

Theorising children's rights as a multi- and inter-disciplinary field of study

R Songca*

Abstract

In this paper, the author advocates the use of multi-disciplinary approaches and research to meet the demands of the many societal problems in South Africa today. It is argued that children's rights and related issues escape disciplinary classification and inadvertently place researchers between the disciplines. For instance, it is argued that children's rights in the context of the HIV/AIDS pandemic are too complex to be resolved by applying the subject knowledge of a single discipline. Accordingly, the author proposes the use of multi- and inter-disciplinary approaches in understanding and interpreting the human rights of children.

INTRODUCTION

The complexities of societal problems necessitate a multi-disciplinary research approach¹ as many problems cannot be adequately addressed by single disciplines.² Present-day problems such as poverty, HIV/AIDS,³ crime, and unemployment have underscored the need for multi-disciplinary approaches. Experience has further shown that the many problems confronting us in this century are interrelated, complex and unpredictable.⁴ They do not exist independently of their socio-cultural, political, economic

* LLB LLM (Natal), LLM (Georgetown), LLD (Pret). Associate Professor and Executive Dean: College of Law, University of South Africa. This article was published as a chapter in a book: Songca 'Theorising children's rights as a multi-and inter-disciplinary field of study' in Viljoen (ed) *Beyond the law : multi-disciplinary perspectives on human rights* (2012) 139–162.

¹ The words 'approaches' and 'research' are used interchangeably.

² Choi & Anita 'Multi-disciplinarity, inter-disciplinarity and trans-disciplinarity in health research, services, education and policy: definitions, objectives, and evidence of effectiveness' 2006 *Clin Invest Med* 351.

³ HIV stands for Human Immunodeficiency Syndrome and AIDS for Acquired Immunodeficiency Syndrome.

⁴ Thompson & Klein 'Inter-disciplinary and complexity: an evolving relationship' (2004) 6 *E CO* 2 4.

or psychological contexts⁵ and so subject knowledge of a single discipline is generally inadequate in attempting to resolve them.⁶

In addition, researchers are confronted with the realisation that they need to adjust their traditional way of thinking and come up with more creative ways to resolve problems and interpret new phenomena.⁷ In theory, therefore, multi-disciplinary approaches and research are necessary to resolve complex modern day problems.⁸

Mono-disciplinary research, like multi- and inter-disciplinary approaches, is used to acquire and generate knowledge. Nevertheless, multi- and inter-disciplinary approaches, unlike mono-disciplinary work, transcend the boundaries between distinct disciplines.⁹

This article offers a critical examination of the different multiple disciplinary approaches that may be adopted. Their contribution to a better understanding of the human rights of children in the context of HIV/AIDS will be explored. First, a definition of the concepts is offered. This is followed by an examination of the interplay between different disciplines in addressing children's rights.

DEFINITION OF CONCEPTS

Disciplinarity

'Discipline' is defined as a branch of knowledge or instruction or learning,¹⁰ such as law or history. 'Mono' means one; a mono-discipline, therefore, is a single method of training, a branch of learning or a body of knowledge underpinned by values of universality and certainty.¹¹ Although disciplinary approaches still have a place in education, their Achilles heel lies in resolving complex societal problems, and viewing problems from different perspectives.¹²

⁵ Brewer 'The challenges of inter-disciplinary' 1999 *Policy Sciences* 327.

⁶ Thompson & Klein n 4 above at 2; Max-Neef 'Foundations of trans-disciplinarity' 2005 *Ecological Economics* 5.

⁷ Songca 'Trans-disciplinarity: the dawn of an emerging approach to acquiring knowledge' 2006 *International Journal of African Renaissance Studies* 221.

⁸ Choi & Anita n 2 above at 360.

⁹ Nicolescu 'The trans-disciplinary evolution of the university condition for sustainable development' available at: <http://nicol.club.fr/ciret/bulletin/b12/b12c8.htm> (last accessed 18 January 2013); McGregor 'The nature of trans-disciplinary practice' available at: <http://www.kon.org> (last accessed 18 January 2013).

¹⁰ Collins & Sons *Collins English dictionary complete and unabridged* (2004).

¹¹ Collins n 10 above at 76.

¹² Songca n 7 above at 222.

Multi-disciplinarity

'Multi-disciplinary' entails studying a research topic using more than one discipline, either simultaneously or in sequence.¹³ In most cases, multi-disciplinary research involves teamwork. Nevertheless, the intention remains to serve the root discipline within which the collaboration has been initiated.¹⁴ Members function as independent specialists rather than interactive team members.¹⁵ As the aim is not to study the cultures or research methodologies of the other disciplines, once the research project has been completed, members will re-focus on their own disciplines.¹⁶ The end product is generally a series of reports strung together without any integrating synthesis.¹⁷

Inter-disciplinarity

'Inter' concerns that which is between the disciplines; inter-disciplinary, therefore, connotes interaction between two or more disciplines.¹⁸ Inter-disciplinary research or learning involves the integration of several disciplines to create a unified outcome that is sufficiently substantial and sustainable to enable a new discipline to develop over time.¹⁹ The goal is to solve a particular problem or understand a part of the world represented, emanating from a particular problem.²⁰

Trans-disciplinarity

'Trans-disciplinary' has several meanings. It refers to that which transcends various disciplines; it lies between, beyond and outside of the relevant disciplines. Trans-disciplinary research is about transition, movement, and the sharing of knowledge among the disciplines.²¹ It entails collaboration

¹³ Max-Neef n 6 above at 6.

¹⁴ McGregor n 9 above.

¹⁵ Max-Neef n 6 above at 6.

¹⁶ Songca n 7 above at 223.

¹⁷ Max-Neef n 6 above at 6.

¹⁸ Nicolescu n 9 above.

¹⁹ Collins n 10 above at 76.

²⁰ Thompson & Klein n 1 above at 7–8; Choi & Anita identify three distinguishable characteristics between multidisciplinary and interdisciplinary. Numerically, interdisciplinary involves two disciplines and becomes multidisciplinary if more than two disciplines are involved. Territorially, interdisciplinary actually focuses on the reciprocal action of two disciplines, multidisciplinary often involves little interaction or collaboration across disciplines. Interdisciplinary involves crossing into another space and there is a blurring of professional boundaries. Epistemologically, interdisciplinary involves the creation of a new way of working.

²¹ McGregor n 9 above.

between people from varied disciplines and societies. Its goal is to understand the world as it is today, with all its complexities.²²

Consequently, as none of the approaches identified seems ideal, I recommend the use of multiple disciplinary methods when dealing with the human rights of children affected by HIV/AIDS²³. I argue that the dynamics engendered by this pandemic and its impact on the rights of children are too complex to be resolved through the use of a legal approach alone.

In the next section, I shall briefly discuss the legal responses to the HIV/AIDS pandemic and the various ways in which it has impacted on children's rights.

CHILDREN'S RIGHTS IN THE CONTEXT OF HIV/AIDS

If there is any single disease that can be described as a concomitant of globalisation, it is HIV/AIDS because of its indiscriminate selection of victims.²⁴ The pandemic is threatening the fabric of societies and families by causing the deaths of millions of predominantly young people.²⁵ The 2010 UNAIDS Report estimated that, worldwide, more than sixteen million children under eighteen years of age have been orphaned by HIV/AIDS, and approximately 14,8 million of these children live in sub-Saharan Africa.²⁶ HIV/AIDS has been identified as the leading cause of death in people between the ages of fifteen and fifty-nine in the sub-Saharan Africa.

Approximately 1,9 million children in South Africa had been orphaned or lost one parent to the disease by the end of 2009.²⁷ Various interventions aimed at the prevention of infection have been developed over the years,²⁸ but with varying degrees of success. The challenge faced by many societies,

²² As above; Nicolescu n 9 above; Max-Neef n 6 above at 11.

²³ A multiple disciplinary approach involves research by researchers from multiple disciplines. Words such as multi-disciplinary and inter-disciplinary are used to indicate research or efforts that involve several disciplines. See Choi & Anita n 2 above at 352.

²⁴ Sackey 'Cultural responses to the management of HIV/AIDS: the repackaging of puberty rites 2001 *Research Review NS* 5.

²⁵ Benn 'The influence of cultural and religious frameworks on the future course of the HIV/AIDS pandemic' 2002 *Journal of Theology of Southern Africa* 3.

²⁶ Report on the Global AIDS epidemic available at: http://www.unaids.org/globalreport/Global_report.htm (last accessed 18 May 2011).

²⁷ UNICEF/UNAIDS 'Children and AIDS: Fifth Stocktaking Report' 2010 http://www.unicef.org/publications/index_57005.html (last accessed 22 January 2013).

²⁸ Preventive interventions include the following: information on HIV/AIDS in conjunction with methods that enable people to combine knowledge with safer sex practice; social marketing of condoms, *etcetera*.

including South Africa's, is the implementation of effective programmes and the removal of barriers that prevent holistic and well-designed approaches to HIV/AIDS.²⁹

To date, the scientific (technology and medicine), religious and legal frameworks have dominated the shaping of our understanding, responses, and approaches to prevention of the disease. The legal framework has played a pivotal role in addressing the human rights of children living in the context of HIV/AIDS.

In the following section I shall briefly examine the national and international law frameworks governing the rights of children affected by the HIV/AIDS crisis.

INTERNATIONAL AND REGIONAL APPROACHES TO HIV/AIDS

The human rights of children: the legal framework

South Africa is party to treaties that deal specifically with children's rights.³⁰ South Africa ratified the Convention on the Rights of the Child (CRC) on 16 June 1995. It consequently agreed to 'respect and ensure' to every child on a non-discriminatory basis, the rights set out in the Convention.³¹ In January 2000, South Africa ratified the African Charter on the Rights and Welfare of the Child (African Children's Charter). Both the CRC and the African Children's Charter have played a pivotal role in embedding an ethos of children's rights in the country,³² and in informing South African policy and legislation relating to children. South Africa has clearly taken the recommendations set out in the UNAIDS International Guidelines to heart.³³ In terms of these recommendations, state parties are urged to adopt a human

²⁹ Benn n 25 above at 5.

³⁰ Bessler 'In the spirit of *ubuntu*: enforcing the rights of orphans and vulnerable children affected by HIV/AIDS in South Africa' 2008 *Hastings International and Comparative Law Review* 33.

³¹ This provision is in line with the Committee on the Rights of the Child's General Comment 4 which states that state parties cannot discriminate against children, or the enjoyment of their CRC rights on the basis of their HIV/AIDS status. Art 1 defines a child as any human being under the age of eighteen. The South African Constitution Act 106 of 1996 and The Children's Act 38 of 2005 have adopted similar definitions.

³² Songca 'Revisiting section 170A of the Criminal Procedure Act 51 of 1997' 2010 *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 402. Examples of recognised rights of children include the right to life, art 6 of CRC and art 5 of African Children's Charter; the child's right to freedom of expression, art 7 of the African Children's Charter and art 13 of CRC; the right to education, art 11 of the African Children's Charter and art 28 of CRC.

³³ The Guidelines were used as a frame of reference in Director of Public Prosecutions, *Transvaal v Minister for Justice and Constitutional Development* 2009 7 BCLR 637.

rights approach in developing policies and legislation surrounding HIV/AIDS and children's rights.

Initially, there were no specific international or regional measures dealing with the human rights of children affected by or infected with HIV/AIDS. Neither the CRC nor the African Children's Charter refers specifically to HIV/AIDS in its provisions.³⁴ According to Sloth-Nielsen and Mezmur,³⁵ this omission can be attributed to the fact that the impact of HIV/AIDS on children at the time the Conventions came into force was relatively unknown.

Over the years, children's lives have been dramatically affected by the virus with many dying or losing parents.³⁶ This led the CRC Committee on the Rights of the Child (CRC Committee) to issue General Comment 3 in March 2000 which specifically deals with HIV/AIDS and children's rights.³⁷ This General Comment acknowledges that children are at the epicentre of the disease; high rates of infection have been identified among adolescents and young children. In many cases, women and young girls do not know that they are infected and they have in turn unknowingly infected their children. The General Comment further notes that the pandemic is commonly perceived as a health issue; nevertheless its impact affects all the rights of children. The General Comment advocates a rights-based approach to HIV/AIDS and envisages the use of general principles of the Convention to guide measures and intervention on all levels.³⁸

It recognises that the potential for discrimination in its various forms is real in the context of HIV/AIDS and that this is likely to heighten the vulnerability of children.³⁹ This extends from discrimination against children who are affected by the disease or are themselves infected. The General Comment also raises concerns about the existence of gender-based discrimination, combined with taboos or negative attitudes to sexual activity by girls as this can limit their access to preventive measures and other

³⁴ Sloth-Nielsen & Mezmur 'HIV/AIDS and children's rights in law and policy in Africa: confronting the hydra head-on' in J Sloth-Nielsen (ed) *Children's rights in Africa: a legal perspective* (2008) 279.

³⁵ *Id* at 282.

³⁶ Maqoko & Dreyer 'Child-headed households because of the trauma surrounding HIV/AIDS' 2007 *HTS Theological Studies* 717.

³⁷ General Comment 3 (2003), HIV/AIDS and the rights of the child.

³⁸ Sloth-Nielsen & Mezmur n 34 above at 283.

³⁹ Pars 5–7.

services.⁴⁰ It further recognises the complex nature of the HIV virus and acknowledges the need for both innovative solutions and multiple disciplinary approaches to the problem. In this regard, the General Comment recommends the establishment of inter-disciplinary teams to assist in the identification and development of intervention strategies.⁴¹

As stated above, many children have lost their parents to AIDS. The responsibility for caring for these orphans has become a major challenge in Africa. Endemic poverty has made it even more difficult for families and extended families affected by HIV/AIDS to assist these children.⁴² Regarding the development of innovative solutions, it is submitted that these are reflected in the CRC Committee's decision to recognise, at international level, the phenomenon of child-headed households. The General Comment acknowledges that some protection is required for children who live without parental care.

Moreover, the General Comment recognises the important role that the extended family can play in the context of HIV/AIDS and also embraces practices that recognise communities as responsible for the well-being of children.⁴³ The legal framework has in this instance turned to customary traditions or practices to address the rights of children. This is a striking example of a traditional African practice that has found expression in modern international human rights law.

State parties, such as South Africa, have amended their laws to ensure compliance with commitments flowing from their membership of both the CRC and the African Children's Charter. Currently in South Africa, children's rights, duties and responsibilities, are included in the Constitution⁴⁴ and various legislative enactments.

⁴⁰ See par 6; Sloth-Nielsen 'Of newborns and nubile: some critical challenges to children's rights in Africa in the era of HIV/AIDS' 2005 *International Journal of Children's Rights* 73.

⁴¹ Paragraph 36 recommendation 8, *eg* the General Comment encourages state parties to provide an enabling environment that encourages collaboration among different stakeholders teams, such as NGOs; traditional leaders; religious and cultural leaders, people living with HIV/AIDS, and children.

⁴² Maqoko & Dreyer n 36 above at 722.

⁴³ Paragraph 3.1.

⁴⁴ Section 28 of the Constitution of the Republic of South Africa 1996. A new constitutional era was ushered in, in terms of which the Constitution became the supreme law of the Republic.

The Children's Act⁴⁵ was also passed with various aims in mind, some of which are to give effect to the rights of children as embodied in the Constitution. The Children's Act acknowledges that children, because of their age and special circumstances, are most vulnerable to the effects of poverty and diseases such as HIV/AIDS, and consequently recognises child-headed households as family units.⁴⁶ In terms of this Act, a child-headed household is one in which 'a child over the age of sixteen years has assumed the role of care-giver in respect of the children in the household'.⁴⁷ This recognition of child-headed households is intended to protect children who have lost parents to AIDS, or whose parents are too ill to care for them. As stated previously, the legal discipline had to seek solutions in other disciplines.

The discussion above highlights the complexities that emanate from the application of the human rights of children in the context of HIV/AIDS and the legal responses offered to these challenges. The fact that innovative and positive intervention strategies in the form of legislation and other measures have had positive results, must not be downplayed. Policy makers and legislators have produced a whole gamut of alternative care possibilities and prevention strategies at both national and international levels. Unfortunately, the increasing number of people living with the virus undermines these efforts.

It is submitted that the many 'tentacles' spawned by the pandemic and its impact on the human rights of children, underscore the need for the use of multiple frameworks/approaches that go beyond the purely legal. Multiple disciplinary research evolves to meet the demands of many societal problems that cannot be adequately addressed by single disciplines alone.

While, as emphasised above, the role played by the use of legal frameworks in addressing the issue of HIV/AIDS cannot be ignored, it must at the same time be acknowledged that the legal framework on its own cannot adequately address all the issues surrounding the human rights of children living in the context of HIV/AIDS. On the whole, legal experts share values and perceptions, and study and interpret knowledge from the same window on reality. Human rights discourse, in general, and the human rights of children in particular, if looked at from the context of HIV/AIDS, raises real problems

⁴⁵ Act 38 of 2005 as amended by the Children's Act 41 of 2007.

⁴⁶ Section 137 of the Children's Act as amended.

⁴⁷ Section 137(1)(a) of the Children's Act as amended; see also s 137(1) of the Children's Amendment Act 41 of 2007.

that can only be fruitfully examined within a multiple disciplinary framework.

Consequently, the section that follows examines the practical application of multiple disciplinary approaches to children's rights in the context of HIV/AIDS. In addition, it investigates how cultural, political, and socio-economic perspectives can, in conjunction with legal perspectives, contribute to the field of children's rights.

THE USE OF MULTIPLE APPROACHES: TOWARDS A BETTER UNDERSTANDING OF CHILDREN'S RIGHTS IN THE CONTEXT OF HIV/AIDS

It has been argued above that HIV/AIDS issues surrounding the rights of children cannot be resolved within the subject knowledge of a single discipline, *viz* the legal framework. This section looks at how legal,⁴⁸ cultural, political and socio-economic frameworks can 'collaborate' to tackle the many 'tentacles' produced by the pandemic.

The human rights of children: a socio-economic framework

Pandemics such as HIV/AIDS affect all aspects of our lives: cultural, spiritual, economic, political, social and psychological.⁴⁹ AIDS deaths have decimated the work force, lowered life expectancy, and raised poverty levels.⁵⁰ The pandemic also affects the psychological well-being of individuals and communities. Research on the various impacts of the disease reveals that people and communities affected by the disease range far and wide in their search for explanations.⁵¹ They have turned to religious belief, political experience and government policies, and their socio-economic situations, in their search for explanations.

Peoples' knowledge and responses to the disease are influenced by the constant tension between the expectations regarding the course and management of the disease, fostered by official pronouncements, and the peoples' lived experiences. In South Africa, until recently, the government's

⁴⁸ Legal frameworks are discussed in ss 3.2 and 3.3 above.

⁴⁹ Kurgat 'Integrating HIV and AIDS in the teaching of African religion' 2008 *Mainstreaming HIV and AIDS in Theological Education* 151.

⁵⁰ Garner 'Safe sects? Dynamic religion and AIDS in South Africa' 2000 *The Journal of Modern African Studies* 41; Schoepf 'International AIDS research in anthropology: taking a critical perspective on the crisis' 2001 *Annual Review of Anthropology* 335.

⁵¹ Schoepf n 50 above at 343–345 352.

dithering and lack of political will resulted in an alarming increase in HIV/AIDS-related deaths.⁵²

In Africa, the devastating effects of the disease have been felt most acutely by communities struggling under the burden of poverty, inequality and economic crisis.⁵³ Global inequalities of class, gender, ethnicity, coupled with endemic poverty and powerlessness, also drive the spread of the disease. Research has shown a link between global structures and processes, and how this, in turn, has played a role in the spread of the disease.⁵⁴ For example, in Zimbabwe the economic and political crisis has resulted in many Zimbabweans leaving their country for neighbouring states in search of better lives. These trans-boundary movements have set the stage for multiple partners, gender violence, and the spread of sexually-transmitted diseases, including HIV/AIDS.

Anthropological literature on HIV/AIDS has shown how social practices and gender inequalities result in social suffering and contribute to the risk of infection.⁵⁵ According to Becker, the development of sexual mores cannot be divorced from gender relations. He is of the view that domestic relations have been negotiated and renegotiated over the years, and the way these negotiations have shaped women's options has depended on their economic situation.⁵⁶ For instance, many married women are unable or afraid to discuss the use of condoms with their husbands.⁵⁷ Moreover, disclosing a sexually-transmitted disease or a positive diagnosis, may expose the woman to violence and even divorce or loss of livelihood and children.⁵⁸

A study conducted in KwaZulu-Natal,⁵⁹ reveals how social practices which encourage a multiplicity of partners among men, remain firmly embedded in our societies. The study revealed how young Zulu men are encouraged by their parents or peers to have several sexual partners concurrently. However, a woman with more than one sexual partner runs the risk of not being able to marry as this form of behaviour is frowned upon.

⁵² See in general Ewing & Fourie 'Circumcision can be the kindest cut: but medicine and culture need to work together to fight HIV' *Mail & Guardian Health* 8–14 April 2011 3; Heywood 'Failing our kids' *Sunday World* 12 June 2011 12.

⁵³ Schoepf n 50 above at 345.

⁵⁴ *Ibid.*

⁵⁵ Becker 'The virus and the scriptures: Muslims and AIDS in Tanzania' 2007 *Journal of Religion in Africa* 16.

⁵⁶ *Id* at 19.

⁵⁷ Schoepf n 50 above at 348.

⁵⁸ *Ibid.*

⁵⁹ Garner n 49 above at 55.

The HIV/AIDS pandemic has had devastating effects on children, especially on the girl child.⁶⁰ African women and girls bear the brunt of caring for the sick and orphaned, although they may themselves be sick.⁶¹ Although many countries in Africa have increasingly relied on extended families and changing social and economic conditions have weakened the role of the extended family. Consequently, this may negatively affect the social fabric of society.⁶²

In South Africa, the socially-created penchant for violence has led to the murder of many women and children. Being young, a woman, or a lesbian, are risk factors when it comes to rape, unwanted pregnancy, HIV/AIDS, and death. An increasing number of women in South Africa are falling victim to the scourge of 'corrective rape'.⁶³

In conclusion, it can be argued, given the discussion above, that the social and economic environments that drive the pandemic still present serious problems for many countries in Africa, including South Africa. There is a need for a general understanding of how HIV/AIDS impacts on other areas of life, and *vice versa*.⁶⁴ As a result, some researchers are of the view that action research – because it is a trans-disciplinary research method designed to foster social change – if used appropriately, can result in a better understanding of the dynamics that underpin the disease.

South Africa has made significant strides in promoting gender-focused civil society organisations. This notwithstanding, our society remains reluctant to confront existing notions among men and women of what it means 'to be a man'.⁶⁵ The male perception of sexual risk and responsibility for the prevention of HIV/AIDS remains largely unchallenged.⁶⁶ Many children's rights to family life have been threatened by the HIV/AIDS pandemic. In this regard, some children have lost their parents to the disease, while others have

⁶⁰ See s 3.2 above.

⁶¹ Schoepf n 50 above at 348.

⁶² Himonga 'African customary law and children's rights: intersections and domains in a new era' in Sloth-Nielsen n 34 above at 73.

⁶³ Corrective rape is a homophobic crime, in which men rape lesbians to 'cure' them of their sexual orientation. See Smith 'Teenage lesbian is latest victim of "corrective rape" in South Africa'. *The Guardian.co.uk* (accessed 14 October 2011).

⁶⁴ Heywood n 52 above at 12.

⁶⁵ Ewing & Fourie n 52 above at 3. Some men exhibit through their behaviour residues of patriarchy, masculinity, poverty and radical disappointment with the government, social exclusion and a sense of entitlement. These feelings of non-accountability fuel violence, deaths and the spread of HIV/AIDS; see also Smith n 64 above.

⁶⁶ See in general Garner n 49 above at 41.

been forced to assume the role of caregivers or heads of child-headed households.⁶⁷

Many factors other than the socio-economic, contribute to the spread of the pandemic. In South Africa, for example, HIV infections are still on the increase, although there is evidence of improved condom use among young men and women.⁶⁸ Moreover, although many people are now aware of the dangers of HIV/AIDS, and how it is transmitted, cultural factors still count against the use of condoms.⁶⁹ Some men still regard intercourse with a condom less pleasurable and so are unlikely to initiate condom use.⁷⁰

The discussion below explores how cultural beliefs, in particular African (traditional) religions, can contribute to the HIV/AIDS debate in Africa.

The human rights of children: a cultural framework

Culture is crucial for social order and stability in a society.⁷¹ Although generally regarded as difficult to define, culture may be defined as⁷²

the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a social group ... not only the arts and letters but also modes of life, fundamental rights of the human being, value systems, traditions and beliefs.

⁶⁷ The child-headed household is a reality in South Africa and one of the consequences of HIV/AIDS. These households are regulated by sec 137 of the Children's Act 38 of 2005.

⁶⁸ See Heywood n 52 above at 12.

⁶⁹ Garner n 49 above at 54.

⁷⁰ As above.

⁷¹ Aseka 'HIV/AIDS in Africa: a socio-cultural perspective' Department of History, Archaeology and Political Studies, Kenyatta University. A full discussion of culture and its responses to HIV/AIDS is beyond the scope of this paper.

⁷² UNESCO 1982. Culture has also been defined as the 'cumulative creation of human beings which transforms individuals into organised groups and gives these groups an almost indefinite continuity'; see Kaime *The African Charter on the Rights and Welfare of the Child: a socio-legal perspective* (2009). The African Children's Charter in its Preamble (par 6) states that the concept of the rights and welfare of the child should be characterised by the virtues of African cultural heritage and be inspired by African civilisation. However, art 21 urges state parties to eliminate harmful social and cultural practices affecting the welfare, dignity and growth of the child. Van Bueren notes that there is little express reference to culture as a positive value in CRC. See Van Bueren 'Children's rights: balancing traditional values and cultural plurality' in Douglas & Sebba (eds) *Children's rights and traditional values* (1998) 17. In South Africa, customary law (and practices) are constitutionally entrenched in secs 211 and 212 of the Constitution.

African religion encapsulates the indigenous religions and beliefs of Africans which have been handed down from one generation to another. Although there are many religious and cultural systems in Africa, there are also a number of common characteristics that have resulted in a coherent philosophy that underpins the different expressions of religion in Africa.⁷³ The African understanding of religion is an understanding of the connectedness of all things.⁷⁴ There is no distinction between the levels of reality. As religion is a celebration of unity, to distinguish religion from culture is a pointless exercise.⁷⁵ The structure of African traditional religion is closely interwoven with values and morality. These values are dynamic and constantly evolving in accordance with the dictates of society and the community.⁷⁶

People's values are a reflection of the traditional religious and moral principles to which they subscribe.⁷⁷ The morality of society is maintained through the spirits and the priests and/or medicine men. It is for this reason that spirits are believed to play a crucial role in the implementation and maintenance of morality.⁷⁸

The African perspective on the HIV/AIDS pandemic is based on the African understanding of the causes of the disease.⁷⁹ Many communities in Africa view the disease as a curse from the spirits that have been offended. Others regard it as a manifestation of witchcraft or a disease which requires cleansing and purification.⁸⁰ In some countries, including South Africa, the spread of HIV/AIDS among children has been exacerbated by the myth that having sex with a young girl will cure the virus.

⁷³ Beyers 'What is religion? An African understanding' 2010 *HTS Theological Studies* 1. Distinguishing characteristics include the following: belief in a supreme being; belief in spirits and divinities; the cult of ancestors; a unified community; and the use of magic, charms and spiritual forces.

⁷⁴ *Id* at 3.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Igboin 'Colonialism and African cultural values' 2011 *African Journal of History and Culture* 96.

⁷⁸ See Beyers n 73 above at 3. Africans believe that life-threatening diseases such as HIV/AIDS are a curse from the spirits that we have offended through our immoral behaviour. In the same vein, spirits can be implored to protect one from the evil intentions of others.

⁷⁹ Kurgat n 49 above at 153.

⁸⁰ *Ibid.*

Among the various African values, the sanctity of human life is of cardinal importance. Life is safeguarded judiciously through prayers, rituals and magic. Human life is determined by rites, and rites are an essential part of religion.⁸¹ Religion is the social institution concerned with ethics, and therefore moral values related to sex are generally rooted in religious teachings.

Consequently, in the section below, I use the traditional rites of passage to argue for the repackaging of the practice of traditional circumcision in the management of HIV/AIDS.⁸²

Circumcision

Circumcision (initiation) is central to many cultures in Africa. In South Africa, circumcision is a rite of passage which inducts boys into manhood.⁸³ Puberty rites, of which circumcision is a part, are performed on boys around the age of sixteen years.⁸⁴ If appropriately applied, puberty rites include formal educational programmes. It is expected that at the end of the puberty rites, the initiated/circumcised young person will be able to handle every obligation, duty or assignment.⁸⁵ Lessons on the enjoyment of sex and sexual responsibility are emphasised. Research has been conducted into the advantages and disadvantages of male circumcision worldwide. The most often cited reason for this, is the link between circumcision and HIV/AIDS prevention.⁸⁶ Unfortunately, in South African indigenous or traditional circumcision, the endurance of pain is regarded as the most important element of the ritual and serves to test an individual's bravery. The formal education received by initiates is intended to enhance social cohesion among communities. It is argued that its importance should be restated and emphasised.

Initiates are taught positive moral values cherished by their society.⁸⁷ For example, lessons on how to become responsible citizens, issues relating to

⁸¹ Beyers n 73 above at 6.

⁸² Section 12 of the Children's Act 38 of 2005. In terms of the Children's Act, it is illegal to perform circumcision on boys under the age of 16 years without their written informed consent, even when it is done for a traditional rite. Circumcision of male children below the age of 16 is permitted if done for religious purposes.

⁸³ Bogopa 'Challenges facing the initiation schools: the case of Nelson Mandela Metropole in the Eastern Cape' 2007 *Acta Criminologica* 55.

⁸⁴ Bogopa n 83 above at 56.

⁸⁵ Sackey n 24 above at 6-7.

⁸⁶ Mavundla & Netswera 'Realisation of indigenous male circumcision as a social religious custom' 2009 *Journal of Trans-Cultural Nursing* 395.

⁸⁷ Sackey n 24 above.

family violence and respect for women form part of the educational programme.⁸⁸ There is always an emphasis on self-control, discipline and respect.⁸⁹ Moreover, initiates are encouraged to practice abstinence. In typical traditional societies, adolescents who have not yet gone through the rites, are not permitted to be sexually active.⁹⁰ Initiation elevates boys to men and girls to women, and prepares initiates for marriage. African religions regard marriage as the most basic expression of the desire to maintain life.⁹¹

It is submitted that the educational programme for initiates should be adapted to include information on HIV/AIDS, its causes and its prevention. These programmes should also include lessons on the positive aspects of African culture.

Intensive training on HIV/AIDS for traditional medical circumcision providers, traditional leaders and authorities is a matter of urgency.

According to some studies,⁹² many countries in Africa treat diseases such as HIV/AIDS as shameful and the result of promiscuity. It is for this reason that relatives and close family members hide the fact that those close to them have contracted the disease.⁹³ Initiation programmes must also educate initiates on the causes of the disease and how the pandemic can be diagnosed and managed at an early stage. Traditional medical circumcision providers and traditional leaders should also be tasked with the responsibility of providing correct information to the community and dispelling dangerous myths or practices.⁹⁴

Customary practices, such as circumcision discussed above, should not be abandoned altogether, but rather be adapted to avoid the aspects that might place people's lives or welfare at risk. By shying away from culture and preferring the biomedical, we are denying ourselves the opportunity to use HIV/AIDS as a vehicle through which we may learn more about ourselves and empower culture to adapt and respond to new circumstances and challenges.⁹⁵

⁸⁸ Kurgat n 49 above at 155.

⁸⁹ *Ibid.*

⁹⁰ Sackey n 24 above at 7.

⁹¹ *Ibid.*

⁹² Kurgat n 49 above at 158.

⁹³ *Ibid.*

⁹⁴ Benn n 25 above at 17.

⁹⁵ Ewing & Fourie n 52 above at 3.

It is submitted that government policies and laws dealing with children, together with the involvement of religious groups and their congregations in the communities, reflect the core values of society. Their intervention strategies and education programmes greatly contribute to the humane treatment and collective survival of South African children as embodied in the principle of *ubuntu*.⁹⁶

Christianity

In addition to African religions, Christianity is becoming one of the most influential factors in the engagement with HIV/AIDS in most countries, including South Africa.⁹⁷ The dominant religion of the West is Christianity. It is reported that seventy per cent of the world's population belong to Christian churches.⁹⁸ It is submitted that Christianity can play a significant role in inhibiting HIV/AIDS transmission and in ensuring care and support for those affected by the disease.⁹⁹ Nevertheless, if employed inappropriately, Christianity may be perceived as contributing towards the spread of HIV/AIDS and exacerbating its negative impacts.¹⁰⁰

In what follows, I briefly examine the various ways in which people living with HIV/AIDS have turned to Christianity in an attempt to hone their coping skills.¹⁰¹ In addition, the section looks at how people have used Christianity to reframe their realities and experiences in a way that helps them to cope with their condition.

⁹⁶ The word *ubuntu* has its origin in the Nguni ethnic group. It is an African concept that represents rules of conduct and customs that recognise the collective consciousness of the people of Africa. The *ubuntu* culture is underpinned by values of humanness, care, respect and empathy: see Schoeman *A philosophical view of social transformation through restorative justice teachings – a case study of traditional leaders in Ixopo, South Africa* (2012) 13 21.

⁹⁷ Prince *et al* 'Introduction to special issue: engaging Christianities: negotiating HIV/AIDS, health, and social relations in East and Southern Africa' 2009 *Africa Today* 1.

⁹⁸ Du Toit 'HIV, AIDS and religion: an ambiguous relationship' available at: <http://hiv.aids.consultancy.com> (last accessed 4 April 2011).

⁹⁹ Kelly 'The role of religion in the HIV/AIDS epidemic (with special reference to Christianity and Islam)' (paper commissioned by UNAIDS scenario setting for HIV/AIDS in Africa August 2003); Kowalewski 'Religious constructions of the AIDS crisis' (1990) 51 *Sociology Analysis* 91.

¹⁰⁰ Du Toit n 98 above.

¹⁰¹ Hlongwane & SMkhize 'HIV/AIDS through the lens of Christianity: perspectives from a South African urban support group' 2007 *Journal of Social Aspects of HIV/AIDS* 556.

A study conducted on an HIV/AIDS support group in Durban¹⁰² revealed how participants rationalised their HIV infection to strengthen their coping mechanisms using Christianity as their frame of reference.¹⁰³

Results from the study revealed how a positive test result triggered feelings of anger and self-blame among some respondents. This category of respondents showed how they later sought refuge in the Bible. They reoriented their lives and began to embrace the after-life. By so doing, they came to regard themselves as 'saved' Christians and to believe that they would be received by God.¹⁰⁴

Many people who suffer from life-threatening diseases such as HIV/AIDS have turned to religion as a coping mechanism. Some have argued that religion has improved their psychological well-being. Research has revealed that people living with the virus have reported differing benefits derived from their religious or spiritual beliefs.¹⁰⁵ The following benefits have, in the main, been associated with religious beliefs or spirituality:

- comforting emotions and feelings;
- spiritual support through a relationship with God;¹⁰⁶
- relief of the fear and uncertainty of imminent death; and
- self-acceptance and a reduction in self-blame.¹⁰⁷

Critics argue that issues related to sexuality and morality should not be reduced to personal choice as doing so obscures the importance of material conditions that shape sexual relations and drive the spread of the virus.¹⁰⁸ Poverty and social inequalities should also be part of the discourse.¹⁰⁹ Moralising messages from certain churches, and the distinctions they draw between the 'saved' and 'unsaved', serve to generate feelings of failure in some people.¹¹⁰

¹⁰² *Id* at 556.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Siegel & Schrimshaw 'The perceived benefits of religious and spiritual coping among adults living with HIV/AIDS' 2002 *Society for the scientific study of religion* 91.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Prince *et al* n 97 above; <http://muse.jhu.edu/journals/at/summary/v056/56.1.prince.html> (last accessed 4 October 2011).

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

Given the above, churches and other religious groups have the power to deconstruct and re-organise people's perceptions about HIV/AIDS and this may, in turn, lead to a better understanding of the range of issues driving the pandemic.

Initially, many churches explained HIV/AIDS as a punishment from God and hence the wages of sinners. Nevertheless, when church members and leaders were themselves infected, churches had no choice but to reconsider their views. Churches were compelled to preach about issues that did not initially feature on their agendas – such as gender.¹¹¹

In fact, churches and faith-based organisations have over the past years become more comfortable with discussing HIV/AIDS with their congregations. This has resulted in a growing understanding among these organisations of the relationship between scriptural messages centering on compassion, forgiveness and acceptance.¹¹² It is submitted that church leaders should, whenever possible, use these messages to help children better to understand and deal with their feelings if they have been affected or infected by HIV/AIDS. For children born with the virus, such messages will enable them to accept the disease and take full advantage of available programmes or resources.

HIV/AIDS orphans are often rejected by other children, discriminated against, or isolated. Hence, working with communities and families affected by the virus has influenced the way church leaders and their congregations view and care for community members who are infected or affected by the disease.¹¹³ Prejudice and discrimination against affected and infected community members is slowly being eradicated. This is a positive development in that people infected or affected by the disease feel that they are accepted by their communities.¹¹⁴ Children infected or affected by the virus, too, will not feel pressurised into dropping out of school and will readily seek information about the disease or talk openly about it and the problems they are experiencing.

¹¹¹ Prince *et al* n 97 above.

¹¹² Kuijper 'Religion and HIV/AIDS: defining issue of our time' *Cordaid* available at: <http://www.stopaidsnow.org> (last accessed 25 April 2011).

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

Norms and values that underpin most religions, if applied appropriately, may invoke innate feelings of humanity and kindness amongst those who subscribe to religious beliefs. Manifestation of these acts of kindness amongst church leaders and their members, include caring for orphans and other members of the community, and providing counselling to families affected by the disease. Counselling services by church leaders are crucial in rural areas where health and other services are less accessible.¹¹⁵

Through their activities, church organisations and their leaders hold the potential of restoring the essential African norms and values of collective solidarity and *ubuntu* within their communities.

In the section that follows, I examine the practical application of the multi-disciplinary approach using the frameworks discussed above. The second part of the section investigates the extent to which such perspectives can contribute to the question of children rights.

THE USE OF MULTI-DISCIPLINARY AND INTER-DISCIPLINARY APPROACHES: TOWARDS A BETTER UNDERSTANDING OF CHILDREN'S RIGHTS IN THE CONTEXT OF HIV/AIDS

Above, I discussed the practical application of a multiplicity of disciplinary approaches to children's rights. In particular, the various ways in which legal, religious and cultural perspectives can contribute to the field of children's rights was considered. The section immediately below illustrates the contribution multi-disciplinary and inter-disciplinary approaches can make to the field of children's rights.

Multi-disciplinary approaches

Typical multi-disciplinary work entails the juxtapositioning of disciplines through which those involved piece together their individual contributions in an attempt to solve a common problem.¹¹⁶ The juxtapositioning of disciplines is additive rather than integrative; the disciplinary perspectives are not shared, they are merely contrasted.¹¹⁷

¹¹⁵ Maqoko & Dreyer n 35 above 728.

¹¹⁶ Thompson Klein n 4 above at 2–3.

¹¹⁷ *Ibid.*

In practice, multi-disciplinary research can, in the main, be applied in two ways:

Scenario A

A legal expert or researcher may use cultural, legal and socio-economic frameworks in an attempt to find a solution to problems surrounding the rights of children in the context of HIV/AIDS. It should be noted that, although the boundaries may temporarily blur to enable the expert to gather information from other disciplines, the parameters will reassert themselves as soon as the research has been completed. For example, lawyers using a multi-disciplinary approach will rely on legislation, international conventions, and the constitutions of different countries in their search for answers. Even as they look at other disciplines as discussed above, no attempt will be made to integrate their findings from the different paradigms into a coherent whole.

Scenario B

The experts from the three (sub)-disciplines mentioned above, work together as a team but with limited interaction. They share the same common goal, but do not work together in an integrated or co-ordinated way.¹¹⁸ It should be noted that the team members work independently, each looking at the problem from within the context of her own discipline. Sharing of perspectives is limited, as the intention is to serve the root discipline that initiated the collaboration.¹¹⁹ The members of the group are not required to understand the cultures or research methodologies of the other disciplines; they need only to have an understanding of their own roles in the task at hand.¹²⁰ As stated above, a research problem or training that mingles disciplines but maintains its distinctive character, is classified as multi-disciplinary.¹²¹

Returning to our scenarios, the multi-disciplinary endeavour will reflect the following:

¹¹⁸ Choi & Anita n 2 above at 353.

¹¹⁹ McGregor n 9 above.

¹²⁰ Weinstein 'Coming of age: recognising the importance of inter-disciplinary education in law and practice' (1999) 74 *Washington Law Review* 319.

¹²¹ Collins n 10 above at 76.

Scenario A

This occurs where an individual researcher uses multi-disciplinary perspectives. The researcher's use of this approach will help him or her to better understand the dynamics that underpin the rights of children in the context of HIV/AIDS. This would not have happened had a mono-disciplinary approach been used. Moreover, the researcher might be able to provide an holistic solution to the particular problem being investigated. Nevertheless, the goal of the research remains limited within the framework of disciplinary research.

Scenario B

Professionals from different disciplines collaborate in an attempt to find a solution to a particular problem. Members of the team function as independent specialists.¹²² Sharing of perspectives is limited: each member interrogates the problem from his or her own discipline. In most cases, knowledge of other frameworks is confined to the individual contributions made by other team members.¹²³

The discussion shows that the multi-disciplinary approach has its limitations. Members from different disciplines work independently on different aspects of a project or research endeavour, in parallel or sequentially.¹²⁴ Typical multi-disciplinary work entails nothing more than an attempt by professionals from a number of disciplines to piece together their individual contributions.¹²⁵ The different disciplines collaborate in a research endeavour or project without any integration of concepts, epistemologies or methodologies taking place.¹²⁶

Where multi-disciplinary perspectives are used, each discipline maintains its distinctive character, and integration is restricted to the linking of research results. Hence, the outcome is the sum of un-synthesised individual parts; the outcomes do not result in a coherent whole.

¹²² Max-Neef n 6 above at 2; McGregor n 9 above.

¹²³ *Ibid*; see also ss 2.2 and 2.3 above.

¹²⁴ Choi & Anita n 2 above at 356.

¹²⁵ Weinstein n 118 above at 352.

¹²⁶ Choi & Anita n 2 above.

Members of the team hardly communicate or share perspectives. As the need for cooperation and dialogue increases, the differences in value systems, attitudes and behaviours may lead to conflict and ineffective teamwork.¹²⁷

Given these shortcomings, I advocate the use of multi-disciplinary approaches or perspectives.

Inter-disciplinary approaches

Inter-disciplinarity involves integrating several disciplines or sub-disciplines to create a unified outcome or perspective that is sustained and sufficiently substantial to create an entirely new discipline.¹²⁸ An inter-disciplinary approach refers to the appropriate combination of knowledge from different specialists, especially as a means of shedding new light on a real problem.¹²⁹ Inter-disciplinary teams work jointly but still from a discipline-specific base, to address a problem.¹³⁰ Inter-disciplinary endeavours require closer and more frequent collaborative exchanges between the collaborators. For effective collaborative work, team members must be able to communicate, exchange ideas, and construct new solutions.¹³¹ Communication entails an ability to engage in a dialogue with other team members so that all the members can exchange ideas in the hope of understanding the problem they are confronted with.¹³²

Typical inter-disciplinary work entails a blurring of disciplines, with participants surrendering certain aspects of their individual disciplines.¹³³ Integration and synthesis of disciplines is crucial.

Returning to our discussion above, the experts or academics from cultural studies, anthropology, sociology, political studies, and law should always bear in mind that problem solving that involves people from different disciplines unfolds over time and so demands patience and commitment. The different experts have to be open to new ways of thinking and be prepared to question their paradigms and assumptions or frames of reference.

¹²⁷ Weinstein n 118 above at 352–353.

¹²⁸ McGregor n 9 above.

¹²⁹ Songca n 7 above at 223.

¹³⁰ Choi & Anita n 2 above at 355.

¹³¹ Weinstein n 118 above at 353.

¹³² *Ibid*; McGregor n 9 above.

¹³³ Choi & Anita n 2 above at 356.

The experts from these disciplines will produce joint, coordinated and continuously integrated research. The outcome of their research is so tightly interwoven and integrated, that the contributions of the specific researchers are often not easily discernible.¹³⁴ Integration is vital to inter-disciplinary work. To be effective, it must be coherent and not random.¹³⁵ It should help enrich the knowledge of the teams and of other people about the problem researched. It should result in interconnections and cross-fertilisation of the different methodologies and perspectives.¹³⁶

Given the above, to ensure successful teamwork, experts from the different disciplines need to subscribe to the following principles. First, having agreed on the problem to be addressed, team members should initiate a process of communication and identify people with the same questions who will discuss real inter-disciplinary problems, and collectively identify areas of mutual concern. Secondly, members need to be firmly embedded in their own disciplines. They must be willing to abandon their disciplines temporarily, and to populate the space between the disciplines while searching for answers. Thirdly, team members should acknowledge the limitations of their own disciplines and appreciate that problems can be resolved by using different perspectives.

CONCLUSION

This paper advocates the use of multiple disciplinary approaches and research strategies from multiple disciplinary perspectives in order to meet the demands of many societal problems that confront society. In this regard, I have argued that children's rights and the issues that emanate from them eschew disciplinary boundaries and situate researchers in a space between the disciplines.

In problematising the rights of children, I have used the HIV/AIDS pandemic as a lens through which the human rights of children could be interrogated. I argue, therefore, that children's rights in the context of HIV/AIDS are too complex to be resolved using the subject knowledge of only a single discipline. Accordingly, I propose the use of multi- and inter-disciplinary approaches in understanding, solving and interpreting the human rights of children.

¹³⁴ Choi & Anita n 2 above at 353.

¹³⁵ Songca n 7 above at 224.

¹³⁶ *Ibid.*

It is clear that universities need to adapt and be innovative if they are to deal effectively with complex problems of global and long-standing impact.¹³⁷ Universities should encourage collaboration across academic departments, colleges, and faculties. In addition, academic institutions must forge partnerships with government, non-governmental organisations, and industry. If academic institutions wish their graduates to be innovative problem solvers, they must ensure that the theoretical benefits of a trans-disciplinary approach to the curricula are in harmony with their institutional mission and goals. Universities must think of new ways of, or put in place systems for, recognising and rewarding individuals engaged in trans-disciplinary research. This will enable scholars to think beyond the confines of their basic disciplines.¹³⁸

Academics should be aware of the limitations of their disciplines and be open to collaboration with other disciplines. They should also engage in collaborative research, and invite academics from other disciplines to examine the issues that they are confronting from a different perspective.

As universities, we need to revisit our law curriculum and look at the cultural and human dimensions of problems and challenges. These need to be integrated into our offerings.

¹³⁷ Songca n 7 above at 231.

¹³⁸ *Ibid.*