child in a family environment that the safekeeping of the child is secured. The opposite is often true. "The great underlying

¹⁸⁸ Ibid

¹⁸⁹ Prevention and Eradication of Child Labor and Protection of Adolescent Work, National Plan, Brasilia, Ministry of Labour and Employment, Labour Inspection Secretariat, 2004, p16

¹⁹⁰ Ibid

¹⁹¹ Ibid, p17

question that is raised when examining the Brazilian legal system in the field of child labor has to do with the fact that the Federal Constitution and the Statute are not fully applied, nor completely understood.”¹⁹² For example, the Statute is applied to older concepts, which includes the view that it was permissible to punish children and adolescents at odds with the law.

8.4 Government programmes

Brazil’s National Plan for the Prevention and Eradication of Child Labour and Protection of Working Adolescents and the National Programme to Eliminate Child Labour (PETI) guide government efforts to combat child labour. A programme to combat sexual violence and the commercial exploitation of children is coordinated under The National Plan to Combat Sexual Violence against Children and Adolescents. Other policy instruments include: the National Plan to Promote and Protect the Rights of Children and Adolescents for Family and Community Life, the National Human Rights Programme, the National Decent Work Plan (2011-2015), the More Education Programme, the Brazil without Misery Programme, and the National Policy and Decennial Plan for the Human Rights of Children.

“To strengthen efforts to eradicate extreme poverty under the Brazil without Misery Program, the Government launched the Caring Brazil program, a cash transfer initiative, aimed at families in extreme poverty that benefit from the *Bolsa Familia* program, but whose monthly income per capita is less than \$137. Caring Brazil will target families with children ages 0 to 15 and will benefit 16.4 million people. (114, 117) After more than 2 years of discussions, the Brazilian Chamber of Deputies approved the National Educational Plan (2011-2020), which will require that 10.0 percent of Brazil’s GDP be allocated to education. The Plan has 20 goals, including increased access to daycare, universal basic education, an end to illiteracy, and the conversion of 50.0 percent of public schools into full-time schools, extending to 7 or more the number of

¹⁹² Ibid

school hours per day.”¹⁹³ This initiative is a benchmark for best practice internationally as it seeks to provide social protection to families, thus ensuring that children are able to attend school. Additionally various initiatives are in place seeking to evaluate and monitor advances made to ensure that Brazil speed up processes to combat the worst forms of child labor. As a regional power, Brazil is also involved in a number of regional efforts to combat the worst forms of child labour.

8.5 Conclusion on Brazil

In concluding the section on Brazil, one must note that the system assumes collaboration between various agencies, and although evidence is presented of cross-sectoral buy-in, not enough evidence is presented of the effectiveness of the system in combating child labour. To the contrary, as previously indicated, child labour remains a major challenge for Brazil. Questions also arise as to the capacity of the various agencies to deal with what is a very onerous legal framework, requiring proactive action from especially State agencies at local level. To this end, the Brazilian government admits that “many of the problems of sexual exploitation and intra-family abuse remain unresolved, even though the agent of the System of Guaranteeing Rights identifies the problem and is sensitive to it, he or she is unable to change the conditions of these children.”¹⁹⁴ These agents have no practical ability to solve the problems and are often working within a context of institutional detachment. Brazil is however to be commended for a detailed legal framework with very clear intensions, and within a framework that understands the issue of child labor as a human rights issue. To this end, “the minimum age for the recruitment and enlistment in the armed forces is 18. The constitution establishes free and compulsory education until the

¹⁹³ United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the Worst Forms of Child Labor, www.dol.gov/ilab/reports/child-labor/brazil.htm, p5 (last accessed on 10 February 2014)

¹⁹⁴ Ibid, p18

age of 17.”¹⁹⁵ Access to education is often a challenge, especially in rural areas where conditions are often poor.

Section 9: South Africa

In 2012, South Africa made moderate advancements in efforts to eliminate the worst forms of child labour. The worst forms of child labour continue to exist, with dangerous work a particular feature in agriculture and domestic service. South Africa has a large child population, approximately one third of the total population are under 15, that is nearly 15 million children. It is a problem, if left unchecked and unchallenged, can spread across South Africa’s large underage population. “In fact, numbers tend to show an increase in sex trafficking... As black Africans make about 80% of the South African population and represent most of the poor in the country, child labour mostly affects this segment of the population”¹⁹⁶ The official unemployment is estimated at around 25% of the population (whilst many predicts the unofficial unemployment rate to be much higher), again highest amongst black Africans, “which in turn drives the need to use any means to make money, be it prostitution or forced labour. And despite the signing of tons of international and national conventions and law to protect the rights of children, South Africa’s been learning the hard way that merely writing a law doesn’t automatically put it to action”¹⁹⁷ As will be discussed, South Africa has a strong legal framework to combat child labour, however, much needs to be done to ensure the effective implementation of laws and to address the root causes of poverty. These root causes forces children into labour especially in the agricultural sector. Although universal access to primary education is guaranteed, conditions at schools are often poor.

¹⁹⁵ United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the Worst Forms of Child Labor, www.dol.gov/ilab/reports/child-labor/brazil.htm, p3 (last accessed on 10 February 2014)

¹⁹⁶ Child Labour in South Africa, Sexual Exploitation and Discrimination, (Dec 2012), www.poverties.org/child-labor-in-south-africa.htm (last accessed on 17 February 2014)

¹⁹⁷ Ibid

It is widely reported, that South Africa is one of the most unequal societies you can find. South Africa as a result, features some of the largest income gaps between the rich and poor worldwide. This gap creates a strong market for employment in the domestic sector, “domestic workers are close to representing 10% of the working population in the country and are generally underpaid”¹⁹⁸ Fuelling the South African challenge as an apartheid past which creates huge structural inequalities, and resulting in poverty having a racialized face, with the African population largely being poor and unemployed, and the white population largely being rich and in employment.

Children in South Africa are engaged in the worst forms of child labour. “Children are involved in a variety of agricultural activities, including forestry and in harvesting sugarcane, mango, lychee, bananas, grapes, citrus and other fruits. There are reports that some of these children may be exposed to extreme heat and physical and sexual abuse. In addition, children in agriculture may work long hours, use dangerous tools, and apply harmful pesticides.”¹⁹⁹ In these contexts, livestock is injuring children, and this often results, in especially boys, being absent from school due to their work. Children employed in domestic work; work long hours performing strenuous tasks often for a pittance and without being provided decent shelter. These children are often vulnerable to abuse, both physical and sexual, as they are often isolated. Further evidence²⁰⁰ suggests that children also scavenge in landfills and dumpsites for recyclable materials, involving long hours of carrying heavy loads in dangerous circumstances.

“Some children in South Africa are exploited in commercial sexual exploitation. In addition, adults to commit crimes, including drug trafficking, home burglaries, use children and gang- related activity. South Africa remains a country of origin, transit, and destination for children trafficked for the purposes of sexual exploitation and forced

¹⁹⁸ Ibid

¹⁹⁹ United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the Worst Forms of Child Labor, www.dol.gov/ilab/reports/child-labor/southafrica.htm, p1 (last accessed on 10 February 2014)

²⁰⁰ Ibid

labour.”²⁰¹ Children are trafficked from rural areas to urban areas, and especially girls are trafficked from countries like China, Lesotho, Malawi, Mozambique, Swaziland and Thailand for commercial sexual exploitation and for domestic service. Various reports indicate that South African boys are trafficked internally for farm work, food service, begging, and street vending. This paints a grim picture, of a context in which children are exploited in a country with apartheid past, and a post apartheid context that is governed by one of the most celebrated constitutions on the world.

We now turn to South Africa’s legislative framework, noting that South Africa is signatory to C138, the Minimum Wage Convention; C182, the Worst Forms of Child Labour Convention; the Convention on the Rights of the Child. The minimum age for work in South Africa is 15, the minimum age for engaging in hazardous work is 18 and compulsory age for education is 15, while free public education is available. In terms of the Defence Act the minimum age for voluntary military service, military training, and conscription, even in times of a national emergency is 18.

9.1 South African Constitution, 1996

The South African constitution was adopted in 1996, introducing a Bill of Rights, which protects the fundamental rights of South Africans. Section 28 of the constitution constitutes a “mini-charter” of children’s rights covering a wide range of issues such as civil and political rights, including the right to a name and nationality (article 23.1.a); socio-economic rights, like the right to basic nutrition, shelter, basic health care services and social services (section 28(1)(c); child justice (section 28(1)(9)(g); and section 28 (2) constitutionalize the principle of the best interest of the child.²⁰² Writing about the impact of this section, Devenish²⁰³ describes it as intending “to give expression to the social and moral conscience of the South African

²⁰¹ Ibid, this point is also made by Child Labour in South Africa, Sexual Exploitation and Discrimination, (Dec 2012), www.poverties.org/child-labor-in-south-africa.htm

²⁰² The Constitution of the Republic of South Africa, Act 108 of 1996

²⁰³ Devenish, G. A Commentary on the South African Bill of Rights, Butterworths: Durban, 2002, p371 - 372

nation and the desire of its leaders to give social compassion, some meaningful constitutional and legal effect in relation to children, who in the past have suffered so inordinately because of the unconscionable laws and policies." Yet, in one of South Africa's most influential constitutional court cases, the famous Grootboom case, the court held that section 28 "did not create rights that are separate and independent for children and their parents"²⁰⁴ The argument is thus that children will derive their autonomy from other provisions in the constitution, like the right to dignity (section 10), the right to privacy (section 14), the right to freedom of religion, belief and opinion (section 15). The Bill of Rights deals with child labour as follows: "Section 28(1) Every child has the right – (e) to be protected from exploitative labour practices; (f) not to be required or permitted to perform work or provide services that – (i) are inappropriate for a person of that child's age, or (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral, or social development;"²⁰⁵ It is important to note that these provisions were included in the South African constitution before South Africa had ratified the Convention 138, and it particularly worthy to note in this context, that South Africa went for a child centered approach.

The South African constitution thus provides a clear and very nuanced child labour framework. The constitution does not provide a minimum age, nor does it outright prohibit child labour, and as already indicated, and possibly given the socio-economic realities, requires an approach that considers instead the well-being of the child.

9.2 Basic Conditions of Employment Act (No 76 of 1997) and the amendment Act (No. 11 of 2002)

The Basic Condition of Employment Act sets the minimum age for work at the age of 15, and the minimum age for hazardous work at

²⁰⁴ The Government of the Republic of South Africa and Others vs Grootboom and Others (2001)(1) SA 46 CC

²⁰⁵ The Constitution of the Republic of South Africa, Act 108 of 1996

the age of 18. Employers may hire children younger than age 15 to work in the performing arts with the permission of the South African Department of Labour.²⁰⁶ In terms of this provision, the Department of Labour can assess applications for permits allowing children to work in this sector. However, if the application does not meet the requirements, it can be turned down and/or the applicant will be advised on the steps needed to ensure compliance with the Act. This mechanism allows the Department to track the frequency of this sector using children to work, and if exploitation is suspected, it gives the Department the ability to act and/or to take the appropriate action.

The Act requires the Department of Labour to approve regulations to extend the legal provisions. As such, "regulations prohibit children younger than age 18 from hazardous activities, including the production and sale of alcohol, mining, scavenging in garbage dumps, and exposure to hazardous substances, including dust, fumes, biological agents, lead, and pressurized gases."²⁰⁷ The list is quite comprehensive and as such also includes "work that: takes place in cold, hot, or noisy environments; involves respiratory hazards, elevated spaces, lifting of heavy objects; or interferes with a child's access to nutrition, health care, or education"²⁰⁸ Guidelines are also provided for the employment of children requiring them to be separated from their parents or guardians.

9.3 Children's Act (No. 38 of 2005) and the Children's Amendment Bill (No. 19 of 2006)

This act prohibits the use of children for slavery, slave like practises, trafficking, commercial sexual exploitation, and illicit activities. Clause 141 (3) requires the Minister of labour to "take all

²⁰⁶ Basic Conditions of Employment Act (No 76 of 1997) and the amendment Act (No. 11 of 2002). This is also extensively discussed in United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the Worst Forms of Child Labour, www.dol.gov/ilab/reports/child-labor/southafrica.htm

²⁰⁷ Basic Conditions of Employment Act (No 76 of 1997) and the amendment Act (No. 11 of 2002)

²⁰⁸ Ibid

reasonable steps to assist in ensuring the enforcement of the prohibition on the worst forms of child labour, including steps providing for the confiscation, in terms of the Prevention of Organized Crime Act, of assets acquired through the use of such child labour". Significantly, also, is that this Act requires that support mechanisms be put in place which may include providing a social worker. This isn't a mandatory provision but gives the court discretion to ensure that the necessary support systems are put in place, should there be a need. Through this measure, the issue of the worst forms of child labour is also incorporated into welfare legislation, thus not restricting it to criminal legislation only. And by making a social worker available, the legislation acknowledges the need for a nuanced approach, which includes confiscating gains made.

9.4 The Child Justice Act (No. 75 of 2008)

This act allows "for the diversion of child offenders from the formal criminal justice to alternative forms of justice, such as victim – offender mediation and family councils."²⁰⁹ It creates one-stop child justice centers and calls for the prosecution of adults who use children for illegal activities. To this end, courts are to consider whether an adult, when determining the placement of children in the justice system influenced a child. This is an important development in context where adults, as discussed earlier, often use children in criminal activities, like burglaries.

9.5 Government programmes:

The National Child Labour Action Programme for South Africa (CLPA) is the primary policy instrument to prevent and eliminate child labour in South Africa. It calls for and coordinates activities and legislative reform against the worst forms of child across government departments. Monitoring and evaluation indicators are built in to help government stay abreast of developments. "While

²⁰⁹ The Child Justice Act (No. 75 of 2008)

Government collects some data on child labour, it does not collect comprehensive data on the number of children engaged in hazardous work or child labour"²¹⁰ The South African government also implements a Child Support Grant, which is a direct cash transfer to the primary caregivers of vulnerable children. In 2012, the eligibility age was raised from 17 to 18, the purpose of this grant being to provide assistance to the poor, by alleviating the economic pressures and lowering the costs involved with raising a child. "Reports assessing the impact of the grant indicate that recipients may be less likely to send their children away for child labour... Reports also suggest, however, that the amount of each grant is very low, which may mean the grants have little impact on child poverty"²¹¹ Another significant government intervention, is the old age grant or pension. This is a cash transfer for eligible adults over the age of 60. "Assessments of the grant's impact indicate that children's school attendance and completion increase and child labour decrease in rural households with male pension recipients, especially for boys in households with male recipients. Studies also indicate a decrease in the total hours worked by children, especially among girls"²¹² A number of other grants exist to provide a cushion of support for South Africa's most vulnerable. These include grants for care dependency and for foster care to help families and children, and especially those vulnerable to the worst forms of child labour. In terms of the relevant legislation, those children who receive social grants are exempt from paying school fees. This "no-fees policy however ends in South Africa's grade 9 or when the child reaches the age of 15. In addition, the South African government provides a national school feeding programme for children, and it funds subsidies for registered organizations working child labour to provide care to children.

The South African government also implements and coordinates a number of initiatives in this regard, including: South African Government-European Union co-funded Program of Assistance to the South African Government to Prevent, React to Human

²¹⁰ United States Department of Labour Bureau of International Labour Relations, 2012 Findings on the Worst Forms of Child Labour, www.dol.gov/ilab/reports/child-labor/southafrica.htm, (last accessed on 10 February 2014)

²¹¹ Ibid

²¹² Ibid

Trafficking, and Provide Support to Victims of Crime. This Program supports the Government's National Strategy to Combat Human Trafficking through Prevention, Response and Support for Victims. "The Government also operates Thuthuzela Care Centers that provide medical services, counseling, and legal support to victims of sexual abuse and exploitation."²¹³ As a leading nation in the region, South Africa supports a number of cross border and regional efforts to eliminate and raise awareness the worst forms of child labour, this includes developing codes for the tourism industry.

9.6 Conclusion on South Africa

South Africa has a clear legal framework in relation to child labour. Constitutional principles and provisions that are progressive, protective and yet flexible guide this framework. It takes the lived realities of children working in South Africa into account, as well as ensuring that it prohibits the serious exploitation of children. Fighting child labour in South Africa is particularly difficult because work is needed on all fronts: schools, parenting support, job opportunities, sexual and health education, social safety nets and so on. South African children, also requires psychological help, as they live in the most desperate conditions, and the psychological help is required to help them in seeing themselves as being more than a nuisance, but as an actual asset to society. South Africa's apartheid past, means that black African children are worst affected by poverty, and as such, are mostly subjected to child labour. The worst forms of child labour is especially prevalent in the agricultural sector, in rural areas, and increasingly in urban areas due to rapid urbanization and the fact that children are being trafficked to the cities.

Section 10. Recommendations:

Whilst it is clear that much has been done to eliminate child labour globally, Levine concludes "that childhood poverty has not

²¹³ Ibid, p4

decreased in consequence of the laws that make child labour illegal and that human rights legislation cannot protect children from harm when the political economy of the country is rooted in structural inequality”²¹⁴ This is a key challenge for the IBSA countries, whom as we discussed, whose economic challenges are rooted in deep seated structural inequalities: India is rooted in a deep seated legacy of exclusion, and the exploitation of children in key economic sectors, including the caste system history; for Brazil the legacy of a colonial past runs deep. This past includes slavery and historical legacies which views child labour as a normal part of the socialization experience, particularly in the rural areas; South Africa’s colonial and apartheid past continues to bedevil efforts to bring about meaningful transformation, resulting in deep seated inequality and a context in which poverty has a black African face. This means that child labour affects especially black African children in rural areas who are often trafficked to urban areas.

The goal towards the elimination of child labour, this needs to be one, which seeks to fight poverty and inequality in the long term. In the short to medium term, the following recommendations may be of assistance:

10.1 The need for integrated programmes

It is widely acknowledged that education is key component in the fight against poverty, and thus key to ensuring the elimination of child labour globally. For education to play this central role, problems in education systems needs to be addressed. “This means improving the quality of education and directing resources to increasing access to schooling for all children, including child labourers, while ensuring that the school environment, particularly the learning environment, is inclusive and strong enough to persuade children to remain in school until they graduate.”²¹⁵ Whilst

²¹⁴ Levine, S. “The picanniny wage”. An historical overview of the persistence of structural inequality and child labour in South Africa. *Anthropology South Africa*. Vol 29, No.3 and 4, 2006, p122 - 131

²¹⁵ Winrock International. (2008) *Best Practices in Preventing and Eliminating Child Labor through Education*. Winrock International Empowerment and Civic

legislation plays a key role in ensuring universal access to education, policy and programmatic inventions to realize this right, needs to be integrated taking the full context into account. Programmes thus need to integrate legislative provisions, with the economic and social realities facing especially the poor. Both international and local initiatives needs to further be informed by contexts where child labour is driven by historical views on the childhood, the needs of the family, the impact of hiv/aids resulting in child orphans who now head households, the role of business in driving this practise, etc. Initiatives are often driven in isolation of each other, however, we acknowledge the efforts being made in recent years to have a more holistic approach, and these efforts must however become part of the mainstream approach. For example, the UN's Global Compact is an important initiative to bring business leaders into the loop. This initiative is located within the broader human rights context. It's effectiveness will however be judged on the extent to which business leaders are also brought into the bigger contextual challenges facing the societies in which they operate, and how the UN system is able to ensure a seamless integration of this initiative with it's various other initiatives which sits across multiple agencies.

10.2 Advancing best practises

Best practise models across the world needs to be identified and advanced. To this end, IBSA has played a key role in providing the world with best practise models. "Since 2006, the International Labour Organisation says, the number of child workers has dropped by 11 percent worldwide. And the number of children in hazardous work has gone down by 26 percent. Much of that progress has come in India, Brazil and South Africa, which formed a three-way development initiative in 2003."²¹⁶ These nations have done so, by largely enforcing their own legislation, and they "are very strongly seen as sort of the motherboards of development initiatives in their

Engagement Unit.

²¹⁶ <http://southasia.oneworld.net/archive/globalheadlines/ibsa-unites-against-child-labour#.UwHf73nlfwl>, (last accessed on 17 February 2014)

respective continents, in Asia, in Africa, and in Latin America."²¹⁷ Through the IBSA partnership, these nations were able to share best practice models, and discuss areas of challenge, thus broadening the information pool and enabling them to learn from each other.

The World Report on Child Labour²¹⁸ stresses the need for social protection to be extended as a key part of national strategies, and in particular as these floors would guarantee basic income such as pensions, child benefits, access to basic affordable social services to the poor like health care and access to education, amongst others, in line with national priorities. Brazil's Bolsa Familia programme is highlighted as a good practice example. Through this initiative families are provided with a monthly cash allowance to send their children to school, thus playing a key role in reducing child labour in both rural and urban areas across Brazil. In both South Africa and in rural India, the numbers of child labourers declined and the numbers attending school increased substantially when households began receiving a large cash transfer. Education is a key strategy to eradicate poverty; by keeping children in school, the long term of the elimination of child labour may this be achieved. Critical though, is the need to provide a safety net for families.

Although India, South Africa and Brazil are helping their neighbours in better understanding child labour and with the development of programmes to eliminate child labor. These efforts and best practice models needs to become part of the global programme for the elimination of child labour, especially in respect of lessons learnt by these countries. Through the IPEC programme, the ILO has played a key role in adding to the knowledge base of on child labor, including highlighting the successes of the IBSA group, as international role-models in this regard. "Knowledge about concrete steps towards eliminating child labour has been gathered and documented through evaluations and collections of good practice examples of different interventions and types of child labour."²¹⁹ An example of this is The Understanding Children's Work (UCW) programme, a research initiative of the ILO, UNICEF and the World Bank.

²¹⁷ Ibid

²¹⁸ World report on child labour: Economic vulnerability, social protection and the fight against child labour /International Labour Office. Geneva: ILO, 2013

²¹⁹ Ibid, p4

10.3 Moving beyond Rhetoric: The Need for Political Will

Whilst the progress made in India is widely acknowledged, it is significant to note that the India is not a signatory to the Minimum Age Convention, C138 and the Worst Forms of Child Labour Convention, C182. Whilst the World Report on Child Labour commend India, Brazil and South Africa for the progress made, India must be persuaded to sign these two important conventions. India does not have a minimum age for employment, increasing the chances of younger children engaging in activities, which may jeopardize their health and safety. More importantly, the rhetoric must be followed by strong political will, which is means a commitment to global standards in this regard. In South Africa, the Minister of Labour is given wide-ranging powers through the Basic Conditions of Employment Act. These legislative provisions include appointing social workers to assist vulnerable children. The reality is that there is a big demand for social workers to assist in this regard, resulting in an enforcement gap with many children thus falling through the cracks, especially in rural settings. Brazilian efforts includes local authorities being set up to assist in the monitoring and reporting of incidents of child labour, yet many of those local authorities do not have the capacity to effectively play this role envisaged by legislation. Whilst we celebrate the gains, it requires much stronger political will to fill the gaps and to ensure that the lived reality of especially rural children are improved.

Whilst global efforts are now moving to include business leaders, these must be duplicated at national level to ensure that global efforts find meaning at national level. The political will be required to ensure the integrated approach recommended above, and a streamlining of efforts that cuts across number of sectors. These efforts must seek to break down traditional views on childhood, and practices inherited from a past in which child labour played a key part in the industrial development path of many nations. "Inadequate domestication of international legal and policy framework in national laws and policies and their inadequate enforcement/implementation shows the lack of political will of governments to end child labour. The civil society movement encompassing NGOs, child rights organisations, teachers'

association, trade unions, and others need to urge governments to honour their commitments.”²²⁰ This movement now includes business through the commitments made by their joining the United Nations Global Compact.

Section 11. Conclusion

The “total eradication of child labour is possible, affordable and achievable.”²²¹ Beyond political will and leadership at all levels, comprehensive approaches are required that “address the conditions of poverty that spawn and perpetuate the practice, rehabilitation, alternative and remunerative employment for the parents, enforcement of legislative and administrative measures, education and vocational training. An enforcement approach that does not address the root causes of poverty will not succeed and can result in the aggravation of the situation of the child.”²²² This dissertation has shown the close link between children’s rights more generally, and the interconnectedness of addressing child labour with broader human rights issues. “Child labour has long been recognized as a significant violation of children’s rights, fundamental labour rights and human rights, as well as a substantial barrier to national development.”²²³

11.1 Children’s Rights and Child Labour: Past, Present and Future

Children’s rights have come a long way. Through the efforts of the International Labour Organization, child labour has become an important international human rights issue. By increasingly addressing child labour in it’s more holistic form, children’s rights have been catapult into the mainstream across a number of international agencies, which now for the first time will include business through the UN Global Compact. Significant, is the move

²²⁰ Satyarthi, Kailash. Global March Against Child Labour. Human Rights and Child Labour, p 4

²²¹ Ibid, p 5

²²² Singh, Pankaj. (2005) From the Selected Works of Pankaj Singh: Child Labour in India. http://works.bepress.com/pankaj_singh/4, p 22 (last accessed on 10 February 2014)

²²³ World report on child labour: Economic vulnerability, social protection and the fight against child labour /International Labour Office. Geneva: ILO, 2013, p3

away from the minimum age approach, which was so dominant up until the early to mid- 1990's. The approach taken today, and going into the future, acknowledges the multiple factors causing child labour. These range from the legacy of slavery, the impact of poverty, inequality and the role of HIV/Aids; to notions of what childhood means and thus conceptions about how to best contribute to the development of the child. "A Roadmap for achieving the elimination of the worst forms of child labour by 2016 was adopted at The Hague Global Child Labour Conference of 2010 and subsequently endorsed by the ILO's Governing Body in recognition of the need for a "new momentum" if the world is to attain the ambitious 2016 target."²²⁴ Eliminating the worst forms of child labour is furthermore widely acknowledged as a first step in the ambition to completely eliminate all forms of child labour. This renewed energy means a better world for children, as this ambition requires a focus on improving the lives of children.

The road map, identifies the following imperatives: "Implement strategies, policies and programmes that offer access to and delivery of social and health services to vulnerable and socially excluded households, hard-to-reach children and children with special needs, including where possible a basic social protection floor; Fight discrimination that contributes to child labor; Support families' capacity to protect their children by working towards a system of social protection through, for instance, cash transfer schemes, public works, access to credit, insurance and savings schemes, and strengthening and implementing national protection frameworks to protect children from exploitation; Assist victims of the worst forms of child labour to prevent their return to child labour."²²⁵ As such, addressing child labour is a means towards the realizing of the full spectrum of children's rights.

²²⁴ Ibid, p5

²²⁵ Ibid

11.2 Advancing Human Rights through Children's Rights

"International community and governments in particular must make honest efforts in integrating and mainstreaming the issue of child labour into the human rights and development policies and programmes, particularly in dealing with all forms of discrimination and exclusion, ensuring education and alleviating poverty."²²⁶ To this end, all actors, must work towards giving meaning to phrases like "children first", "children can't wait", and "children are the future". International and local legal instruments, as discussed, also moved towards embracing phrases like "child centered approach" and "in the best interest of the child". These phrases must find meaning beyond political rhetoric, including increased public pressure to ensure that the goal of the total elimination of child labour is achieved. Child labour as such needs to find greater momentum outside the labour movement, in the realm of the broader human rights cause as an essential part of creating a world free of discrimination, abuse and the exploitation of human beings. "These rights are fundamental and inalienable and, therefore, are not negotiable."²²⁷ As shown through this dissertation, several human rights laid in the Universal Declaration of Human Rights are violated when children are employed and in the process exploited. By creating a better world for our most vulnerable, one are in fact creating a better world for all.

11.3 Final Word

This dissertation explored the area of child labour. It did so by discussing the development of children's rights internationally, paying particular attention to the various international legal instruments in this regard. Having paid attention to this, the discussion located child labour within the broader context of a human rights framework, which seeks the protection of, and the

²²⁶ Satyarthi, Kailash. Global March Against Child Labour. Human Rights and Child Labour.

²²⁷ Prevention and Eradication of Child Labor and Protection of Adolescent Workers. National Plan. Ministry of Labor and Employment. The Labour Inspection Secretariat. Brazil. 2004

advancement of the rights of children. The IBSA group (consisting of India, Brazil and South Africa) is celebrated internationally as best practise models for the advancement of efforts towards the elimination of the worst forms of child labour. Critically examining these nations, gave us an opportunity to reflect on the extent of the challenge within those national contexts. We were then able to consider the legislative frameworks, locating them within the international legal instruments. International initiatives were discussed, including efforts by the United Nations, and the International Labour Organization. These organizations hold the global mandate to advance children's rights, and to work towards the elimination of the worst forms of child labour in the first instance, and the total elimination of child labour as a longer - term goal. Whilst considering the historical context, and the complex nature of the causes of child labour, this dissertation concludes that through the efforts of the International Labour Organization, children today enjoy better protection than before. Through the International Plan for the Elimination of Child Labour (which sets bold targets and provides technical and other support to nations) the world has set itself ambitious goals to ensure an international human rights context, which protects children against all forms of exploitation. This is a goal, which can only be achieved by ensuring that the total elimination of all forms of child labour remains a key priority in the advancement and promotion of human rights, globally.

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