

The Prohibition of Child Slavery in South Africa, Uganda and Zimbabwe: Overcoming the Challenges of Implementation of Legislation

*Rufaro Audrey Mavunga**

Abstract

The elimination of child slavery is a priority in many international instruments today. This article investigates the extent to which South Africa, Uganda and Zimbabwe comply with international instruments to which they are party. It therefore compares and contrasts the different legislative provisions that prohibit child slavery in South Africa, Uganda and Zimbabwe. The municipal laws of these countries in some cases do not always reflect the principles and standards of international law. The research subsequently prompts the reformulation or refinement of some laws. In other instances, legislation adequately prohibits child slavery, but the law is ineffectively enforced. These states face challenges with the enforcement of legislation and this article further investigates some of the problems faced with regard to the implementation. Furthermore, this article also proposes practical ways in which states can effectively overcome the challenges they face in enforcing such laws.

INTRODUCTION

Despite the fact that many people believe that slavery no longer exists, an estimated five million children are currently enslaved worldwide.¹ Slavery-like practices are often clandestine and not always easily visible. The problem is compounded by the fact that the victims of slavery-like abuses are generally from the poorest and most vulnerable social groups, and fear as well as the need to survive do not encourage them to speak out.² This makes it difficult to have a clear picture of the scale of current slavery, let alone to expose, penalise or abolish it. This practice is nonetheless a

* LLB, LLM, LLD (UP) Institute for Dispute Resolution, University of South Africa. This work is based on the research supported by the South African Research Chairs Initiative of the Department of Science and Technology and National Research Foundation of South Africa (Grant No 98338).

¹ Anti-Slavery Website, 'Child Slavery' <<https://www.antislavery.org/slavery-today/child-slavery/>> accessed 11 September 2017.

² The People's Movement for Human Rights Learning, 'Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery' <<http://www.pdhre.org/conventionsum/slasum.html>> accessed 28 October 2017.

violation of children's rights, and a blemish on humanity.³ Article 7(2) of the Rome Statute of the International Criminal Court (ICC) characterises enslavement as a crime against humanity falling within the jurisdiction of the Court.⁴ Eradicating it is a globally-agreed priority.⁵

International concern about slavery and its clampdown is the theme of many treaties, declarations and conventions.⁶ These international instruments aim to reduce and eventually eliminate child slavery and they set specific standards while leaving the actual implementation of such principles to member states. Once member states ratify international instruments, they are obliged under international law to give effect to these standards on the domestic level.⁷ South Africa, Uganda and Zimbabwe have ratified and, in some cases, have acceded to the above-mentioned conventions that prohibit child slavery.⁸ In compliance with their obligations under international law, in some cases these countries have instituted a legislative framework that is favourable to the defence of children's rights, in general, and to combat child slavery. Although the prohibition of child slavery is clearly addressed in international agreements, there are some concerning traits in the laws of Uganda and Zimbabwe that provide for exceptions, according to which children can be forced to perform compulsory labour.⁹ In both these countries, the relevant legislation is not clear about the nature and extent of such labour, which exposes children to possible exploitation and harm.¹⁰

This article compares and contrasts the different constitutional and legislative provisions of South Africa, Uganda and Zimbabwe, in order to determine ways in which legislation could be improved to eliminate child slavery and slavery-like practices. South Africa, Uganda and Zimbabwe have been selected as cases in point because they share some commonalities. All three countries have ratified and, in some instances, acceded to most of the child slavery conventions, and they employ similar rules of incorporation of

³ International Labour Organisation (ILO), 'World Day against Child Labour 12 June 2017' <<http://www.ilo.org/ipecc/Campaignandadvocacy/wdacl/lang--en/index.htm>> accessed 29 January 2018.

⁴ United Nations (UN) General Assembly, Rome Statute of the International Criminal Court 1998 (last amended 2010).

⁵ European Commission, 'G 20 Leaders Declaration: Shaping an Interconnected World' (Hamburg, Germany, 7–8 July 2017) <file:///C:/Users/user/Downloads/STATEMENT-17-1960_EN.pdf> accessed 29 January 2018, see also UN, 'Transforming Our World: The 2030 Agenda for Sustainable Development' <<https://sustainabledevelopment.un.org/post2015/transformingourworld>> accessed 11 October 2017.

⁶ Discussed under 'The Prohibition of Child Slavery or Practises Similar to Slavery in International Law.'

⁷ John Dugard, *International Law: A South African Perspective* (Juta 2009) 9.

⁸ See discussion under 'The Implementation of Child Slavery Conventions in the Municipal Laws of South Africa, Zimbabwe and Uganda.'

⁹ Constitution of the Republic of Uganda 1995 s 25(3)(a–d). See also Labour Act Chapter 28; 01 2006: s 4 A(2)(b).

¹⁰ See discussion under 'The Implementation of Child Slavery Conventions in the Municipal Laws of South Africa, Zimbabwe and Uganda.'

international law.¹¹ The challenge is that the relevant international standards are not always fully implemented within the municipal laws of these countries. In other instances, legislation adequately prohibits these forms of labour, but the law is ineffectively enforced. This article further investigates some of the problems or challenges faced with regard to the enforcement of legislation and how states can overcome these obstacles.

WHO IS A CHILD?

It is crucial to first define and determine who a ‘child’ is. Both the Convention on the Rights of the Child (CRC) and the African Children’s Charter define a child as a person younger than eighteen years.¹² Childhood is regarded as a period of dependence and reliance on adults—a stage of incompetence relative to adulthood.¹³ The preambles to these instruments proclaim childhood as a stage at which children receive special care and assistance.¹⁴ In addition, they concede that, for the full and harmonious development of his or her personality, a child should grow up in an atmosphere of happiness, love and understanding.¹⁵ The CRC and the African Children’s Charter reiterate the same notions in many articles: these instruments declare that the responsibility for the welfare, development, survival and protection of the child is primarily given to the parents or guardians of the child and, where necessary, the state;¹⁶ they have the primary responsibility for the upbringing of the child.¹⁷ Both instruments also provide that state parties ensure that children should be provided with the necessary medical assistance and health care¹⁸ and, in addition, accorded the right to education.¹⁹

WHAT IS CHILD SLAVERY?

Child slavery is the enforced exploitation of a child for their labour for someone else’s gain.²⁰ Child slavery includes the following: the sale and trafficking of children; children in debt bondage; and serfdom.²¹ In addition, it comprises children used by others for profit, often through the

¹¹ *ibid.*

¹² Art 1 of the Convention on the Rights of the Child 1989; see also art 1 of the African Charter on the Rights and Welfare of the Child 1990.

¹³ David Archard, ‘Philosophical Perspectives on Childhood’ in Fionda J (ed), *Legal Concepts of Childhood* (Hart Publishing 2001) 46.

¹⁴ Para 9 of the Preamble of the Convention on the Rights of the Child (hereinafter CRC) 1989; see also para 4 and 5 of the Preamble of the African Children’s Charter 1990.

¹⁵ *Id* para 6, see also para 4 of the Preamble of the African Children’s Charter 1990.

¹⁶ Thoko Kaime, ‘The Convention on the Rights of the Child and the Cultural Legitimacy of Children’s Rights in Africa: Some Reflections’ (2005) AHRLJ 225.

¹⁷ See Art 18 of the CRC and Art 20 of the African Children’s Charter 1990.

¹⁸ Art 24(2)(b) of the CRC.

¹⁹ CRC Art 28.

²⁰ Anti-Slavery (n 1).

²¹ Worst Forms of Child Labour Convention 182, 1999 Art 2. These concepts are discussed under ‘The Prohibition of Child Slavery or Practises Similar to Slavery in International Law.’

use of violence, abuse and threats, in prostitution or pornography, forced begging, petty crime, and the drug trade.²² Child slavery also entails forced child labour, for example, in agriculture, factories, construction, mines, bars, the tourist industry or domestic work.²³ Children forced to take part in armed conflict or those who are forced to marry also fall under the category of persons in slavery.²⁴ All these activities hamper the positive mental and physical development of a child.²⁵ Sometimes, children are forced to undertake tasks in dangerous conditions which cause physical deformities and long-term health problems.²⁶ Furthermore, child slavery deprives children of a proper education, with the result that they are more likely to become adults with low-earning prospects, propagating a cycle of poverty.²⁷ International instruments brand child slavery as morally reprehensible and not to be taken lightly. It is classified as the worst form of child labour, which ought to be eliminated as a matter of urgency.²⁸

THE PROHIBITION OF CHILD SLAVERY OR PRACTISES SIMILAR TO SLAVERY IN INTERNATIONAL LAW

Slavery and slavery-like practices are defined and outlawed in a number of international instruments. The first and still important is the League of Nations Slavery Convention (Slavery Convention) adopted in 1926.²⁹ Article 1(a) defines slavery as the status or condition of a person over whom any or all the powers attaching to the rights of ownership are executed. Article 1(b) defines slave trade as including all acts in capture, acquisition or the disposal of a person for the intent to reduce to slavery. This Convention sought to prevent and suppress the slave trade and, furthermore, to progressively bring about the complete abolition of slavery in all its forms.³⁰ The Slavery Convention did not specifically refer to child slavery as a particular category in its definitions of slavery and the slave trade. Although the Slavery

²² *ibid.*

²³ Anti-Slavery (n 1).

²⁴ *ibid.*

²⁵ Sunil Kumar Joschi, *Child Labour Issues, Challenges and Laws* (Akansha 2006) 1. See also ILO, 'Children in Hazardous Work: What We Know: What We Need to Do' (International Labour Office 2011) <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/--publ/documents/publication/wcms_155428.pdf. > accessed 21 July 2016, see also ILO, 'Red Card to Child Labour' <<http://www.ilo.org/ipecc/Campaignandadvocacy/RedCardtoChildLabour/lang--en/index.htm>> accessed 29 January 2018. See also Save the Children, 'Protecting Children from Exploitation' <http://www.savethechildren.org/site/c.8rKLIXMGIpI4E/b.6192517/k.9ECD/Protecting_Children_from_Exploitation.htm> accessed 10 August 2017.

²⁶ UN, 'Fact Sheet no.14 Contemporary Forms of Slavery' <<http://www.ohchr.org/Documents/Publications/FactSheet14en.pdf>> accessed 29 January 2018.

²⁷ ILO (n 3) 18.

²⁸ Worst Forms (n 22) Art 2.

²⁹ Convention to Suppress the Slave Trade and Slavery 1926.

³⁰ *Id* Art 2.

Convention outlawed slavery and its associated practices, it has also been criticised for failing to establish procedures for reviewing the incidences of slavery in states and also for its neglect to create an international body, which could evaluate and pursue allegations of violations.³¹ Despite these drawbacks, this Convention is nonetheless commended for its stance on abolishing this harmful practice. Through promotional campaigns and pressure on governments, the implementation of legislation on slavery was recorded in countries such as Nepal and Iraq.³²

In 1956 the United Nations (UN) developed the Supplementary Convention on the Abolition of Slavery and the Slave Trade and Institutions and Practices Similar to Slavery of 1956 (Supplementary Convention on Slavery). Like the Slavery Convention of 1926, the Supplementary Convention on Slavery defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are executed.³³ The term 'ownership' involves the right to possess and use a slave, to compel and gain from the slave's labour; as well as to buy, sell, or even destroy.³⁴ The term 'status or condition' means that a person is a slave if any other person can, by law or enforceable custom, claim such property in him as would be claimed if he were an inanimate object.³⁵

The Supplementary Convention on Slavery included a specific reference to the exploitation of young persons that was not present in the Slavery Convention of 1926.³⁶ The Supplementary Convention in addition extended the definition established by the 1926 Convention by including practices similar to slavery, such as (i) debt bondage; (ii) serfdom; and (iii) any institution or practice whereby a child or young person under the age of eighteen years is delivered by either or both of his natural parents or his guardian to another person, whether for reward or not, with a view to exploitation of the child or young person; or of his labour.

Debt bondage is defined as the condition arising from a pledge by a debtor of his personal services, or of those of a person under his control as security for a debt, if the value of those services, reasonably assessed, is applied towards liquidation of the debt, or the length and nature of those services are not respectively limited and defined.³⁷ In simpler terms, a

³¹ UN, 'Abolishing Slavery and Its Contemporary Forms' (Geneva 2002) <<http://www.ohchr.org/Documents/Publications/slaveryen.pdf>> accessed 29 January 2018.

³² *ibid.* See also Ved Nanda and Cherif Bassiouni, 'Slavery and the Slave Trade: Steps toward Eradication' (1971) Santa Clara Lawyer 430.

³³ Supplementary Convention on the Abolition of Slavery and the Slave Trade and Institutions and Practices similar to Slavery 1956, Art 1(1).

³⁴ Jean Allain, 'The Definition of Slavery in International Law' (2009) 52 Howard LJ 258.

³⁵ *Id* 261.

³⁶ Supplementary Convention (n 33) Art 1(c).

³⁷ *Id* Art 1(a).

person is held as collateral against a loan.³⁸ Since such labourers receive little or no remuneration, loan repayment is difficult, and his or her debt may be inherited by the next generation.³⁹

Article 1(b) of the Supplementary Convention defines serfdom as the

condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change such status.⁴⁰

It is servile labour which binds a person by law, custom or agreement to work on land that belongs to someone else.

While the UN Supplementary Convention provides important definitions for slavery-like practices, the International Labour Organisation (ILO), in addition, established the Forced and Compulsory Labour Convention prohibiting forced or compulsory labour.⁴¹ This Convention defines forced labour as work exacted under coercion, force, penalty, threats, intimidation and the denial of freedom.⁴² This Convention, however, provides that forced or compulsory labour does not include, firstly, any work or service exacted in virtue of compulsory military service laws for work of a purely military character; secondly, any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; thirdly, any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations. Fourthly, forced labour does not include any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquakes, violent epidemics or epizootic diseases, and, in general, any circumstance that would endanger the existence or the well-being of the whole or part of the population. Lastly, minor communal services of a kind, which are performed by the members of the community in the direct interests of the said community. This Convention permits those forms of forced labour; however, the position of children is different. The Forced Labour Convention declares that only persons who are between the ages

³⁸ UN, 'The Human Faces of Modern Slavery' (OHCHR) 6 <<http://www.ohchr.org/Documents/Issues/Slavery/UNVTCFS/UNSlaveryFund.pdf>> accessed 30 August 2016. See Anti-Slavery (n 1).

³⁹ *ibid* UN (n 38) 6.

⁴⁰ Supplementary Convention (n 33) Art 1(b).

⁴¹ Forced and Compulsory Labour Convention 29, 1930.

⁴² *Id* Art 2.

of eighteen and forty five years may be called up for such forced labour.⁴³ The ILO child labour convention namely, the Worst Forms of Child Labour Convention, (Convention No.182) in addition, provides that children who are younger than eighteen years ought to be prevented from undertaking 'all' forms of slavery or practices similar to slavery.⁴⁴

Another form of slavery, specifically human trafficking, is extensively prohibited in terms of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime of 2000 (Palermo Protocol). The Palermo Protocol defines trafficking as any act of recruitment, transportation, transfer, harbouring or receipt of children for the purpose of subjecting them to any form of exploitation, including prostitution or sexual exploitation in general, forced labour or services, slavery and practices similar to slavery and servitude or the removal of organs.⁴⁵

The use of children in armed conflict is also considered a form of slavery and is prohibited in several instruments. Article 38(2) of the CRC provides that state parties should ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.⁴⁶ Such protection was considered insufficient because of the widespread problem of child soldiers.⁴⁷ In order to strengthen the protection of children in armed conflict, the UN adopted the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Protocol on Armed Conflict) in 2002.⁴⁸ In contrast to the CRC, the Protocol on Armed Conflict provides extra protection to children older than fifteen years and encourages member states to prevent the participation of children who are younger than eighteen years in armed conflict.⁴⁹ The Protocol moreover prohibits both voluntary and forced recruitment of children.⁵⁰ It provides that

⁴³ Labour Convention (n 42) Art 11.

⁴⁴ Worst Forms (n 22) Art 2.

⁴⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime 2000 Art 3.

⁴⁶ Holly Cullen, 'The Role of International Law in the Elimination of Child Labour' (Martinus Nijhoff 2007) 285.

⁴⁷ Alessandro Fodella, 'Freedom from Child Labour as a Human Right: The Role of the UN System in Implementing ILO Child Labour Standards' in Giuseppe Nesi and others (eds), *Child Labour in a Globalized World: A Legal Analysis of the ILO Action* (Ashgate 2008) 220.

⁴⁸ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 2000.

⁴⁹ Id Art 3(1). See also generally Michael Dennis, 'Newly Adopted Protocols to the Convention on the Rights of the Child' (2000) *American J of Intl L* 789.

⁵⁰ Yoshi Noguchi, 'ILO Convention No 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child' (2002) *Intl J of Children's Rights* 359; see also Fodella (n 48) 221. See also generally Divya Singh, 'When a Child is not a Child: The Scourge of Child Soldiering in Africa' (2007) *AHRJL* 210.

state parties should take all feasible measures to ensure that child victims are released from service and properly assisted in their recovery.⁵¹ The Protocol on Armed Conflict represents a progressive development on the standards relating to child soldiers.⁵² The Protocol on Armed Conflict, however, has certain weaknesses: it does not set a minimum age for indirect participation in hostilities.⁵³ The line between direct and indirect participation is difficult to determine, but the mere presence of a child at a military base may be sufficient to render a child a legitimate military target.⁵⁴ Children in any capacity, including those who work as cooks, porters or messengers, qualify as child soldiers.⁵⁵ The involvement of children in any of these activities, whether directly or indirectly, creates a danger.⁵⁶ Children, regardless of their age, are subject to attack by enemy forces and should be prohibited from such work.⁵⁷

International instruments prohibiting child slavery collectively provide that state parties should abolish and abandon slavery in all its forms.⁵⁸ In addition, they provide that states enact laws that convict persons of the crime of slavery, and that such persons should be liable to punishment.⁵⁹ These instruments further provide that member states should cooperate with each other and with the UN to give effect to provisions abolishing slavery.⁶⁰ Furthermore, international instruments that seek to eliminate child slavery request that states take into account the importance of education in eliminating child slavery, and also take effective and time-bound measures to provide the necessary and appropriate direct assistance for the removal of children from child slavery and for their rehabilitation and social integration.⁶¹ These instruments, likewise, require that states identify and reach out to children at special risk and take account of the special situation of girls.⁶²

⁵¹ *ibid.*

⁵² Singh (n 50) 216.

⁵³ *ibid.*

⁵⁴ Cullen (n 46) 106.

⁵⁵ *ibid.* See also Dennis (n 50) 792.

⁵⁶ See the UNICEF, 'Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups' (Paris 2007) <<https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>> accessed 29 January 2018, see also Ann Shepard, 'Child Soldiers: Is the Optional Protocol Evidence of an Emerging "Straight-18" Consensus?' (2000) *Intl J of Children's Rights* 52.

⁵⁷ *ibid.*

⁵⁸ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 Art 1.

⁵⁹ *ibid* Art 5 and 6, see the Worst Forms (n 21) Art 7 and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 Art 5.

⁶⁰ Supplementary Convention (n 59) Art 8, Worst Forms (n 22) Art 8 and Protocol to Prevent (n 60) Art 9 –11.

⁶¹ Worst Forms (n 21) Art 7(2).

⁶² *ibid.*

In addition to the adoption of the above-mentioned instruments, the UN has established the Working Group on Contemporary Forms of Slavery.⁶³ The Working Group consists of five independent experts who meet for one week annually. They monitor the application of the slavery convention and review the situation in different parts of the world.⁶⁴ The Working Group, in addition, encourages the need to create awareness of the problems of slavery and furthermore recommends that information campaigns be launched for the boycotting of goods produced on the basis of exploited child labour.

THE IMPLEMENTATION OF CHILD SLAVERY CONVENTIONS IN THE MUNICIPAL LAWS OF SOUTH AFRICA, ZIMBABWE AND UGANDA

South Africa

The South African Constitution importantly provides that no person may be subjected to slavery, servitude or forced labour.⁶⁵ It furthermore provides that ‘children are not to be used directly in armed conflict, and are to be protected in times of armed conflict.’⁶⁶ The Constitution protects children in direct conflict, but it does not clarify what this means. The Defence Act,⁶⁷ uncompromisingly, states that children younger than eighteen years are prohibited from participating in the South African National Defence Force (SANDF). This legislation thereby prevents all children below this age from voluntary enlistment in the SANDF; and from participating in armed conflict. The legislation makes it illegal for children to participate in any capacity, whether directly or indirectly. By providing for such matters in the Constitution, South Africa reflects the seriousness of the need to prohibit slavery within its jurisdiction.

In order to further prevent the use of children in slavery-like practices, the Prevention and Combating of Trafficking in Person’s Act⁶⁸ prohibits human trafficking. This Act provides that any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of a threat of harm, or by the use of force or other forms of coercion, deception and fraud is guilty of an offence.⁶⁹ In addition, the Act, provides that any person who abducts or abuses a position of authority for the purposes of human trafficking is guilty of an offence, as is a person who, directly or

⁶³ UN Fact Sheet No14 (n 26). See also the UN Human Rights Council Resolution 6/14 <http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_14.pdf> accessed 29 January 2018.

⁶⁴ *ibid.*

⁶⁵ The Constitution of the Republic of South Africa, 1996 s 13.

⁶⁶ *ibid* s 28.

⁶⁷ Defence Act 2002 s 52 provides that the regular force consists of persons not younger than eighteen years of age and not older than sixty-five years, whether in a permanent or temporary capacity, and is organised in the manner.

⁶⁸ The Prevention and Combating of Trafficking in Persons Act 7, 2013.

⁶⁹ *Id* s 4.

indirectly, gives or receives payment or benefits to obtain the consent of a person having control or authority over another person.⁷⁰ In addition, the Prevention and Combating of Trafficking in Person's Act penalises those that financially benefit from the services of a victim of trafficking.⁷¹ This Act further prescribes certain sanctions for these offences, that range from a fine, amounting to R100 million, to imprisonment.⁷² It also provides for protective measures for purposes of investigation and prosecution in respect of foreign victims of trafficking.⁷³ The Act finally provides for the removal of a child victim of trafficking and placing them in temporary care. In order to further protect children, the Criminal Law (Sexual Offences and Related Matters) Amendment Act prohibits the trafficking in persons for sexual purposes.⁷⁴

South Africa's legislation also protects children from forced labour. The Basic Conditions of Employment Act, in addition, prohibits all forms of forced labour.⁷⁵ This Act stipulates that no person, for his or her benefit or for the benefit of someone else, may cause, demand or impose forced labour.⁷⁶ If a person contravenes the terms of such laws, the person commits an offence.⁷⁷

The Children's Act⁷⁸ furthermore prohibits the use, procurement or offer of a child for slavery or practices similar to slavery. Section 141 provides that 'no person may use, procure or offer a child for slavery or practices similar to slavery, including but not limited to debt bondage, servitude and serfdom, or forced or compulsory labour or provision of services.'⁷⁹ The provision of the Children's Act prohibits slavery and similar practices to the same extent as child slavery conventions. The Children's Act further highlights that slavery is not limited to debt bondage, servitude and serfdom or forced compulsory labour or provision of services. However, the legislation is deficient in that it does not provide examples of other practices that may fall under such work. The courts, thus far, have not been helpful in identifying activities that fall under this provision. South African legislation criminalises both the use and the offer of a child for the purposes of slavery.

South African legislation implements the provisions of child slavery conventions. The wording, and especially the definitions of slavery, debt bondage, servitude, and serfdom have been influenced by child labour conventions. In addition, international instruments have largely influenced

⁷⁰ *ibid.*

⁷¹ *Id* s 7.

⁷² *Id* s 13.

⁷³ *Id* s 15–17.

⁷⁴ The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32, 2007 s 71.

⁷⁵ Basic Conditions of Employment No 751996 as amended by Act 60, 2014 s 48(1).

⁷⁶ *ibid.*

⁷⁷ *Id* s 48(3).

⁷⁸ The Children's Act 38, 2005 as amended by Act 41, 2007 s 141(1).

⁷⁹ *ibid.*

the provisions in the relevant laws that prohibit child slavery. South Africa has adopted penalties for the contravention of legislation, such as fines amounting to R100 million or imprisonment. In addition to the protective measures provided for by the legislation, children who are exposed to child slavery in South Africa are referred to as children in need of care and protection.⁸⁰ A child exposed to slavery is referred to a social worker for investigation and, in some cases, may be placed in temporary safe care.⁸¹

Although the prohibition of the use in slavery and slavery practices seems comprehensive, the UN Committee of Experts on the Rights of the Child notes that national legislation also protects children from child prostitution, child pornography and trafficking in children.⁸² However, the Committee stated that it was concerned that the current criminal law does not effectively address all acts and activities relating to the sale of children as defined in Articles 2 and 3 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The Committee states that legislation seems not to extend to offences that are committed domestically or transnationally. The Committee furthermore encourages that the criminal law be extended to protect the transferring of the organs of a child for profit, engaging a child in forced labour, or improperly inducing consent, as an intermediary, for the adoption of a child.⁸³ The Committee recommends that South Africa ensures that all acts and activities referred to in the Optional Protocol are fully covered under its criminal law, including all forms of sale of children. In particular, South Africa should explicitly define and criminalise firstly, the sale of children through illegal adoption; secondly, the transfer of organs of the child for profit; and thirdly, the engagement of the child in forced labour. South Africa is yet to comply fully with this recommendation and is urged to urgently do so.

Legislation prohibiting child slavery may work as a deterrent to some who wish to enslave children. However, this is not always the case. Children in South Africa are vulnerable to being trafficked from rural to urban areas.⁸⁴ Such children are trafficked for a variety of reasons, such as for commercial sexual exploitation; domestic work; begging; and street

⁸⁰ Id s 150.

⁸¹ Id ss 150–152.

⁸² Concluding observations on the initial report submitted by South Africa under Art 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC/C/OPSC/ZAF/1, 2016).

⁸³ *ibid.*

⁸⁴ United States Department of Labour, 'Findings of the Worst Forms of Child Labour in South Africa' (Washington, Bureau of International Affairs 2014) <<https://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/2014TDA.pdf>> accessed 30 January 2018. See also Joshua Aransiola, 'Human Trafficking and Human Rights Violations in South Africa: Stakeholders' Perceptions and the Critical Role of Legislation' (2014) AHRLJ 509–525, who analyses human trafficking in South Africa.

vending.⁸⁵ Trafficking is associated with other forms of crime, such as forced labour, child prostitution and gang robbery.⁸⁶ Statistics reveal that orphaned children and children from child-headed households are more likely to be trafficked, and girls are at a higher risk of being trafficked than boys.⁸⁷ Although there are social-security structures in place for vulnerable children through the allocation of grants, unfortunately not all children benefit from these grants.⁸⁸ South Africa is also a destination for trafficked children. Porous borders and inadequate border control has unlocked a way for the unlawful migration of children from neighbouring countries such as Zimbabwe, Mozambique, Swaziland and Lesotho.⁸⁹

South Africa also has a tradition among some communities called *Ukuthwala*. It is a form of abduction involving the kidnapping of a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or the young woman's family to endorse marriage negotiations.⁹⁰ What is disturbing about this is that in some cases, underage children are abducted under the guise of this practice. While such issues compound child slavery, the South African government has been accused of not collecting comprehensive accurate data on the number of children engaged in practices such as child slavery, and the extent of the problem is unknown.⁹¹ The Survey of Activities of Young Persons of 2010 provided statistics revealing that children are exposed to hazardous conditions, but did not detail the number of children involved in forced labour, debt bondage and other slavery-like practices.⁹² The government does not publish the number of prosecutions or convictions for such crimes.⁹³ In

⁸⁵ Aransiola 521.

⁸⁶ *ibid.*

⁸⁷ Laura Bermudez, 'No Experience Necessary: The Internal Trafficking of Persons in South Africa' (Pretoria, International Organization for Migration (IOM), 2008) <http://pdf.usaid.gov/pdf_docs/Pnado562.pdf> accessed 28 September 2016.

⁸⁸ South Africa provides child support grants, foster grants, care dependent grants disability grants and old age pensions. Jacobus de Hoop and Rosati Furio, 'Cash Transfers and Child Labour' (Understanding Children's Work Programme, Working Paper, March 2014) <http://www.ucw-project.org/attachment/st_Cash_Transfers_and_Child_Labour_July1320130917_130104.pdf> accessed 28 September 2016.

⁸⁹ Dan Swart, 'Problems Surrounding the Combatting of Women and Child Trafficking in Southern Africa and South Africa' (2011) *Child Abuse Research Journal* 33.

⁹⁰ Department of Justice, 'Ukuthwala' <<http://www.justice.gov.za/brochure/ukuthwala/ukuthwala.html>> accessed 14 September 2017.

⁹¹ Department of Labour, 'Child Labour and Other Related Activities in South Africa: An Analysis of the Study of Activities of Young Persons' (Pretoria 2010) 13. See also United States Department of Labour (n 85).

⁹² Statistics South Africa, 'Survey of the Activities of Young People 2010' (Pretoria 2011).

⁹³ Department of Labour (n 92) 13; see also the UN Committee on the Rights of the Child on the Consideration of Reports submitted by State Parties under Art 12 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (published in 2016) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fZAF%2f1&Lang=en> accessed April 2018

its 2016 recommendations, the UN Committee on the Rights of the Child suggested that South Africa revise its system of data collection with a view to incorporating all the areas covered by the CRC.⁹⁴ According to the ‘Survey of Activities of Young Persons,’ published in 2017, Statistics South Africa did not adequately comply with the recommendations of the UN Committee on the Rights of the Child.⁹⁵ The survey highlighted neither children involved in slavery and slavery-like practices, nor any of the other worst forms of child labour, such as the use of children in illicit activities, prostitution and pornography. While South Africa may have challenges regarding its data collection, child slavery, as mentioned above, is covert and not always easily identifiable.

Those that enforce the laws, namely, the South African Department of Labour through its inspectors, face challenges in trying to implement legislation. Inspectors find it hard to inspect private property, as they do not have a letter of invitation and their safety and security is not guaranteed.⁹⁶ In addition, investigators lack sufficient training in identifying victims of trafficking.⁹⁷

As mentioned previously, children involved in armed conflict fall under those exposed to slavery. While children in South Africa are not generally exposed to armed conflict, levels of violence, including gun-related violence and gang activities, among the youth in South African communities remain high.⁹⁸ There are many reasons for the high levels of violence in South Africa. The violence is partly due to the years of apartheid, which caused big differences between people living in the country.⁹⁹ Alcohol and drug abuse cause people to behave violently and hurt others, especially children.¹⁰⁰

Uganda

Uganda has enacted legislation seeking to eliminate the use of children in slavery and similar practices. The Ugandan Constitution provides that no person may be ‘held in slavery or servitude’.¹⁰¹ It furthermore stipulates that no person may be required to perform forced labour, but it does offer exceptions where forced labour is permissible.¹⁰² Forced labour does not include work done in fulfilment of a sentence or order of court, or work

⁹⁴ *ibid.*

⁹⁵ Statistics South Africa, ‘Survey of the Activities of Young People 2015’ (Pretoria 2017)

⁹⁶ Mpfariseni Budeli, ‘Children’s Rights and Protection against Child Labour in South Africa’ (2012) Commonwealth Youth and Development 14.

⁹⁷ United States Department of Labour (2010) (n 85).

⁹⁸ *ibid.*

⁹⁹ UNICEF, ‘The Study on Violence against Children in south Africa Special Summary for Teens’ (2013) <https://www.unicef.org/southafrica/SAF_resources_violenceagainstchildren.pdf> accessed 24 April 2018.

¹⁰⁰ *ibid.*

¹⁰¹ Constitution of the Republic of Uganda 1995 as amended by Act 12, 2015 s 25(1).

¹⁰² *Id* s 25(2).

done by a person in prison which is reasonably necessary for the purposes of hygiene or maintenance of the place of detention.¹⁰³ The Constitution further provides that forced labour excludes work required to be done by a member of the armed forces during war or during a state of emergency.¹⁰⁴ However, the position of children for the purposes of enlistment into the armed forces is different. In terms of the Defence Forces Act, no person younger than eighteen years may be recruited into the defence force.¹⁰⁵ Children younger than eighteen years cannot legally be part of the armed forces. In the event of a war, they cannot undertake any forced labour, as they are not permitted to be members of the armed forces. The Constitution furthermore provides that forced labour excludes any labour required as part of reasonable and normal communal or other civic obligations.¹⁰⁶ Such a provision breeds uncertainty with regard to the position of children, as they may be exposed to exploitative labour in order to fulfil communal and civic obligations. There is no legislation that clarifies the position of children in this regard or the extent and limits of such forced labour. No available case law provides guidelines on what such work entails.

To protect children further, Uganda adopted the Prevention of Trafficking in Persons Act.¹⁰⁷ The Act defines and abolishes the use of children in slavery, trafficking, debt bondage, serfdom and forced labour.¹⁰⁸ These definitions correspond to the definitions provided for by the UN Supplementary Convention on Slavery. Section 2 of the Employment of Children Regulations further protects children by prohibiting slavery and similar practices, including work by a child to pay off a loan or other obligation incurred by the family.¹⁰⁹ In terms of the Employment of Children Regulations, slavery includes a child trafficked by organised networks, who is bought and sold within and across the borders.¹¹⁰ Slavery is defined to include a child trafficked for prostitution, begging, soliciting and/ or work in places

¹⁰³ Id s 25(3)(a)–(b).

¹⁰⁴ Id s 25 (3)(c)–(d)

¹⁰⁵ Defence Forces Act 2005 s 52 (2)(c).

¹⁰⁶ Constitution (n 102) s 25(3)(d).

¹⁰⁷ Prevention of Trafficking in Persons Act 7, 2009.

¹⁰⁸ Id s 2. Slavery is defined as the ‘status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ Trafficking in persons is defined as ‘the recruitment, transportation, transfer, harboring or receipt of a person by means of the threat or use of force or other forms of coercion or abduction, fraud, deception of the abuse of power or of position of vulnerability of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purposes of exploitation.’ Debt bondage as the ‘status or condition arising from a pledge by the debtor of his or her personal services or labour, or those of a person under his control as security for a debt, when the length and nature of series is not clearly defined or when the value of the services as reasonably assessed is not applied towards the liquidation of the debt.’ Forced labour is defined as ‘all work or service which is exacted from any person under the threat of any penalty and for which the said person has not offered him/herself voluntarily.’

¹⁰⁹ Employment of Children Regulations 17, 2012 s 2(i).

¹¹⁰ Id s 2(ii).

such as construction sites, shops, factories and in domestic services.¹¹¹ The Employment Regulations provide that slavery also includes work by a child who is forced to participate in armed conflicts and hostilities.¹¹²

The Prevention of Trafficking in Persons Act provides that a person who recruits, hires, maintains, confines, transports, transfers, harbours, or receives a person through force or other forms of coercion for the purpose of engaging that person in forced labour, slavery, involuntary servitude and debt bondage, commits an offence liable to imprisonment for fifteen years.¹¹³ The use of children for the purposes of slavery is such a serious crime in Uganda that it may warrant the death penalty.¹¹⁴ The Penal Code¹¹⁵ further provides that any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves commits a felony and is liable on conviction to imprisonment of ten years.¹¹⁶ Any person who attempts or conspires with another person to induce a person to give him- or herself as a slave is also liable to conviction.¹¹⁷

The issue of slavery and similar practices is prohibited and penalties are levelled against such offenders. Such provisions comply with child slavery conventions, but enforcement of legislation is a challenge. This legislation to prohibit the use of children in trafficking seems comprehensive; yet Uganda is still considered a source of and destination for trafficked children.¹¹⁸ Children are trafficked internally for sexual exploitation and for forced labour to undertake tasks such as fishing and domestic work.¹¹⁹ In some cases, Ugandan children have been trafficked to Central, East and North Africa for commercial sexual exploitation and forced labour.¹²⁰ Children from Burundi, the Democratic Republic of the Congo (DRC), Kenya, Rwanda, Tanzania and South Sudan are trafficked to Uganda for commercial sexual exploitation and agricultural work.¹²¹ Uganda faces challenges in trying to eliminate child trafficking due to the fact that it does not have comprehensive information on its magnitude at a national level.¹²²

¹¹¹ Id 2(iii).

¹¹² Id s 2(iv).

¹¹³ Prevention of Trafficking (n 108) s 3.

¹¹⁴ Id s 5.

¹¹⁵ Penal Code of 1950 as amended by Act 8 of 2007.

¹¹⁶ Id s 251.

¹¹⁷ Penal Code (n 116) s 251(1).

¹¹⁸ United States Department of State, 'Trafficking in Persons Report – Uganda' (Washington, Bureau of International Labour Affairs, 2014) <<http://www.refworld.org/docid/53aab98a3b2.html>> accessed 28 October 2016.

¹¹⁹ *ibid.*

¹²⁰ United States Department of Labour, 'Findings on the Worst Forms of Child Labour Uganda' (Washington, Bureau of International Labour Affairs, 2014) 888 <<https://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/2014TDA.pdf>> accessed 28 October 2016.

¹²¹ *ibid.*

¹²² *ibid.*

Traffickers are relatives, peers and well-established individuals.¹²³ An ILO study (International Programme for the Elimination of Child Labour) of 2008 confirmed that trafficking in children was a growing problem worldwide, as it is fuelled by intermediaries who make false promises concerning employment opportunities and a better life that families and children are seeking.¹²⁴ Trafficking in persons is not fully understood by the majority of the Ugandan population.¹²⁵ The government, furthermore, fails to provide victims of trafficking with adequate assistance and, instead, relies on non-governmental organisations (NGOs) and international organisations to provide the necessary care.¹²⁶ In addition to the lack of financial resources, the Ugandan government has been accused of often lacking the political will to combat trafficking.¹²⁷ Although the government reported that it had prosecuted fifty-six defendants in 2013, law enforcement officials are accused of being over-zealous in investigations, leading to the disregard for victim protection.¹²⁸ In some instances, children exposed to these activities are not treated as victims, but are stigmatised and suffer from fear and guilt.¹²⁹ In a particular incident, girls from India and Rwanda were trafficked into Uganda, arrested and charged with prostitution and were deported, despite revealing that they had been used against their will.¹³⁰ There are reports of insufficient arrests and prosecutions of those that contravene the law.¹³¹

Although legislation provides that children younger than eighteen years should not be permitted to work in armed conflict, reports show that

¹²³ Lorenzo Guarcello and Furio Rosati, 'Understanding Children's Work in Uganda: Child Labour' (UCW Programme, 2008) 26.

¹²⁴ IPEC, *Combating Trafficking in Children for Labour Exploitation: A Resource Kit for Policy-Makers and Practitioners* (International Labour Office, 2008) 17 <<http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=9130>> accessed 29 October 2016.

¹²⁵ Baguma Benda, 'Challenges and Dilemmas Encountered by the National Rapporteurs on the Trafficking in Persons and Equivalent Mechanisms in the Course of their Work. The Uganda Experience at the Second Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms' (Bangkok, 21–22 May 2014) <<http://www.ohchr.org/EN/Issues/Trafficking/Pages/2ndConsultativeMeeting2014.aspx>> accessed 29 October 2016.

¹²⁶ *ibid.*

¹²⁷ United States Department of State (n 118).

¹²⁸ *ibid.*, see also Benda (n 125).

¹²⁹ *ibid.*

¹³⁰ Kasirye Rogers, 'Rapid Assessment Report in Trafficking of Children into Worst Forms of Child Labour including Child Soldiers in Uganda: A Study Conducted in the Districts of Busia, Pader, Kalangala, Masaka and Kampala' (International Labour Office 2007) <[file:///C:/Users/user/Downloads/c_trafficking_uganda%20\(2\).pdf](file:///C:/Users/user/Downloads/c_trafficking_uganda%20(2).pdf)> accessed 24 April 2018.

¹³¹ UN Committee on the Rights of the Child Consideration of Reports Submitted by State Parties Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict Concluding Observations: Uganda (OHCHR 49th session, 2008) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/OPAC/UGA/CO/1&Lang=En> accessed 30 September 2016.

children are used in armed conflict even by the government itself.¹³² The conflict between the government and the Lord's Resistance Army (LRA) has created extreme economic hardship putting children at risk of child slavery.¹³³ Educational services in conflict areas are constrained, further limiting children's options for learning and increasing the likelihood of children being exploited.¹³⁴ As a direct consequence of the conflict, child prostitution has become an emerging phenomenon. In some cases, girls openly offer themselves for sex, while others are abducted and used as wives.¹³⁵ Children take on several roles in armed conflict, for example as wives or as domestic servants to cook and clean.¹³⁶ Children may also be used to help recruit or abduct other children into armed conflict.¹³⁷ At times, children and men are recruited by armed groups fraudulently or by force.¹³⁸ Children are recruited through false offers of employment and sometimes by threats at gunpoint. Officials of the military claim that they cannot determine the age of every child because of the lack of proper birth records in the country, and many children lie about their age as they want the economic security of a paid position.¹³⁹

The African Children's Committee has attempted to provide guidelines that may be used by the Ugandan government. In 2013, the Committee found that the government of Uganda had violated Article 22 of the African Children's Charter on the Rights and the Welfare of the Child, which provides that children should not be recruited or used in armed conflict.¹⁴⁰ The Committee revealed that children in Uganda were being recruited and used for sexual violence, killing and maiming. The African Children's Committee recommended that Uganda adopt an explicit, comprehensive provision in its Penal Code providing for the criminal responsibility of anyone who recruits or uses persons younger than eighteen years in

¹³² Abigail Leibig, 'Girl Child Soldiers in Northern Uganda: Do Current Legal Frameworks Offer Sufficient Protection' (2005) *Northwestern J of Intl Human Rights* 1.

¹³³ Eunice Apio, *Forgotten Children – The Outcome of Children Born of the Lord's Resistance Army, Northern Uganda* (Coalition to Stop Child Soldiers 2008); see also Singh (n 51) 209, see also Lydia Wambugu and Getachew Adem, 'Children in African Conflicts: The Case of Acholiland, Northern Uganda' (ISS Monograph Series No 142, 2008).

¹³⁴ National Child Labour Policy 2006, 16.

¹³⁵ ECAPT International, 'Uganda National Plan of Action on Child Sexual Abuse and Exploitation (2008–2012): Reviewing Progress and Moving Forward' (Kampala, 2008) <http://www.unicef.org/uganda/National_Plan_of_Action_on_CSEC.pdf> accessed 29 October 2016.

¹³⁶ Leibig (n 132) 1.

¹³⁷ *ibid.*

¹³⁸ United States Department of State (n 119), United States Department of Labour (n 120) 889.

¹³⁹ UN Committee (n 131).

¹⁴⁰ African Committee of Experts on the Rights and the Welfare of the Child, 'Decision on the Communication submitted by Hunsungule Michelo and Others on Behalf of the Children in Northern Uganda Against the Government of Uganda' (Communication 1/2005, Addis Ababa, 15–19 April 2013) <<http://www.chr.up.ac.za/images/files/news/press/DSA-ACE-64-1038.15.pdf>> accessed 30 October 2016.

situations of hostility, tension or strife.¹⁴¹ This recommendation *inter alia* highlights that children should not be used in any capacity during hostilities, tensions and strife. It also placed a duty on Uganda to make sure that any person (regardless of whether he or she is a military official or a member of a rebel group) who recruits and uses a child, should be punished by the law. Uganda is yet to make amendments to its legislation to incorporate the recommendations of the African Children's Committee and is urged to do so without delay.

Zimbabwe

Zimbabwe has legislation that defines and prohibits slavery and similar practices. The Zimbabwean Constitution provides that no person may be subjected to slavery and servitude,¹⁴² and furthermore stipulates that 'no person may be made to perform forced or compulsory labour'.¹⁴³ The Labour Act¹⁴⁴ reinforces the provisions of the Constitution in this regard, whereby section 4A provides that no person shall be required to perform forced labour.¹⁴⁵ The Labour Amendment Act of 2015 defines forced labour as 'any work or services which a person is required to perform against his or her will under the threat of some form of punishment.'¹⁴⁶

However, the Labour Act allows exceptions that make forced labour legal.¹⁴⁷ Forced labour does not include:

labour required in consequence of the sentence or order of the court or labour required of any person while lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance or management of the place at which he or she is detained.¹⁴⁸

The Labour Act also provides that forced labour does not include any labour required by way of parental discipline.¹⁴⁹ This provision is controversial and contradicts the terms of the Constitution in that it explicitly allows parents to discipline children by way of what otherwise constitutes forced labour. This provision does not demarcate the boundaries, limits and the extent to which this form of parental discipline can be enforced. It therefore leaves room for abuse by parents or guardians. Disciplinary measures imposed by parents can require children to perform work that affects their

¹⁴¹ *ibid.*

¹⁴² Constitution of Zimbabwe Amendment Act 20, 2013 s 54.

¹⁴³ *ibid.*

¹⁴⁴ Labour Act Chapter 28:01, 2006 as amended by Act 5 2015 s 4A (1).

¹⁴⁵ *ibid.*

¹⁴⁶ *Id* s 1.

¹⁴⁷ *Id* ch 28:01.

¹⁴⁸ *Id* s 4 A(2)(a)–(b).

¹⁴⁹ *Id* s 4 A(2)(d).

physical, moral and mental health. Such imposed discipline could also affect attendance at school and weaken the effect of international campaigns to eliminate child slavery. Despite the contradiction with the Constitution, the Labour Act must be interpreted in line with the Constitution that prohibits all forced labour. The legislature should amend the Labour Act to conform to the provisions of the Constitution.

In 2014, Zimbabwe enacted the Trafficking in Persons Act¹⁵⁰ that prohibits slavery and similar practices.¹⁵¹ The Trafficking in Persons Act defines the term ‘debt bondage’ as a pledge by a debtor of his or her personal services of labour or those of a person under his or her control as security for the payment of a debt.¹⁵² The Trafficking in Persons Act defines unlawful purpose as ‘for the purposes of prostitution, child or adult pornography, the unlawful removal of organs, forced marriage, debt bondage, illegal labour, forced labour or other forms of servitude.’¹⁵³ Any person who traffics an individual by transporting him or her outside or within the Republic of Zimbabwe for an unlawful purpose is guilty of a crime of trafficking. The crime of trafficking is considered to be committed in aggravating circumstances if the trafficked person is a child.¹⁵⁴ If a victim was trafficked for the purposes of child pornography or prostitution, such a victim is not charged with any crime but treated as a victim.¹⁵⁵ The Trafficking in Persons Act stipulates that any person who recruits, harbours or receives a person for the purpose of trafficking is guilty of an offence.¹⁵⁶ A person who commits the crime of trafficking may be liable to imprisonment for no less than ten years.¹⁵⁷

The participation of children in armed conflict is also expressly prohibited by the National Service Act.¹⁵⁸ No person younger than eighteen years may be recruited into national service.¹⁵⁹ This prohibition is similar to the position in South Africa and Uganda, which prevents children from both voluntary and compulsory enlistment. Children in Zimbabwe are not currently exposed to any armed conflict, but they are exposed to other forms of slavery that are discussed below.

The biggest challenge to the implementation of legislation prohibiting child slavery in Zimbabwe has been the lack of the necessary resources and training of inspectors. Inspectors are meant to play a crucial role in the enforcement of laws relating to conditions of work and the protection

¹⁵⁰ Trafficking in Persons Act 4, 2014.

¹⁵¹ See the Preamble of the Trafficking in Persons Act (n 150).

¹⁵² Trafficking in Persons (n 150) s 2.

¹⁵³ *ibid.*

¹⁵⁴ *Id* s 3(3).

¹⁵⁵ *Id* s 3(4).

¹⁵⁶ *Id* s 3(1)(a)-(b).

¹⁵⁷ *Id* s 3(2)(a).

¹⁵⁸ National Service Act No 19 of 1979 as amended by Act No 22, 2001.

¹⁵⁹ *Id* ss 9 and 17.

of workers in workplaces.¹⁶⁰ In addition, they oversee the regulation of employment of children and young persons as one of the principal functions of any system of labour inspect. Inspectors should supply information and advice to employers and workers on how to comply with the law, and alert the competent authorities on any defects or abuses not covered by existing legal provisions.¹⁶¹ In Zimbabwe, however, they are not adequately trained and do not have the financial means to buy fuel to facilitate inspections of workplaces such as farms or industrial workplaces.¹⁶² *IRIN News* once announced: ‘There is no money to fund vital programmes in the labour sector because the government lives from hand to mouth and there is no donor funding.’¹⁶³ The severe economic conditions that the country faces have a negative impact on service delivery, and the situation is further compounded by pervasive corruption, which continues to divert resources that could enhance the implementation of the rights of children.¹⁶⁴ Major factors that force children into slavery include the breakdown of the family unit due to HIV/AIDS, as well as poverty.¹⁶⁵ Should the socio-economic situation in Zimbabwe continue to worsen, the number of children involved in harmful forms of work will continue to increase.¹⁶⁶

A critical challenge that perpetuates child slavery is that those who are meant to enforce the law, violate the law. Between 2006 and 2009, there were numerous reports of police officers coercing local miners in Marange

¹⁶⁰ ILO, ‘Combating Child Labour: A Handbook for Labour Inspectors’ (International Labour Office 2002)

¹⁶¹ Labour Inspection Convention 181, 1947 art 3.

¹⁶² United States Department of Labour, ‘Findings on the Worst Forms of Child Labour Zimbabwe’ (Washington, Bureau of International Labour Affairs, 2014) <<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/zimbabwe>> accessed 29 September 2016.

¹⁶³ Editorial Staff, ‘Zimbabwe Child Labour on the Rise’ *IRIN News* (Harare, 24 February 2012) <<http://www.irinnews.org/report/94939/zimbabwe-child-labour-rise>> accessed 30 January 2018.

¹⁶⁴ UN Committee on the Rights of the Child, ‘Concluding Observations on the Second Periodic Report of Zimbabwe’ (71st session, 2016) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/044/47/PDF/G1604447.pdf?OpenElement>> accessed 30 October 2016. See also Tendai Mugabe, ‘Miners Robbed Us’ *Herald Newspaper* (Harare, 4 March 2016) <<http://www.herald.co.zw/miners-robbed-us-says-president/>> accessed 29 October 2016. In this article, President Mugabe alleges that there is about 15 billion dollars missing from the mining sector.

¹⁶⁵ United States Department of Labour (n 163), see also Michael Kesby, Gwanzura Ottemoller and Monica Chizororo, ‘Theorising Other, “Other Childhoods”’: Issues Emerging From Work on HIV in Urban and Rural Zimbabwe’ (2006) *Children’s Geographies* 197.

¹⁶⁶ ‘Zimbabwe Child Labour’ (n 163).

to join what amounted to forced labour syndicates.¹⁶⁷ Children between the ages of ten and seventeen years worked the same hours as adults, and were forced to work long hours without breaks, food or water.¹⁶⁸ Corruption among law enforcement officers and the judiciary is an obstacle to accessing proper remedies for victims of forced labour and trafficking.¹⁶⁹ Victims of trafficking do not pursue such cases due to the fear that their traffickers will bribe judges and police officers.¹⁷⁰ The government is accused of a minimal effort to protect trafficking victims and, instead, relies on NGOs to identify and assist victims.¹⁷¹

ASSESSMENT

All three countries prohibit the use of children for the purposes of slavery and slavery-like practices in their respective Constitutions, reflecting the seriousness of the need to prevent such forms of work for children. While it is to be commended that this practice is prohibited in the Constitutions themselves, it is critical that there be widespread knowledge of the provisions of legislation. All legislation contrary to the provisions of the respective Constitutions should be amended to align with the provisions of the Constitutions.

In all three countries, definitions of ‘debt bondage’, ‘serfdom’ and ‘forced and compulsory labour’ have been influenced by child slavery conventions. All these jurisdictions outlaw the voluntary and compulsory recruitment of children younger than eighteen years and provide extensive legislative protection to children. In all three jurisdictions, child trafficking has been prohibited in greater depth compared to other forms of slavery, such as debt bondage and compulsory labour. This fact reflects the severity of the problem and the urgency to combat this harmful practice. In compliance with child slavery instruments, all the three jurisdictions furthermore provide for penalties for contraventions of such laws. Such penalties may be in the form of fines or imprisonment. Uganda, however, distinctively provides for the possibility of the death sentence in the case of such offences.

¹⁶⁷ Human Rights and Business Country Guide, ‘Zimbabwe’ (2015) <<http://hrbcountryguide.org/countries/zimbabwe/labour-standards/child-labour-2/>> accessed 29 October 2016. See Hilary Andersson, ‘Marange Diamond Field: Zimbabwe Torture Camp Discovered’ *BBC News* (Africa, 8 August 2011) <<http://www.bbc.com/news/world-africa-14377215>> accessed 30 January 2018. See also Human Rights Watch, ‘Diamond in the Rough: Human Rights Abuses in the Marange Diamond Fields of Zimbabwe’ *HRW* (New York, 2009) 19 <<https://www.hrw.org/sites/default/files/reports/zimbabwe0609web.pdf>> accessed 29 October 2017.

¹⁶⁸ *ibid.*

¹⁶⁹ Human Rights and Business Country Guide (n 167).

¹⁷⁰ United States Department of State, ‘Trafficking in Persons Report – Zimbabwe’ (Washington, Bureau of International Affairs, 2015) <<http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243566.htm>> accessed 4 October 2016.

¹⁷¹ *ibid.*

All three countries prohibit the use of children in forced labour, but only South Africa prohibits the use of children in all forms of forced labour. Uganda and Zimbabwe provide exceptions, which classify forced labour as legal. In both Uganda and Zimbabwe, forced labour excludes work performed for the purpose of fulfilling a sentence or an order of court, as well as work required of any person while such person is lawfully being detained which, though not required in consequence of the sentence or order of court, is reasonably needed in the interests of hygiene. Both Uganda and Zimbabwe allow forced labour in a state of emergency or calamity. Uganda distinctively permits forced labour in order to fulfil communal obligations. Uganda is urged to reconsider the provisions that specifically deal with forced labour. The exceptions for forced and compulsory labour have the potential to cause harm to children if not adequately regulated. The legislation should be clear on communal and civic obligations; its legislation currently undermines the prohibition of forced labour. Zimbabwe uniquely provides for the possibility of forced labour for the purposes of parental discipline. Zimbabwe, like Uganda, does not provide limitations on these activities which potentially could harm children. The legislation is likely to result in the exploitation of children because such work is ineffectively regulated and its parameters inadequately set. Zimbabwe is urged to rectify the inconsistency in its laws; the Constitution prohibits all forms of forced labour whereas the Labour Act permits children to be disciplined by parents. The Labour Act should be interpreted in line with the provisions of the Constitution, and the legislature should revise the regulation to conform to the Constitution.

All three countries face common challenges in implementing legislation. In all three countries, the number of children involved in slavery and slavery-like practices is not adequately documented, which negatively affects the proper implementation of legislation. In all three countries, statistics on the number of prosecutions, convictions and arrests for the use of children in slavery and slavery-like practices are insufficiently publicised. Arguably, if such prosecutions were publicised, it may have a deterrent effect on potential offenders. It is advisable that these countries adopt measures to ensure that case law involving the use of children in such practices is easily accessible. Governments need to enhance cross-border prevention, protection and prosecution in fighting slavery and slavery-like practices. Member states need to devote resources to identifying and helping victims. The international community must continue to build capacities to improve criminal justice actions such as detecting, investigating and successfully prosecuting cases of slavery.¹⁷²

¹⁷² United Nations Security Council 7898th Meeting Prevention, Protection Prosecution Stresses as Security Council Holds Open Debate on Human Trafficking, Modern Slavery, Forced Labour in Conflict Situations.

In all three countries, child poverty has been the biggest instigator of the participation of children in slavery and slavery-like practices. In the case of South Africa, children from poor backgrounds who do not benefit from the social-security structures resort to such work. In Uganda and Zimbabwe, lack of adequate social-security structures leaves children with no option other than to resort to slavery and slavery-like practices. Slavery is a complex problem that requires complex solutions to address all its root causes. Poverty and the lack of access to sustainable livelihood opportunities must be addressed to minimise the vulnerability of people in slavery.¹⁷³ Poverty could be eradicated through social protection, livelihood interventions and access to decent work for adults. Social protection is especially vital in helping vulnerable families to maintain a minimum quality of life, ensuring a stable income to keep children in school as well as the health and nutritional needs of the recipients.¹⁷⁴ Social protection includes all public and private initiatives providing income or consumption transfers to poor families with the aim of reducing their economic and social vulnerability. Governments should increase resources that are allocated to children. In addition, they should establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated for children. Governments should also take steps to combat corruption in this regard.

All three countries face challenges in implementing the relevant laws. In some cases, they lack the necessary training and resources to undertake their task adequately. In all three countries, those who are meant to uphold the law violate the law by subjecting children to slavery-like practices. Members of the police are perpetrators of crime and negatively influence the implementation of legislation. Uganda and Zimbabwe should adopt legislation that severely punishes anyone, whether a member of the police or military, who violates the law and uses a child for such offences. Information campaigns for the boycotting of goods produced by means of child slavery should be launched.¹⁷⁵ These countries, in addition, should host seminars and workshops that provide information to members of the community. Governments should allow NGOs to make a positive contribution to the effective elimination of slavery. NGOs can provide legal assistance to children affected by states of emergency, as well as rehabilitation services and development assistance for children caught in armed conflict.

Governments need to encourage community leaders, religious and lay organisations to be active in making their citizens aware of the inhumane

¹⁷³ Anti-Slavery Website, 'Fact Sheet on Modern Slavery' <<http://www.antislavery.org/wp-content/uploads/2016/11/Modern-slavery-fact-sheet.pdf>> accessed 30 January 2018.

¹⁷⁴ ILO, 'Combatting Child Labour through HIV/AIDS Programming with a Focus on Social Protection in Uganda' <http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_14287/lang--en/index.htm> accessed 24 April 2018.

¹⁷⁵ United Nations Fact Sheet (n 26).

character of current forms of exploitation. Communities should be informed on how to monitor the wellbeing of children, to identify and intercept children at risk of becoming victims of slavery and to offer direct assistance to children in need. Schools should encourage parent-teacher associations and various other programmes, such as art exhibitions and essay competitions, to bring home the damaging effects of slavery and its practices. Stakeholders, in addition, should seek to interest the media—television, radio, newspapers and magazines—to deal with the issues of exploitation in entertainment; to enlist the help of public personalities to promote respect for human rights and to create awareness of the problems of exploitation.¹⁷⁶

South Africa has many legislative provisions that seek to prevent the use of children in slavery and slavery-like practises. The UN Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its latest concluding observation, however, highlighted that current criminal law does not address effectively all acts and activities relating to the sale of children. South Africa should seriously consider the recommendations of the CEACR to enhance the protection of children. Uganda, on the other hand, has serious problems regarding the use of children in armed conflict. It is recommended that Uganda develops and adopts measures tailor-made to its particular problem. Furthermore, the country should comply with the recommendations of the African Committee on the Rights of the Child. Legislation should be precise in holding to account anyone, even government officials, who unlawfully recruit and use children. Legislation regulating military enlistment should be strict in relation to the documentation needed to prove the age of a person, in order to avoid the enlistment of children into the armed forces. It may be difficult for the government to regulate the recruitment of children into rebel armed-groups, but it can prevent their recruitment into its own national army.

CONCLUSION

The states examined in the research have to comply to some extent with their obligations to prohibit slavery and slavery-like practices. In all three countries, definitions of ‘debt bondage’, ‘serfdom’ and ‘forced and compulsory labour’ have been influenced by child labour conventions. In all three jurisdictions child trafficking has been prohibited in greater depth compared to other forms of slavery, such as debt bondage and compulsory labour. This may show the significance of the problem and the insistence to combat this harmful practice. In compliance with child labour conventions, all the three jurisdictions further provide for penalties for contraventions of such laws. There are, however, some concerning traits that warrant some legislative reformulation.

¹⁷⁶ *ibid.*

South Africa has many legislative provisions that seek to prevent the use of children in slavery and slavery-like practises. However, the UN Committee of Experts in its latest concluding observation highlighted that current criminal law does not address effectively all acts and activities relating to the sale of children as defined in Articles 2 and 3 of the Optional Protocol on the Sale of Children. South Africa should seriously consider the recommendations of the CEACR to enhance the protection of children.

In Uganda, forced labour is permitted in order to fulfil a sentence or an order of the court, and during a state of emergency or calamity. Uganda also permits forced labour if its purpose is to fulfil communal and civic obligations. Such a provision breeds uncertainty with regard to the position of children, as they may be exposed to exploitative labour in order to fulfil communal and civic obligations. There is no legislation that clarifies the position of children in this regard or the extent and limits of such forced labour. No available case law gives a guideline to what such work entails. Uganda is urged to reconsider the provisions that specifically deal with forced labour. The exceptions for forced and compulsory labour have the potential to cause harm to children if not adequately regulated. The legislation should be clear on communal and civic obligations; its legislation currently undermines the prohibition of forced labour. Uganda also has serious problems regarding the use of children in armed conflict. It is recommended that Uganda adopt measures tailor-made to its particular problem and comply with the recommendations of the African Committee on the Rights of the Child. Legislation should be precise in holding to account anyone, even government officials, who unlawfully recruit and use children. Legislation regulating military enlistment should be strict in relation to the documentation needed to prove the age of a person, in order to avoid the enlistment of children into the armed forces. It is difficult for the government to regulate the recruitment of children into rebel armed-groups, but it can prevent their recruitment into its own army.

The Zimbabwean Constitution states that no person may be made to perform forced or compulsory labour, but, in contravention, the Labour Act provides that forced labour is permissible for the purposes of parental discipline. Zimbabwe, like Uganda, does not provide limitations on these activities which potentially could harm children. The legislation is likely to result in the exploitation of children, because such work is ineffectively regulated and its parameters inadequately set. Zimbabwe is urged to rectify the inconsistency in its laws: the Constitution prohibits all forms of forced labour whereas the Labour Act permits children to be disciplined by parents. The Labour Act should be interpreted in line with the provisions of the Constitution, however, the legislature should also revise the regulation to conform to the Constitution.