

‘Bring Back our Innocence’. Protecting Children from Commercial Sexual Exploitation: A Case Study of Three African Countries

Rufaro Audrey Mavunga

Head of Programmes at the Independent Institute of Education

Former Post-Doctoral Fellow University of South Africa

mavungarufaro@gmail.com

Abstract

The focus of this article is on the commercial sexual exploitation of children with a particular focus on the use of children for the purposes of prostitution and pornography in South Africa, Zimbabwe and Uganda. The article examines the international prohibition of child prostitution and pornography and analyses the extent to which these three countries have implemented the relevant international instruments in their national legal order. The research reveals that South Africa has enacted estimable legislation that prohibits the use of children for the purposes of prostitution and pornography, whereas Zimbabwe and Uganda’s legislation warrants some refinement. In addition, research identifies some of the challenges these countries are facing in implementing the respective legislative frameworks and, to that effect, the article author seeks to offer recommendations for overcoming such difficulties. The extent to which the three countries have incorporated international laws prohibiting child prostitution into their national legislation is analysed.

Keywords: worst forms of child labour; commercial sexual exploitation; child prostitution; child pornography

Part A

Introduction

The commercial sexual exploitation of children occurs when individuals buy, trade or sell sexual acts with a child.¹ It is classified as one of the worst forms of child labour and a modern form of slavery.² It is morally reprehensible and should never be tolerated or taken lightly by society.³ Currently, there is a rigorous international campaign to eliminate the worst forms of child labour as a matter of priority.⁴ In 2015 the United Nations Member States developed the Sustainable Development Goals (SDGs) for peace and prosperity for all people and the planet for now and into the future.⁵ SDG 8.7 provides that states should take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour by 2025.⁶ Owing to the urgency to eliminate the worst forms of child labour, the purpose of this article is aimed at reducing the vulnerabilities of children and the potential risk of being exposed to commercial sexual exploitation.

The study includes two parts, namely: Part A and Part B. Part A begins by providing conceptual clarity; then it provides statistics regarding the commercial sexual exploitation of children. This section examines further the international and regional prohibition of the commercial sexual exploitation of children and after that it investigates the implementation of international laws prohibiting child pornography by means of the municipal laws of South Africa, Uganda and Zimbabwe. Part B of this article discusses the municipal laws that prohibit child prostitution in South Africa, Uganda and Zimbabwe.

-
- 1 Innocence Lost Working Group, 'Commercial Sexual Exploitation of Children: A Fact Sheet' <http://www.pollyklaas.org/safe/pdf/2016/ccse_fact_sheet.pdf> accessed 7 June 2018.
 - 2 Article 3 of Worst Forms of Child Labour Convention No 183 of 1999. The Stockholm Declaration and Agenda of Action Sweden, 27–31 August 1996 <https://www.kinderrechte.gv.at/wp-content/uploads/2013/10/The-Stockholm-Declaration-and-Agenda-for-Action_1996.pdf> accessed 2 July 2018.
 - 3 Yoshie Noguchi, 'ILO Convention No 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child' (2002) *International Journal of Children's Rights* 355–358.
 - 4 International Labour Organization (ILO) Website <<http://www.ilo.org/ippec/facts/ILOconventiononchildlabour/lang--en/index.htm>> accessed 5 June 2018; see also United States Department of Labor, '16th Annual Report on 2016 Findings on the Worst Forms of Child Labor' <<https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/TDABook.pdf>> accessed 5 June 2018.
 - 5 United Nations (UN), 'Sustainable Development Goals' <<https://sustainabledevelopment.un.org/?menu=1300>> accessed 22 October 2018.
 - 6 ILO, 'SDG Alliance 8.7: Joining Forces Globally to End Child Labour, Forced Labour, Modern Slavery and Human Trafficking' (February 2016) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_450718.pdf> accessed 12 June 2018.

These countries have been selected for the study because they share some commonalities: they have ratified and, in some instances, acceded to most of the conventions that prohibit the commercial sexual exploitation of children. In addition, they employ similar rules of incorporation of international law.⁷ These states, furthermore, experience the same socio-economic problems, such as high unemployment and underemployment of adults.⁸ In addition, HIV and AIDS have claimed many lives and created many orphans and child-headed households.⁹ These problems negatively affect children and result in their being commercially exploited. A deeper analysis reveals significant differences in other respects.

South Africa comes closest to adequately implementing child rights conventions in its municipal laws: it has adopted commendable legislation. Uganda and Zimbabwe have not adequately implemented the conventions and could improve their responses by following the example of the South African legislation. Over a decade of socio-economic and political instability in Zimbabwe¹⁰ has negatively affected children and the implementation of legislation prohibiting their commercial sexual exploitation. Insecurity in Zimbabwe is a major cause for concern; but the situation in Zimbabwe highlights the problems faced by many other African countries, where socio-economic

7 ILO (n 6).

8 Jacqueline Gallinetti, Daksha Kassan and Louise Ehlers, 'The Use of Children in Illicit Activities: Child Justice and Child Labour Meet' (Conference report for the workshop: 'Child Justice in South Africa: Children's Rights Under Construction' Johannesburg, 1–2 August 2006) 103; see also s 1 of the National Orphans and Other Vulnerable Children Policy of 2004. See also Maria Gabriella Breglia, Lorenzo Guarcello, Furio Camillo Rosati and Vincent Fred Ssenono, 'Understanding Children's Work in Uganda' Understanding Children's Work: Program Country Report Series (World Bank, 2008) <<https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/660511468318329452/understanding-childrens-work-in-uganda>> accessed 28 April 2016. See also Editorial Staff, 'Unemployed Youths Turn to Gambling' (*News Day*, 5 September 2012) <<https://www.newsday.co.zw/2012/09/05/2012-09-05-unemployed-youths-turn-to-gambling/>> accessed 12 June 2018.

9 Statistics South Africa (SSA) 'Survey of the activities of young people 2010' (SSA 2011); Uganda Bureau of Statistics in Collaboration with Understanding Children's Work (UCW) Programme, 'Understanding Children's Work and Youth Employment Outcomes in Uganda: Inter-agency Report' (UBOS 2014) 100 <http://www.ucw-project.org/attachment/Uganda_report_child_labor_youth_employment20141016_154929.pdf> accessed 8 November 2018; Zimbabwe Department of Labour, 'Findings on the Worst Forms of Child Labour in Zimbabwe' (Bureau of International Labour Affairs 2013) 827 <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.co.za/&httpsredir=1&article=2809&context=key_workplace> accessed 8 November 2018.

10 Tavonga Njaya and Nelson Mazuru, 'Land Reform Process and Property Rights in Zimbabwe: Constraints and Future Prospects (1980–2002)' (2010) *Journal of Sustainable Development in Africa* see generally 164–181; UNICEF, 'A Situational Analysis on the Status of Women and Children's Rights in Zimbabwe 2005–2010' (2010) <http://www.unicef.org/zimbabwe/SitAn_2010-FINAL_FINAL_01-02-2011.pdf> accessed 22 August 2016.

problems hinder the effective enforcement of legislation.¹¹ The Democratic Republic of Congo (DRC), eSwatini, Kenya, Lesotho, Nigeria and Rwanda, to mention a few, all face some form of socio-economic or political upheaval.¹² Instability negatively affects the implementation of laws in their jurisdictions and in Africa as a whole.

Definitions

The aim of this section is to provide the relevant definitions. Conceptual clarity is important to ensure that all the stakeholders define and interpret terms in the same way.¹³ Deciphering greater conceptual clarity and the translation of terms is furthermore needed to ensure stronger, clearer and more consistent advocacy, policy and laws.¹⁴ The terms defined here are child/childhood, Commercial Sexual Exploitation of Children, child prostitution and child pornography.

Child/Childhood

The United Nations (UN) Convention on the Rights of the Child of 1989 ('the CRC') and the African Union (AU) African Charter on the Rights and the Welfare of the Child of 1999 ('the African Children's Charter') are important sources to consult for the description of the notion 'child/childhood'. Both treaties define a child as a person who is below eighteen years of age.¹⁵ While these international instruments determine eighteen years as the legal age at which the termination of childhood occurs, some scholars oppose this, arguing that childhood does not necessarily terminate upon attaining a certain age.¹⁶ Such scholars argue that, owing to varying circumstances, the vulnerability of children differs from context to context, from child to child and at different ages.¹⁷

The reality in many states is that culture and tradition actually determine when childhood terminates, not the attainment of a particular age.¹⁸ For example, a Xhosa

11 Terence Corrigan, 'Socio-economic Problems Facing Africa: Insights from Six APRM Country Review Report' *Occasional Paper 34* (South African Institute of International Affairs 2009) see generally 1–55.

12 See generally Corrigan (n 11) 1–55.

13 United Nations (UN), *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (UN 2009) 5 <https://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf>accessed 3 July 2018.

14 UN (n 13).

15 Convention on the Rights of the Child 1989, Art 1; African Charter on the Rights and Welfare of the Child 1990 Art 2.

16 Remember Miamingi, 'Constructing a Conception of Childhood in Africa' (LLD thesis, University of Pretoria, 2014) 139; see also Kristen Cheney, 'Killing them Softly? Using Children's Rights to Empower Africa's Orphans and Vulnerable Children' (2012) *International Social Work* 94.

17 Miamingi (n 16).

18 Thoko Kaime, *The African Charter on the Rights and Welfare of the Child: A Socio-legal Perspective* (PULP 2009) 87; see also Dan Chirwa, 'The Merits and Demerits of the African Charter on the Rights

male child in South Africa becomes an adult when he has undergone circumcision rituals, during which he spends several days in the bush and fends for himself through gathering and hunting.¹⁹ Any man who does not go through this process is derogatorily referred to as a 'child'.²⁰ In other cultures, when a person gets married, such a person is no longer referred to as a child.²¹ Limited access to education for girls, and traditional and social norms which dictate that girls are to be married at a young age in order to fulfil their role as wife and mother, play a role in the early termination of childhood.²² Although culture and tradition may provide for differing perceptions of the way childhood terminates, setting age limits provides legal certainty for all children. Setting an upper age limit maximises the protection offered by the international instruments and ensures that the rights set forth apply uniformly and to a large number of children.²³ Consequently, for the purposes of this article, a child is considered to be a person below eighteen years of age. This article prescribes that no child below the age of eighteen should be permitted or forced to participate in child prostitution and child pornography. The nature of the two acts exposes children to severe physical and psychological harm, which severely compromises an ideal childhood.²⁴

Commercial Sexual Exploitation of Children (CSEC)

The commercial sexual exploitation of children (CSEC) is defined as the sexual abuse of a child by an adult.²⁵ It involves a transaction involving payment in cash or kind to the child or a third party.²⁶ Commercial sexual exploitation (CSE) includes the use of children in sex tourism, the trade in sex, prostitution and for sex shows and pornography.²⁷ CSE can also be observed in many forms, including incest, early child

and Welfare of the Child' (2002) *The International Journal of Children's Rights* 158; see Miamingi (n 16) 79–81.

19 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Research and Policy Development Unit, 'Report on Public Hearings on Male Initiation Schools in South Africa 2010' (2010) <<https://www.health-e.org.za/wp-content/uploads/2014/06/CRL-Report-on-Public-Hearings-on-Male-Initiation-Schools-in-South-Africa.pdf>> accessed 5 June 2018.

20 *ibid.*

21 International Centre for Research on Women Girls not Brides, 'Taking Action to Address Child Marriage: The Role of Different Sectors: An Overview' (2016) <<https://www.girlsnotbrides.org/resource-centre/child-marriage-brief-role-of-sectors/>> accessed 8 November 2018.

22 *ibid.*

23 Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers 1999) 57.

24 Action for the Rights of Children (ARC), 'Abuse and Exploitation - Revision Version 04/01 Critical Issues Abuse and Exploitation' 10 <<http://www.unhcr.org/3bb81aea4.pdf>> accessed 5 June 2018.

25 ILO, 'Commercial Sexual Exploitation of Children and Adolescents: The ILO's Response' 1 <http://www.ilo.org/global/docs/WCMS_100740/lang--en/index.htm> accessed 5 June 2018.

26 ILO (n 25).

27 ILO (n 25).

marriages, rape, sodomy and defilement, kidnapping with intent to marry or indecent assault.²⁸

Child Prostitution

The UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 2000 ('Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography') defines child prostitution as the use of a child in sexual activities for remuneration or any other consideration.²⁹ 'Any other consideration' covers, for example, the exchange of sexual services for goods, favours, food, shelter or drugs.³⁰

Child Pornography

Article 2(c) of the Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography defines child pornography as any representation by whatever means of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.³¹ The AU Convention on Cyber Security and Personal Data Protection defines child pornography as

any visual depiction, including any photographic, film, video, image whether made or produced by electronic, mechanical or other means of sexually explicit conduct where

(a) The production of such visual depiction involves a minor

(b) Such visual depiction is a digital image, computer image or computer generated image where a minor is engaging in sexually explicit conduct or when images of their sexual organs are produced or used for primarily sexual purposes and exploited with or without the child's knowledge

(c) Such visual depiction has created, adapted or modified to appear that a minor is engaging in sexually explicit conduct.³²

28 ILO (n 25).

29 The UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000, Art 2; see also Humanium, 'Child Prostitution' <<https://www.humanium.org/en/child-prostitution/>> accessed 8 November 2018.

30 UN (n 13) 9–11.

31 UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000, Art 2(c). For further reading, see *Handbook on the Sale of Children* (n 13) 9–11.

32 African Union Convention on Cyber Security and Personal Data Protection 2014 Art 1.

All these definitions relate to the visual representation of children and focus either on sexually explicit behaviour or on the exhibition of a child's genitals or genital area.³³ Such depiction should appear as if the child is engaged in sexually explicit conduct. The depiction of children in instances that have serious literary, artistic, political or scientific purpose may be exempted from the definition of child pornography and subsequent laws.³⁴ Child pornography can also be referred to as child sexual abuse material.³⁵ It comes in many forms and consists of a recording, usually in still or video, which depicts a child engaged in a sexually explicit activity.³⁶

The Figures

There is little quantifiable data on CSEC as a result of under-reporting.³⁷ Some of the reasons for under-reporting are found in the fact that trading sex for food or other forms of support has become a survival tactic for the most vulnerable populations.³⁸ As a result, people will not speak out or report the abuse for fear of losing much-needed material assistance.³⁹ Under-reporting is also related to the fear of stigmatisation: a victim of abuse often will not speak out for fear of being discriminated against.⁴⁰ As one young girl from Côte d'Ivoire said: 'Your name will be ruined.'⁴¹ This is particularly pertinent for children who are coerced into sex, such as trading sex for food, rather than those forced to have sex. In such cases the child is far more likely to be

33 Ending the Sexual Exploitation of Children International (ECPAT), 'Child Pornography and Sexual Exploitation of Children Online' (3rd World Congress 25–28 November 2008, Brazil) <http://www.ecpat.org/wp-content/uploads/legacy/ECPATWCIIIReport_FINAL.pdf> accessed 5 June 2018.

34 Visual representations of children that predominantly stimulate aesthetic feelings do not qualify as pornography. The image must be viewed objectively and determined as a whole if it has as its predominant purpose the stimulation of erotic feelings. See Schedule 5 of the Films and Publications Act 65 of 1996; see also *De Reuck v Director of Public Prosecutions Witwatersrand Local Division* 2003 CCT5/03 para 32; Hg.org Legal Resources, 'Child Pornography' <<https://www.hg.org/child-pornography.html>> accessed 7 June 2018.

35 ECPAT Online, 'Child Sexual Abuse Material/Child Pornography' <http://www.ecpat.org/wp-content/uploads/legacy/SECO%20Manifestations_CSAM.pdf> accessed 7 June 2018.

36 ECPAT (n 35).

37 UBS Optimus Foundation 'Optimus Study South Africa Technical Report Sexual Victimization of Children in South Africa' (May 2016) 57 <http://www.cjcp.org.za/uploads/2/7/8/4/27845461/08_cjcp_report_2016_d.pdf> accessed 7 June 2018.

38 Corinna Csáky, *No One to Turn to: The Under-reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peace Keepers* (Save the Children 2008) 12.

39 Stephanie Pappas 'Child Abuse: Why People so Often Look the Other Way' (*Live Science*, 2011) <<https://www.livescience.com/17031-penn-state-child-abuse-eyewitness-psychology.html>>.

40 Pappas (n 39).

41 Pappas (n 39).

blamed for and stigmatised by the abuse.⁴² In certain cultures girls and young women lose their dowry value if associated with sexual abuse or sexual relations before marriage.⁴³ Consequently, families will prefer to hide signs and evidence of sexual abuse in order to avoid any reduction in economic returns when receiving a dowry in exchange for their daughters.⁴⁴ The threat of retribution or retaliation is also a major deterrent against reporting abuse. Many children fear reprisals from their parents if they tell them that they themselves have been abused.⁴⁵ Regarding reporting abuse on behalf of others, some children fear being physically attacked by the family of the victim for associating their child with the stigma of abuse.⁴⁶

In most cases people lack knowledge about how to report an allegation of sexual exploitation and abuse.⁴⁷ In some instances, confusion about reporting procedures makes vulnerable groups feel powerless to report instances of abuse.⁴⁸ Victims fear the authorities will not believe them and, furthermore, that they will not receive the support of the child's family.⁴⁹ The lack of effective legal services is another major barrier to reporting abuse.⁵⁰ Many communities experiencing humanitarian crises lack effective police and judicial services to which cases of abuse can be reported.⁵¹ For example, during times of conflict some government services are not available in rebel-held territory. In other cases, the police are cited as being wholly ineffective in receiving reports.⁵²

There is, however, an overwhelming amount of evidence that sexual exploitation and abuse (including the commercial sexual exploitation of children) are massive

42 Beverly Engel, 'Stop Shaming Victims of Sexual Assault for not Reporting: Ten (Understandable) Reasons why Victims of Sexual Assault do not Report' (*Psychology Today*, 2018) <<https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201809/stop-shaming-victims-sexual-assault-not-reporting>> accessed 4 June 2018.

43 Engel (n 42).

44 Mannat Mohanjeet Singh, Shradha Parsekar and Sreekumaran Nair, 'An Epidemiological Overview of Child Sexual Abuse' (2014) *Journal of Family Medical Primary Care* 430–435.

45 Children's Institute Reporting Child Abuse and Neglect, 'What you Need to Know' (Inclusive, Enabling Communities Learning Brief 2015) <<http://www.dgmt-community.co.za/organisations/childrens-institute/learning-briefs/reporting-child-abuse-and-neglect-what-you-need>> accessed 8 November 2018.

46 *ibid* 13.

47 ILO, *Commercial Sexual Exploitation and Trafficking of Children in a Nutshell: A Resource for Pacific Island Countries* (ILO 2014) 28.

48 ILO (n 47).

49 ILO (n 47) 28.

50 Intima Alrimawi, Ahmad Rajeh Saifan and Mohannad AbuRuz, 'Barriers to Child Abuse Identification and Reporting' (2014) *Journal of Applied Sciences*. 2793–2803.

51 Csáky (n 38) 13.

52 Csáky (n 38) 13.

problems.⁵³ Reliable statistics on the sex industry are difficult to come by and are often simply guesses. The ILO estimates that in 2016, 4.8 million people were victims of forced sexual exploitation.⁵⁴ Women and girls accounted for more than ninety-nine per cent of all victims of forced sexual exploitation. More than seventy per cent of victims of forced sexual exploitation occurred in the Asia and the Pacific region, followed by Europe and Central Asia (fourteen per cent), Africa (eight per cent), the Americas (four per cent) and the Arab States (one per cent).⁵⁵ More than one million of the victims of forced sexual exploitation were children under the age of eighteen years.⁵⁶ UNICEF estimates that as many as two million children are sexually exploited around the world annually.⁵⁷

Causes of CSEC?

The purpose of this section is to merely highlight some of the reasons why children are used for CSE. It does not provide an exhaustive list of all the causes but simply highlights some of reasons why children are used for the purposes of CSE. In plain terms there is a demand and a supply for the sexual services of children. Purchasers of commercial sexual acts with children or of child sexual abuse material are normally individual offenders whose interest is to satisfy personal sexually abusive drives, desires and fantasies.⁵⁸ Their reward is direct sexual gratification with the child and the sexual services.

The underlying level of the demand factor relates to the social, cultural, gender and institutional constructs that foster the conditions in which the sexual exploitation of children is either ignored, tolerated or even accepted.⁵⁹

Those factors sustain the market for child sexual exploitation by allowing offenders and facilitators to act with impunity. Adults in particular prefer using children for CSE due

53 UNICEF, 'Analysis of the Situation of Sexual Exploitation of Children in the Eastern and Southern Africa Region: The Vicious Cycle of Sexual Exploitation, HIV/AIDS, Vulnerability of Children and Violations of Children's Human Rights' <https://www.unicef.org/events/yokohama/csec-east-southern-africa-draft.html#_Toc527979960> accessed 5 June 2018.

54 ILO, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage 2017' <https://www.alliance87.org/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf> accessed 5 June 2018.

55 ILO (n 54) 38.

56 ILO (n 54) 38–40.

57 UNICEF, 'Factsheet on Commercial Sexual Exploitation and Trafficking of Children' <https://www.unicef.org/indonesia/Factsheet_CSEC_trafficking_Indonesia.pdf> accessed 5 June 2018.

58 Eliana Riggio and Mark Erik Hecht, 'Power, Impunity and Anonymity Power, Understanding the Forces Driving the Demand for Sexual Exploitation of Children' (2016) ECPAT International Journal 5–9.

59 Jordana Dawson Hayes and Mark Capaldi, 'Tackling the Data Death: The Global Scale of Commercial Sexual Exploitation of Children' (2015) ECPAT International Journal 5.

to the fact that it is easier to abuse a child than another adult. Children are docile and often cannot defend themselves.⁶⁰ They do not complain about poor working conditions because they are afraid of being penalised for any misconduct and are compliant with whatever their treatment happens to be.⁶¹ In this way perpetrators gain control over children by grooming them and offering them excitement, drugs, alcohol, gifts and affection.⁶²

Diseases such as HIV and AIDS have threatened the fabric of societies and families by causing the deaths of millions.⁶³ Such illnesses have left many children orphaned and exposed to exploitation.⁶⁴ Children not only lose their parents, but the intensification of such diseases has also brought about other negative consequences for children. In certain communities, sex with virgins is seen to have restorative or healing powers.⁶⁵ In such cases there is always a demand for younger children to provide sexual services.⁶⁶ Gender-based discrimination also promotes the occurrence of CSEC.⁶⁷ The sexual exploitation of girls is often entrenched in patriarchal structures that endorse male sexual authority and do not disallow the commercialisation of girls and women.⁶⁸ They are often depicted in a subservient position in relation to men and boys, which leads to the negation of the ability of women and girls to make decisions regarding their own sexual and reproductive life.⁶⁹

Structural Adjustment Policies are a set of economic programmes often introduced to states as a condition for gaining a loan from the IMF.⁷⁰ Among other things, these

60 Admassie Assefa, 'Explaining the High Incidence of Child Labour in sub-Saharan Africa' (2002) 14(2) *African Development Review* 263.

61 Faraaz Siddiqi and Harry Patrinos, 'Child Labour: Issues and Causes' (1995) *Human Capital Development and Operations Policy Working Papers* 1–17.

62 *ibid.*

63 UN Aids 'HIV/AIDS Pandemic is Threatening the Fabric of Societies and Families by Causing the Deaths of Millions' <<http://www.unaids.org/en/resources/fact-sheet>> accessed 6 November 2018.

64 Rushiella Songca, 'Theorising Children's Rights as a Multi- and Inter-Disciplinary Field of Study' (2012) *CILSA* 370.

65 Rebecca Tiessen, *Everywhere/Nowhere: Gender Mainstreaming in Development Agencies* (Kumarian Press 2007) 162.

66 *ibid.*

67 Dawson Hayes and Capaldi (n 59) 5–9, see also Shoma Jabeen and Ravi Karkara 'Mapping Save the Children's Response to Violence Against Children in South Asia' (Save the Children, 2006) 10. <<https://resourcecentre.savethechildren.net/sites/default/files/documents/1523.pdf>> accessed 6 June 2018.

68 Dawson Hayes and Capaldi (n 59); see also Jini Roby and Jacob Tanner, 'Supply and Demand: Prostitution and Sexual Trafficking in Northern Thailand' (2009) *Geography Compass* 94.

69 Roby and Tanner (n 68).

70 Structural adjustment policies usually involve a combination of free-market policies such as privatisation, fiscal austerity, free trade and deregulation. See Tejvan Pettinger, 'Structural Adjustment – Definition and Criticisms' (Economics Help, 3 March 2019) <<https://www.economicshelp.org/blog/glossary/structural-adjustment/>> accessed 22 October 2018.

policies are arguably aimed at promoting a more open and efficient economy, which will ultimately help to improve living standards and reduce poverty.⁷¹ Although these Structural Adjustment Programmes are meant to diminish poverty, a great deal of controversy surrounds them and they are said to fuel CSEC.⁷² Most countries in the East and southern African region have experienced severe cuts in government spending on crucial social services such as education.⁷³ This has resulted in immense school dropout rates, because most families are incapable of paying the school expenses for their children. Apart from increasing school dropout rates, this leads to a lack of skills development among children.⁷⁴ Uninformed, ill-educated and ostracised sectors of society provide a sturdy source of children who can simply be pressured or tempted into CSE.⁷⁵ This has been the case in Lao, where the school dropout rates of teenagers were high because of the limited accessibility of secondary schools and the lack of employment opportunities.⁷⁶ Children who are idle are easily lured into or targeted for the purposes of prostitution.⁷⁷ Such recruitment is often coordinated by girls or older women, who receive payment to bring relatives and friends to ‘work’.⁷⁸

Poor governance and civil unrest contribute to the rise of CSEC.⁷⁹ Government corruption aggravates a confusing legislative framework, where those charged with enforcing certain protection measures benefit from the continuing exploitation of children economically or through demanding sexual services.⁸⁰ These include the police and members of the judiciary.⁸¹ The political disorder that has persisted in some countries has furthermore seen large populations of men exploit young girls and boys.⁸²

71 See Pettinger (n 70).

72 UNICEF (n 53).

73 UNICEF (n 72).

74 UNICEF (n 72).

75 UNICEF (n 72).

76 Child Frontiers, ‘Commercial Sexual Exploitation of Children in Lao PDR’ (2011) 23 <https://www.researchgate.net/publication/281244672_The_Commercial_Sexual_Exploitation_of_Children_in_Lao_PDR> accessed 6 November 2018.

77 ibid 23.

78 Child Frontiers (n 76).

79 UNICEF, ‘Analysis of the Situation of Sexual Exploitation of Children in the Eastern and Southern Africa Region’ <https://www.unicef.org/about/annualreport/files/ESARO_AR_2014.pdf> accessed 9 November 2018; Ruth Kasalwe, ‘Bridging the Gap Between Commercial Sexual Exploitation of Children and Responses from Law Enforcement’ (Master’s Dissertation, Kennesaw State University 2014) 30.

80 ECPAT International, *The Commercial Sexual Exploitation of Children in Africa: Developments, Progress, Challenges and Recommended Strategies* (ECPAT International 2014) 6; UNICEF (n 79).

81 UNICEF (n 79).

82 UNICEF (n 79). See also UN *Overview of the Refugee Situation in Africa*, Background Paper for the High-Level Segment of the 65th Session of the Executive Committee of the High Commissioner’s Programme on ‘Enhancing International Cooperation, Solidarity, Local Capacities and Humanitarian Action for Refugees in Africa’ (Geneva, 29–30 September 2014) 4–10 <<http://www.unhcr.org/54227c4b9.pdf>> accessed 1 June 2018.

In conflict or war-torn countries the sexual exploitation of children is used as a tool to demoralise and weaken social and familial cohesion.⁸³ In a survey conducted by a non-governmental organisation (NGO) based in South Sudan and the French embassy it was found that 31 per cent of 159 street girls surveyed were victims of commercial sexual exploitation, a situation reportedly fuelled by the increased presence of soldiers in Juba; some girls involved in prostitution here are just 12 years old.⁸⁴

Individual and family factors such as modernisation and urbanisation have led to the break-up of communities and the disintegration of family structures, leaving children vulnerable.⁸⁵ Unstable homes or broken marriages leave children disturbed and without appropriate support.⁸⁶ Children, in some cases, are neglected by stepparents and run away from home, ending up as prostitutes or child labourers. Another factor that has led to the increase of CSEC is fast-paced high-tech inventions and the increasing accessibility of the internet.⁸⁷ Cameras, laptops and cellphones have greatly influenced who produces videos and images of child sexual-abuse material.⁸⁸ Technology helps perpetrators to offend in their own homes and at their own convenience and thereafter distribute such material to others.⁸⁹

The rapid growth in tourism exacerbates the CSEC. In South East Asia the increased tourist arrivals across the region have generated significant economic growth along with employment opportunities in the travel industry.⁹⁰ Although the economic advantages of tourism are obvious, an array of negative influences has also occurred, including an increase in travelling child sex offenders and in children being coerced into the sex

83 Instituto Promundo Instituto Promundo, 'Hidden Violence: Preventing and Responding to Sexual Exploitation and Sexual Abuse of Adolescent Boys: Case Studies and Directions for Action' (Prepared for OAK Foundation 2012) 12.

84 ECPAT (n 80).

85 Sam George and PC Matthew, 'Families in Crisis: Marital Breakdown in India' <http://familyinamerica.org/files/7615/0609/7301/George_Matthew.pdf> accessed 6 June 2018; Mohammad Sheykhi, 'Development and Divorce: A Sociological Appraisal' (2017) *World Wide Journal of Multidisciplinary Research and Development* 51–54.

86 Patrick Fagan and Aaron Churchill, 'The Effects of Divorce on Children' (Marriage and Religion Research Institute 2012) 3–10.

87 UN Office on Drugs and Crime, 'Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children' (UNODC 2015) <https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf> accessed 3 July 2018.

88 ECPAT Online, 'Child Sexual Abuse Material – The Facts' <<http://www.ecpat.org/news/online-child-sexual-abuse-material-the-facts/>> accessed 6 November 2018.

89 ECPAT (n 88).

90 Deanna Davy, 'Regional Overview: Sexual Exploitation of Children in Southeast Asia' (2017) *ECPAT International Journal* 34 <http://www.ecpat.org/wp-content/uploads/2018/02/Regional-Overview_Southeast-Asia.pdf> accessed 8 November 2018.

sector to satisfy the demand for the sexual exploitation of children in travel and tourism.⁹¹

Impact of CSE on Children

The effect of commercial sexual exploitation on a child is vast and in many cases the damage is permanent. The child loses their childhood, dignity and, in some cases, their future prospects.⁹² In addition, the children's health is comprised because they are exposed to sexually transmitted infections and incurable diseases such as HIV and AIDS.⁹³ The physical effects are also apparent: children are faced with physical abuse—they are beaten, burned, tortured and deprived of food, air, light and movement.⁹⁴ They lose their self-respect and can develop a range of post-traumatic stress symptoms such as depression, aggression and violence, and loss of self-control and self-motivation.⁹⁵ Child prostitutes work in a highly competitive environment where they are expected to show off their outward attractiveness and vibrancy in order to appeal to clients.⁹⁶ Such factors contribute significantly to emotional instability. Children also become exploiters themselves as a result.⁹⁷

International and Regional Prohibition of CSEC (Child Prostitution and Child Pornography)

Child prostitution and child pornography have both been prohibited in several international and regional instruments. The sexual exploitation of children was addressed at an international level for the first time with the adoption of the CRC in

⁹¹ *ibid.*

⁹² IN SITU – the Blog of the SDSU School of Social Work, 'Social Workers and Commercial Sexual Exploitation of Children' <<https://socialwork.sdsu.edu/insitu/adolescentschildren/social-workers-and-commercial-sexual-exploitation-of-children/>> accessed 6 June 2018.

⁹³ Grant, Anna, Peter Grabosky and Fiona David, 'Commercial Sexual Exploitation of Children' (Paper presented at the Children and Crime: Victims and Offenders' Conference convened by the Australian Institute of Criminology, Brisbane, 17–18 June 1999) 6 <<https://pdfs.semanticscholar.org/2731/e0e78e80c88b51d80ffdeff8679e3bd2cb2c.pdf>> accessed 6 June 2018.

⁹⁴ ILO (n 25) 2–3; see also ILO, 'A Shared Responsibility: Workers' Organizations in the Fight Against the Commercial Sexual Exploitation of Children and Adolescents' (2008) 4 <http://www.ilo.org/ipsec/Informationresources/WCMS_IPEC_PUB_9212/lang--en/index.htm> accessed 3 July 2018.

⁹⁵ ARC (n 24).

⁹⁶ Ann-Mari Hesselink-Louw, Christiaan Bezuidenhout and Ronelle Pretorius, 'Child Sex Work: The Nature of Factors Contributing to and Consequences of Child Prostitution' (2002) *Acta Criminologica* 49–50.

⁹⁷ *ibid.*

1989.98 The CRC provides that ‘States Parties should protect the child from all forms of sexual exploitation and sexual abuse.’⁹⁹ It also obligates State Parties specifically to:

take all appropriate national, bilateral and multilateral measures to prevent (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials.¹⁰⁰

In 2002, the UN developed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.¹⁰¹ This Protocol was adopted in response to the grave concern expressed at the significant and increasing international traffic in children for the purposes of child prostitution and child pornography.¹⁰² The Protocol comprehensively defines the terms ‘child prostitution’ and ‘child pornography’. The definitions provide sufficient clarity on which acts ought to be criminalised.¹⁰³ In addition, the Protocol obligates states to criminalise the offering, obtaining, procuring or providing of a child for CSE.¹⁰⁴ It furthermore encourages State Parties to apply criminal and penal sanctions for offences involving CSEC, whether such offences are committed domestically or trans-nationally and whether by an individual or by an organisation.¹⁰⁵ The Protocol makes it clear that to protect children from CSE, Member States need to collaborate with and help one another.¹⁰⁶ Article 6(1) of the Protocol encourages Member States to afford one another the greatest measure of assistance.¹⁰⁷ This provision calls for urgency in investigations of such criminal activities and extradition proceedings for the offenders, and for both these investigations and proceedings to be made a priority.¹⁰⁸ The Protocol, moreover, provides that State Parties must take measures to protect child victims, including their social reintegration and their physical and psychological recovery.¹⁰⁹ Importantly, the

98 United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, ‘25 Years of Fighting the Sale and Sexual Exploitation of Children: Addressing New Challenges’ <<http://www.ohchr.org/Documents/Issues/Children/SR/25YearsMandate.pdf>> accessed 28 May 2018.

99 Article 34 of the CRC.

100 Article 34(a)–(c) of the CRC.

101 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2002.

102 See the Preamble.

103 Michael Dennis, ‘Newly Adopted Protocols to the Convention on the Rights of the Child’ (2000) *American Journal of International Law* 793.

104 See art 3.

105 Article 3(3) and (6).

106 Articles 4 and 5.

107 Article 6(1).

108 Articles 5 and 6.

109 Articles 7 and 8. Article 8 contains rights for children specifically: Procedures that recognise children’s vulnerability and special needs as witnesses, the right to be informed, have their views, needs and

Protocol provides that State Parties to this Protocol should promote awareness among the public by appropriate means, such as education and training about the preventative measures and also the harmful effects of the commercial sexual exploitation of children.¹¹⁰

In 2002 the UN furthermore adopted a treaty that seeks to prevent the trafficking of human beings, with a particular focus on women and children: the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. This treaty supplements the UN Convention against Transnational Organised Crime of 2002 ('the Palermo Protocol'). The Palermo Protocol covers all aspects of trafficking in women and children and provides for the punishment of offenders and the protection of victims.¹¹¹ The coverage is comprehensive and provides for detailed measures relating to this matter that States should adopt. Both the Palermo Protocol and the Protocol on the Sale of Children, Child Prostitution and Child Pornography offer widely accepted and crystallised definitions; together they constitute a clear and important point of reference for national legislative interventions.¹¹²

In its attempts to eliminate the CSEC, the UN is assisted by other international organisations, such as the ILO. The Worst Forms of Child Labour Convention No 182 of 1999 provides that the use of children for the purposes of CSE cannot be tolerated by any member states of the ILO, irrespective of their level of development or national circumstances and, therefore, it cannot be subject to progressive elimination.¹¹³ The ILO clearly indicates that despite children below the age of eighteen years having reached the age of sexual consent, national legislation should not include a freedom for this group to consent voluntarily to engaging in child prostitution or pornography.¹¹⁴

To prevent the use of children in pornography in the African context the AU adopted the African Union Convention on Cyber Security and Personal Data Protection of

concerns presented, privacy and confidentiality of information, safety and protection against intimidation.

110 Article 9(2).

111 Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime 2002; see the Preamble and Art 2.

112 Emanuela Fronza and Kolis Summerer, 'The Implementation of ILO Child Labour Standards in Domestic Legal Systems: The Role of Criminal Law' in Giuseppe Nesi, Luca Nogler and Marco Pertile, *Child Labour in a Globalized World: A Legal Analysis of the ILO Action* (Ashgate Publishing 2008) 303.

113 *ibid.*

114 ILO, Committee of Experts on the Application of Conventions and Recommendations: Concluding Observations for Switzerland (99th ILC Session, 2010) <http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2309396,102861,Switzerland,2009> accessed 3 July 2018.

2014.¹¹⁵ This convention importantly criminalises the act of producing, registering, offering, making available and disseminating child pornography.¹¹⁶ In addition, the convention makes it an offence merely to possess an image or representation of child pornography on a computer or in a computer data storage system.¹¹⁷ This convention, like other international instruments, prescribes that states provide for penalties that punish offenders and also makes provision for redress for victims.¹¹⁸ This convention has been commended by ECPAT International, a global network of organisations in more than 90 countries who work towards eliminating all forms of child sexual exploitation.¹¹⁹ ECPAT praises the convention because it goes to great lengths to criminalise digitally generated child sexual abuse material.¹²⁰ It is furthermore applauded because it criminalises the act of facilitating or providing access to pornographic content to a minor that captures aspects of online grooming and sexual extortion.¹²¹ The AU has commendably adopted a comprehensive instrument which states can use to develop laudable legislation. It is, however, disappointing to note that not all African countries have signed and ratified this instrument. This convention had received only seven ratifications—including those of Senegal and Mauritius—as at June 2018. There seems to be a lack of political will and a lack of awareness of cybercrime in Africa and the inherent complexities of the problem and deficiencies in capacity across the continent.¹²² There are also concerns that the scope of the convention is overly ambitious and too cumbersome, as it deals with many areas of electronic activity beyond cybercrime.¹²³

The International Centre for Missing & Exploited Children (ICMEC) is an organisation committed to undertaking research into national anti-child pornography legislation.¹²⁴ According to ICMEC, legislation must meet the following minimum requirements if it is to constitute an appropriate and effective criminal-law response to the problem of child pornography; that is, the law must:

¹¹⁵ African Union Convention on Cyber Security and Personal Data Protection of 2014.

¹¹⁶ Article 29(3).

¹¹⁷ Article 29(3)(c).

¹¹⁸ Article 29(3)(2).

¹¹⁹ ECPAT, 'What we do' <<http://www.ecpat.org/>> accessed 6 June 2018.

¹²⁰ Fact sheet produced by ECPAT International, 'Fact Sheet Produced by ECPAT International – Programme Combating Sexual Exploitation of Children Online' <<http://www.ecpat.org/wp-content/uploads/2016/04/Sexual-Extortion-Factsheet.pdf>> accessed 6 June 2018.

¹²¹ Article 29(3).

¹²² Eric Tamarkin, 'The AU's Cybercrime Response: A Positive Start, but Substantial Challenges Ahead' (ISS Africa: Policy Brief, 20 January 2015) 4.

¹²³ *ibid.*

¹²⁴ ICMEC, *Child Pornography: Model Legislation & Global Review* (8 edn, US Department of State 2016) <<http://www.icmec.org/wp-content/uploads/2016/02/Child-Pornography-Model-Law-8th-Ed-Final-linked.pdf>> accessed 8 November 2018.

- be specific to child pornography laws—in some countries, law-enforcement agents dealing with offences involving child-abuse materials have to depend on general pornography or obscenity laws;
- provide a clear definition of child pornography;
- create offences specific to child pornography, criminalising the knowing possession of child pornography regardless of one's intent to distribute or not;
- ensure that anyone, including parents and guardians who may offer or use a child for pornography, may face penalties;
- penalise those who may know of child pornography;
- include the criminal liability of children involved in pornography;
- criminalise all computer-facilitated acts and conduct related to the sexual abuse and exploitation of children—computer-facilitated offences should include the creation, production, possession and distribution of child-abuse materials as well as the use of computer facilities for making financial transactions related to child-abuse materials, and the grooming and luring of children for sexual gratification; and
- require internet service-providers (ISPs) to report suspected child pornography to the law-enforcement authorities or to some other mandated agency.¹²⁵

The various instruments discussed above are therefore legally binding on State Parties upon ratification, and once ratified such treaties should be incorporated into the municipal laws of State Parties. Notwithstanding the foregoing, however, it is submitted that legislation alone is not sufficient to curb this problem and to that effect, therefore, a multi-faceted approach must be adopted that includes practical measures to complement and enforce legislation.¹²⁶ The UN Special Rapporteur (2001–2008), Juan Miguel Petit, concluded that for prevention to be effective it is fundamental to have

political will; a sound knowledge base; an institutional presence; a multidisciplinary approach and coordination between different institutions; the participation of children and their families; outreach to the grass-roots level, especially to marginalised groups;

¹²⁵ *ibid.*

¹²⁶ Rufaro Mavunga, 'A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999' (2013) PELJ 614.

attention to gender issues and the concerns of groups exposed to higher risks of sexual exploitation, as well as adequate human and financial resources.¹²⁷

Ratification of International Instruments in South Africa, Uganda and Zimbabwe

The table below indicates the years in which these three State Parties of the AU ratified a number of key international instruments aimed at combating the sexual commercial exploitation of children:

International instrument	South Africa	Uganda	Zimbabwe
CRC	1995	1990	1990
UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	2003	2001	2012
Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the UN Convention against Transnational Organized Crime	2004	Not ratified*	2013
ILO Convention No 182	2000	2001	2000
African Children's Charter	2000	1994	1995
AU Convention on Cyber Security and Personal Data Protection	Not ratified*	Not ratified*	Not ratified*

* As at June 2020

How do international instruments become binding laws in these states? In South Africa, section 231(4) of the Constitution provides that international agreements become law only when enacted into law by national legislation.¹²⁸ South Africa therefore follows a dualistic approach to the application of conventions in its municipal law.¹²⁹ dualism regards international and municipal law as separate legal systems¹³⁰ and international law must be adopted in municipal law in order to convert international agreements into

127 United Nations Website, 'Special Rapporteur on the Sale and Sexual Exploitation of Children' <<https://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx>> accessed 27 June 2018.

128 Section 231(4) of Constitution of the Republic of South Africa, 1996.

129 John Dugard, *International Law: A South African Perspective* (Juta 2009) 54; see also Retselisitsoe Phooko, 'Legal Status of International Law in South Africa's Municipal Law: *Government of the Republic of Zimbabwe v Fick and Others* (657/11) [2012] ZASCA 122' (2014) *African Journal of International and Comparative Law* 409.

130 Erika de Wet, 'The Reception Process in The Netherlands and Belgium' in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (Oxford University Press 2008) 229–306. She analyses the relationship between domestic and international law in The Netherlands and Belgium.

binding rules in the municipal sphere.¹³¹ With regard to customary international law, South Africa follows a monist approach:¹³² customary international law is law applicable in the republic unless it is inconsistent with the Constitution or an Act of Parliament.¹³³ Uganda follows a dualistic approach to the adoption of international law in its domestic order.¹³⁴ Its legislation, however, indicates that Uganda is not exclusively dualistic:¹³⁵ it makes allowance for the direct application or the possibility of self-executing treaties in some circumstances.¹³⁶ Zimbabwe follows a strict dualistic approach regarding the status of international conventions in its legal system:¹³⁷ the Constitution provides that ‘the State must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law.’¹³⁸

Legislative Analysis of the Prohibition of Child Pornography in South Africa, Uganda and Zimbabwe

South Africa

South African law offers strong protection against and in fact exceeds the international standards for banning the creation, possession and distribution of child pornographic images. The Criminal Law (Sexual Offences and Related Matters) Amendment Act defines child pornography as any means, any image, however created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of eighteen years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic feelings.¹³⁹ Any person who manufactures, produces and assists in the creation of child

131 Werner Scholtz, ‘A Few Thoughts on Section 231 of the South African Constitution, of 1996: Notes and Comments’ (2004) *South African Yearbook of International Law* 205.

132 Section 233 of the Constitution (n 128); see also Erika de Wet ‘The Reception of International Law in the South African Legal Order: An Introduction’ in Holger Hestermeyer and Rüdiger Wolfrum (eds), *The Implementation of International Law in Germany and South Africa* (PULP 2015) 36.

133 Section 232 of the Constitution.

134 Henry Onoria, ‘Uganda’ in Dinah Shelton (ed), *International Law and Domestic Legal Systems: Incorporation, Transformation and Persuasion* (Oxford University Press 2011) 595.

135 Onoria (n 134) 607. See also *Uganda Law Society v Attorney General Constitutional Petition no 2 and 8/2002* (2009) UGCC 1 (CC).

136 For example, s 28 of the Refugees Act 21 of 2006 provides for the direct applicability of international law.

137 Sections 3(b) and 327 of Constitution of Zimbabwe Amendment Act 20 of 2013; see also Gift Manyatera ‘Oxford Constitutions of the World Country Report on the Republic of Zimbabwe’ <<http://www.icla.up.ac.za/country-reports>> accessed 7 June 2018; Torque Mude, ‘The History of International Human Rights Law in Zimbabwe’ (2014) *Journal of Social Welfare and Human Rights* 83; see also Pierre-Hugues Verdier and Mila Versteeg, ‘Law in National Legal Systems: An Empirical Investigation’ (2015) *American Journal of International Law* 521.

138 Section 34 of Constitution of Zimbabwe Amendment Act (n 137).

139 Section 1 of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (as amended by Act 43 of 2013). It further provides that including any such image or description of such

pornography is guilty of a sexual offence.¹⁴⁰ The Criminal Law (Sexual Offences and Related Matters) Amendment Act contains some unique provisions: a person who unlawfully and intentionally engages with or offers a child, with or without the consent of the child, for financial or other reward, favour or compensation, irrespective of whether the sexual act is actually committed or not, is guilty of a crime.¹⁴¹ This Act also criminalises those who have control over any movable or immovable property and intentionally allow or knowingly permit such property to be used for the purposes of the commission of a sexual act with a child.¹⁴² Section 18 of the Act importantly prohibits the sexual grooming of children. Any person who supplies a child with child pornography with the intention of encouraging, enabling, instructing or persuading a child to perform a sexual act is guilty of the crime of sexual exploitation.¹⁴³

Similarly, to provide extensive protection against the use of children in child pornography, the Films and Publications Act was enacted.¹⁴⁴ This Act defines child pornography as including any image, however created, or any description of a person, real or simulated, who is depicted or described as being under the age of eighteen years, primarily engaged in sexual conduct and, in addition, participating in or assisting another person in sexual conduct and, finally, showing or describing the body parts of such person in a manner or in circumstances which, in context, amounts to sexual exploitation or in such a manner that is capable of being used for the purposes of sexual exploitation.¹⁴⁵ This definition corresponds to the that of child pornography found in the Criminal Law Sexual Offences Act.

person: (a) engaged in an act that constitutes a sexual offence; (b) engaged in an act of sexual penetration; (c) engaged in an act of sexual violation; (d) engaged in an act of self-masturbation; (e) displaying the genital organs of such person in a state of arousal or stimulation; (f) unduly displaying the genital organs or anus of such person; (g) displaying any form of stimulation of a sexual nature of such person's breasts; (h) engaged in sexually suggestive or lewd acts; (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature; (j) engaged in any conduct or activity characteristically associated with sexual intercourse; (k) showing or describing such person – (i) participating in, or assisting or facilitating another person to participate in; or (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or (l) showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violates or offends the sexual integrity or dignity of that person or any category of persons under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons.

¹⁴⁰ Section 17.

¹⁴¹ Section 17.

¹⁴² Section 17.

¹⁴³ Sections 18 and 19.

¹⁴⁴ Films and Publications Act 65 of 1996 as amended by Act 3 of 2009.

¹⁴⁵ Section 1 of the Films and Publications Act (n 144).

The Films and Publications Act, in its reference to child pornography excludes bona fide scientific, documentary and literary work.¹⁴⁶ Artistic publications are exempt unless they contain a visual presentation of child pornography.¹⁴⁷ Any image that predominantly stimulates aesthetic feelings does not qualify as pornography.¹⁴⁸ The image must be viewed objectively and determined as a whole if it has as its predominant purpose the stimulation of erotic feelings.

But how is one to determine whether the predominant purpose of an image is to stimulate erotic rather than aesthetic feelings in the target audience? Evidence of the intention of the author is irrelevant in this determination: the purpose must be determined from the perspective of the reasonable viewer.¹⁴⁹ In *De Reuck v Director of Public Prosecutions* the court held that the image will not be child pornography unless one or more of the four prohibited acts listed below is explicitly depicted:

- a child engaged in sexual conduct;
- a child engaged in a display of genitals;
- a child participating in sexual conduct, and
- a child assisting another person to engage in sexual conduct.¹⁵⁰

Sexually explicit texts or nude or partially nude images of minors sent to other minors may, in some instances, be classified as child pornography.¹⁵¹ Sending and sharing nude or semi-nude photographs or videos and/or sexually suggestive messages via mobile phone-texting or instant messaging ('sexting'—see below) between children, therefore, depending on the content, may also fall within the ambit of the prohibition of possessing or creating, producing and distributing child pornography.¹⁵²

Child pornography is a growing concern in South Africa, as is evidenced by the increasing number of arrests for related offences. While the true extent of this criminal practice remains unknown, the numerous child pornography rings dismantled in recent years (six in 2010 alone) reflect its pervasive nature.¹⁵³ The government is blamed for

146 Schedule 5 of the Films and Publications Act (n 144); see also *De Reuck v Director of Public Prosecutions Witwatersrand Local Division* 2003 CCT5/03 at para 32.

147 *De Reuck* (n 146).

148 *De Reuck* (n 146).

149 *De Reuck* (n 146).

150 *De Reuck* (n 146).

151 Department of Justice and Constitutional Development (Brochure) <<http://www.justice.gov.za/brochure/2014-cyber-bullying.pdf>> accessed 7 June 2018.

152 *ibid*.

153 ECPAT, 'Status of Action Against Commercial Sexual Exploitation of Children in South Africa' (2013) 14 <http://www.ecpat.org/wp-content/uploads/2016/04/a4a_v2_af_s.africa_0.pdf>.

showing insufficient political will to combat child pornography, but it is becoming increasingly difficult to eliminate, owing to the accessibility of the internet. The creation and distribution of child pornography is growing at an alarming rate in South Africa because of improved access to information and communication technology.¹⁵⁴ ‘The number of images involving the severe abuse, including the penetrative and sadistic sexual abuse of younger children, has quadrupled.’¹⁵⁵ Parents who innocently post pictures on social media of their children in the bath on a family holiday often have those photographs stolen from the web: their children’s heads are morphed onto pages where a child is being abused in order to create child pornography.¹⁵⁶ As the incidence increases, the police have intensified investigations and the courts have punished the perpetrators.¹⁵⁷ In 2015 the Minister of Police reported that there had been forty-six arrests and the police had further identified another thirty suspects who were to be arrested. The Minister of Police stated that some suspects had already been convicted while others were on trial in various courts around the country.¹⁵⁸

Sexting, that is, sending or receiving sexually explicit or sexually suggestive images or video via a cellphone, talking to and meeting strangers, and online grooming, are also common risks faced by South African children.¹⁵⁹ The Wireless Application Service Providers’ Association (WASPA) has reported that twenty-two per cent of teen girls and twenty per cent of boys have sent nude or semi-nude photos of themselves over the Internet or their cellphones.¹⁶⁰

Uganda

In order to prohibit the use of children in pornography, Uganda adopted the Anti-Pornography Act of 2014. Pornography in Uganda means any representation through publication, exhibition, cinematography, indecent show or information technology, by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person primarily for sexual excitement.¹⁶¹

154 Department of Social Development, ‘South African Integrated Programme of Action Addressing Violence against Women and Children 2013–2018’ (2014)
<http://www.dsd.gov.za/index2.php?option=com_docman&task=doc_view&gid=607&Itemid=39>
accessed 7 June 2018.

155 Sloane Hunter, ‘South Africa has a Serious Child Porn Problem’ (*Crime, Lifestyle, Sex, South Africa*)
<<http://www.2oceansvibe.com/2018/04/25/south-africa-has-a-serious-child-porn-problem/>> accessed
7 June 2018.

156 *ibid.*

157 *De Reuck* (n 146) para 32 of the judgment; *S v Koralev & Another* 2006 (2) SACR 298 (N).

158 Statement by the National Commissioner, Riah Phiyega, at the Gauteng SAPS Provincial Office, 10 September 2015 <<http://www.saps.gov.za/newsroom/msspeechdetail.php?nid=5950>> accessed 7 June 2018.

159 ECPAT (n 153) 16.

160 ECPAT (n 153) 16.

161 Section 2 of the Anti-Pornography Act 2014.

The legislation does not describe or define what is meant by ‘real or simulated explicit sexual activities’. The legislation also does not define what is meant by ‘sexual parts’ and therefore leaves room for misinterpretation.¹⁶² The lack of a description of pornography or, at best, a vague description of pornography in the Anti-Pornography Act, as well as the debate about the Anti-Pornography Act, apparently leads one to believe that it can include dress styles:¹⁶³ this legislation is said to ban the wearing of mini-skirts and has led to the stripping of fifty women by unruly individuals.¹⁶⁴ There is not enough awareness of or transparency about the Anti-Pornography Act.¹⁶⁵ It has encouraged the violence and instances of mob justice inflicted on women. Uganda therefore needs to clarify at least what is meant by the term ‘sexual parts’.

The Anti-Pornography Act prohibits the production, publication, broadcast, import, export, selling or abetting of, and trafficking in, any form of pornography.¹⁶⁶ Article 14(1) of this Act provides that a person who produces, participates in the production of, trafficks in, publishes, broadcasts, procures, imports or exports pornography depicting images of children commits an offence and is liable to a fine or imprisonment not exceeding 15 years, or to both the fine and imprisonment.

The Ugandan legislation provides penalties for the crime, which is commendable, but such sentencing provisions do not seem to take into account aggravating factors such as the number of images manufactured or the severity of the offender’s criminal record and the risk that an offender may pose to the community.¹⁶⁷ Uganda has created a register of pornography offenders: A list of names of every person convicted of an offence under the Anti-Pornography Act.¹⁶⁸ A person who contravenes such provisions is liable upon conviction to a fine or imprisonment.

The Anti-Pornography Act focuses on the adult offender and does not seem to adequately foresee the possibility of children being the offenders. It is not clear from the legislation whether children who text or send nude pictures of themselves may be placed on the register of pornography offenders, or will be referred to the diversion process. The law does not differentiate between adult and child offenders, nor that

162 Section 2.

163 CIPESA ICT, ‘How Recently Enacted Laws Undermine Ugandan Citizens’ Rights’ (Policy Briefing Series 2014) <http://www.cipesa.org/?wpfb_dl=158> accessed 7 June 2018; see also Editorial Staff, ‘Confusion over Uganda’s “Miniskirt Ban” Leads to Public Attacks on Women’ (*The Guardian*, 24 February 2014) <<https://www.theguardian.com/fashion/fashion-blog/2014/feb/28/uganda-miniskirt-ban-attacks-women>> accessed 7 June 2018.

164 CIPESA ICT (n 163) 2.

165 Julia Vorholter, ‘Homosexuality, Pornography and Other “Modern Threats” – The Deployment of Sexuality in Recent Laws and Public Discourses in Uganda’ (2017) *Critique of Anthropology*. 103–105.

166 Section 13 of the Anti-Pornography Act (n 161).

167 Sections 13 and 14.

168 Section 24.

children consensually sharing their own pictures may be found guilty of manufacturing, possessing and distributing child pornography. The relevant laws need to decriminalise the criminal liability of children who create such content.

The legislation seeks to protect children from being exploited for the purposes of pornography; it does not clarify the position when pornography is not used for the purposes of sexual excitement but for bona-fide reasons, such as documentaries. The Ugandan legislation also does not seem to criminalise online grooming offences. ‘Online grooming’ refers to the use of the internet or other digital technologies to facilitate either online or offline sexual contact with someone under the age of eighteen years.¹⁶⁹ It represents the initial actions used to abuse a child sexually by developing a relationship with the child.¹⁷⁰ As the relationship develops, the offender may show a child pornography, or sexually explicit photos to desensitise it to sexual activity and to normalise the behaviour.¹⁷¹ Showing such pornographic material can arouse inquisitiveness in a child upon which it will probably engage in sexual encounters. Uganda’s legislation not only punishes any attempt to harm a child sexually as a crime; the legislation waits for the crime to be completed so as to punish the offender. Punishing attempted crimes can serve as an early warning to an offender who is put on notice from their first misstep that even incomplete crimes against children will not be tolerated.¹⁷²

Uganda has established the Uganda Pornography Control Committee which has, among other things, the important role of ensuring the early detection of pornography and ensuring that perpetrators are brought to account.¹⁷³ The members of this committee consist of a chairperson and representatives from the media, cultural and religious leaders, publishing houses, arts and entertainment industry, education professionals and health professionals. The committee seems to neglect very important IT professionals who may uncover child pornography during the course of their work: IT professionals may find child pornography while repairing or servicing computers, monitoring social networking websites or apps.¹⁷⁴ It is critical that the Ugandan government also include IT professionals on this committee.

To overlap with the Anti-Pornography Act, the Penal Code penalises the trafficking of obscene publications.¹⁷⁵ The Penal Code provides that any person who, for the purposes of trade or distribution or public exhibition, makes, produces or has in their possession any obscene writings drawings, prints, paintings, printed mater, pictures, posters,

169 ICMEC (n 124)

170 *ibid* 4.

171 *ibid* 4.

172 *ibid*.

173 Sections 3–7 of the Anti-Pornography Act (n 161).

174 ICMEC (n 124) 5.

175 Section 166 of the Penal Code of 1950 as amended by Act 8 of 2007.

emblems, photographs, cinematographic films or any other obscene objects tending to corrupt morals, commits a crime.¹⁷⁶ By adopting this legislation and providing for a sanction, Uganda complies to a certain extent with its obligations under international law to prohibit the use of children for the purposes of prostitution and pornography.

Despite the existence of the relevant laws, pornography circulates in Uganda in the form of magazines and newspapers, on the internet and in places of entertainment such as bars.¹⁷⁷ Children are used to produce pornographic materials and strip in karaoke dance groups that entertain revellers in popular drinking outlets in Uganda.¹⁷⁸ Teenagers are surfing for pornography in internet cafes, the owners of which are either indifferent or do not adequately monitor what the children are watching.¹⁷⁹ Some of the challenges in implementing the legislation are that the number of children who are sexually exploited is not known owing to the hidden nature of the practice.¹⁸⁰ Children exploited in commercial sex suffer such exploitation at the hands of caregivers, who can be parents/guardians, teachers and others who are responsible for looking after children.¹⁸¹ It is difficult to protect children when those who are their custodians violate their rights: such cases often go unreported.¹⁸²

Zimbabwe

According to the Censorship and Entertainment Act, no person can have in his possession any publication, picture, statue, record, video or film that is indecent, obscene or prohibited.¹⁸³ Any person in possession of such material is guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment. In addition, the Censorship Act provides that a publication, picture, statue or record shall be deemed to be undesirable if it or any part of it is indecent or obscene or is offensive or harmful to public morals.¹⁸⁴ By implication, this legislation can be said to refer to the possession

176 Section 166.

177 Uganda Youth Development Link, 'Commercial Sexual Exploitation of Children in Uganda: A Critical Review of Efforts to Address CSEC 2005–2011' 7 <<https://ssa.riselearningnetwork.org/wp-content/uploads/sites/5/2015/12/CSEC-in-Uganda-2011-UYDEL-booklet-23-08-2011pdf-20111206-115302.pdf>> accessed 9 November 2018.

178 *ibid.*

179 *ibid.*

180 *ibid.*

181 Ministry of Gender, Labour and Social Development Uganda (MGLSD), *Elimination of the Worst Forms of Child Labour Making Schooling the Principal Occupation of Children* (International Labour Organisation 2018) <<http://www.ilo.org/ipecinfor/product/viewProduct.do;jsessionid=38a956b00b503096a2dcafc140aca12df3528bb63a35416a50eb6f58da19c616.e3aTbhuLbNmSe3qRaO0?productId=20616>> accessed 7 June 2018.

182 *ibid.*

183 Section 27 of the Censorship and Entertainments Control Act Chapter 10:04 of 1967.

184 Section 13.

of pornography. This Act does not, however, define or express what is meant to be obscene, offensive or harmful, which means that this law can easily be misinterpreted. It does not spell out the exposure of the sexual parts of a child as the reason for the undesirability and this is not sufficient to prohibit child pornography adequately.

The Children's Protection and Adoption Act, in section 10(1)(d), stipulates that any person who causes any child to perform or be exhibited in any way for public entertainment in a manner likely to be detrimental to the child's health, morals, mind or body, commits an offence.¹⁸⁵ Such a person will be liable to a fine or to imprisonment.¹⁸⁶ Section 8 of the Act makes it an offence to cause or induce a person under eighteen to commit 'immoral acts',¹⁸⁷ but the Children's Protection and Adoption Act does not mention or indicate the meaning of 'immoral acts', although these can be interpreted broadly as including child pornography.¹⁸⁸ The law seems to focus more on the immorality rather than on the exploitation and abuse that has occurred. The laws discussed above do not criminalise the use of children for the purpose of child pornography in line with international law. The Trafficking in Person Act defines child pornography as including any representation, through publication, exhibition, cinematography, electronic means or any other means whatsoever, of a person engaged in real or simulated explicit sexual activities or any representation of the 'sexual part' for primarily sexual purpose.¹⁸⁹ If a child is trafficked for the purposes of pornography, such a person is considered a victim and will not be charged with a crime.¹⁹⁰ But this particular Act does not go beyond this in criminalising child pornography.

The laws discussed immediately above do not specifically define child pornography and the immoral acts do not specifically include computer- or internet-specific terminology. The legislation does not criminalise the depiction of children engaged in real or simulated sexual conduct. The laws also do not criminalise the possession of child pornography nor do they ensure that criminal penalties are levelled against parents or legal guardians who use children in such activities. There are no grooming provisions and neither are there any mandatory reporting requirements for healthcare and social services. Zimbabwe seems to be lagging behind in anti-child pornography laws.

185 Section 10(1)(d) of the Children's Protection and Adoption Act 22 of 1971 as amended by Act 23 of 2001.

186 Section 10(1)(d).

187 Section 10(1)(d).

188 ILO, Committee of the Experts on the Application of Conventions and Recommendations and Direct Request Zimbabwe (101st ILC Session, 2012) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0:::P13100_COMMENT_ID:2700658> accessed 7 June 2018.

189 Section 2 of the Trafficking in Persons Act 4 of 2014.

190 Section 3(4).

To try to comply with international standards on the prohibition of child pornography, Zimbabwe drafted the Cyber Security and Data Protection Bill 2019 which, if it does become an Act of parliament, will be the first piece of legislation that to a certain extent provides better legislative protection to children regarding child pornography. Section 35 of this Bill defines child pornography as follows:

as any representation through publication, exhibition, cinematography, electronic means or any other means whatsoever of a child engaged in real and simulated explicit sexual activity or any representation of the sexual parts of a child primarily for sexual purposes.

This Bill commendably includes representation through a wide variety of platforms such as electronic or any other means whatsoever possibly including cell phones. Although the Bill ought to be commended for its attempts to criminalise child pornography it still has some shortcomings that must be addressed to bring the law in line with international trends. This definition seems to be a bit too narrow, seeming to refer to sexually explicit conduct only. The legislation does not define what is meant by sexually explicit conduct. In South Africa, in contrast, ‘sexual conduct’ includes:

- (i) male genitals being displayed in a state of arousal or stimulation;
- (ii) the undue display of genitals or of the anal region;
- (iii) masturbation;
- (iv) bestiality;
- (v) sexual intercourse, whether real or simulated, including anal sexual intercourse;
- (vi) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, with or without any object;
- (vii) the penetration of a vagina or an anus with any object;
- (viii) oral genital contact; or
- (ix) oral anal contact.

In a similar degree of detail, Zimbabwe needs to express clearly, through its legislation, what is meant by ‘sexually explicit conduct’. The Bill does not, in its definitions section, include a child participating in or assisting another person to participate in sexual conduct.

Section 165 of this Bill commendably, criminalises the production, procurement, distribution and possession of child pornography. This Bill furthermore provides that for such offences a person will be liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.¹⁹¹ In addition, section 165A criminalises exposing children to pornography including making pornographic material available or facilitating access to any child. Commendably the Bill prohibits the grooming of children and expressly prohibits making child pornography available to children.¹⁹²

The Bill does not, however, expressly provide for the fact that a child who has been used for pornographic materials is a victim and should be treated as such. Legal provisions should be enacted that allow for the protection of child victims as witnesses in any judicial hearings. The Bill also does not address child pornography for a bona-fide law-enforcement purposes. This is yet another example of the Bill's narrow construction; moreover, it does not, as the South African Act expressly address the matter of child pornography created for literary, documentary or bona-fide purposes which is intended to arouse aesthetic, not sensual feelings.

In sum, Zimbabwe needs to reconsider some of the legislative provisions relating to child pornography, because of their vagueness and lack of comprehensiveness. The Bill is indeed a step in the right direction, but Zimbabwe should learn lessons from the South African legislative framework.

More and more children seem to be exposed to pornography in Zimbabwe. Children have fallen prey to online criminals.¹⁹³ The problem is that those who sell pornography have devised tricks that have made it possible for them to play hide-and-seek with the law-enforcers.¹⁹⁴ In some instances, child pornography is posted on social media platforms such as Facebook, Twitter, Instagram and WhatsApp.¹⁹⁵ Such images and videos are either liked or further distributed to others, even though such content encourages the sexual exploitation of children.¹⁹⁶ Also, as a result of the hype surrounding social media, society is growing accustomed to 'revenge porn', and many

¹⁹¹ Section 165 A.

¹⁹² Section 165 A (b).

¹⁹³ Pauline Hurungudo 'Porn Addiction Hits Zimbabwe' (*Daily News*, 14 October 2018) <<https://www.dailynews.co.zw/articles/2018/10/14/porn-addiction-hits-zimbabwe>> accessed 8 November 2018.

¹⁹⁴ Editorial Staff, 'The Porn War in Zimbabwe' (*Sunday Mail*, 17 August 2014) <<http://www.sundaymail.co.zw/leisure-4-17-august-2014-the-porn-war/>> accessed 7 November 2018.

¹⁹⁵ 'Child Pornography goes Viral on Facebook' (*Bulawayo News*, 23 March 2013) <<https://bulawayo24.com/index-id-technology-sc-internet-byo-27917-article-Child+pornography+goes+viral+on+Facebook.html>> accessed 9 November 2018.

¹⁹⁶ *ibid*.

young women and teenage girls have been violated in this manner by scorned lovers.¹⁹⁷ In April 2018 a woman went to the extent of committing suicide after a sex tape she had produced with her lover had gone viral.¹⁹⁸ For these and similar reasons, societal attitudes regarding child pornography in Zimbabwe need to be responded to earnestly to protect both women and children.

Assessment and Recommendations as of 2020

As at June 2020, none of the three countries had signed the AU Convention on Cyber Security and Personal Data Protection of 2014. These countries are urged to sign and ratify this particular convention and thereafter adopt the provisions in their national legislative frameworks. This convention lays a progressive foundation that can encourage government and other stakeholders to enhance their approach to child pornography. Preferably, these countries should collaborate with one another to harmonise their laws against child pornography and they should be forging joint strategies that identify and punish offenders effectively.

Furthermore, all three countries in this study are encouraged to adopt the suggestions provided by the International Youth Advisory Congress on Online Safety (IYAC) of 2008.¹⁹⁹ Among some of its suggestions, the IYAC urges that an industry advisory panel regarding online safety be established comprising youths and industry leaders who should represent their countries and government bodies and report on current issues in this area.²⁰⁰ Governments are also encouraged to use their combined influence to pressurise the media and industry to implement online safety measures. Teachers, politicians, parents and other adults should be educated to enhance their understanding of online safety issues and to enable them to pass their wisdom on to other adults. All three countries should also find ways to act against the phenomenon of children who produce sexual content.²⁰¹ Sexting is particularly problematic because children do not appreciate the possible consequences of their actions, especially since it renders children vulnerable to becoming victims of sexual extortion,²⁰² cyber bullying and sometimes

197 Francis Mupazviriho, 'Dilemma of Social Media, Child Protection' (*Herald*, 25 September 2017) <<https://www.herald.co.zw/dilemma-of-social-media-child-protection/>> accessed 8 November 2018.

198 Talent Gondo, 'Terrence Sex Tape Latest: Full Name of Culprit who Caused Girlfriend to Commit Suicide Revealed' (*ZimEye*, 18 April 2018) <<https://www.zimeye.net/2018/04/18/name-of-man-who-caused-girlfriend-commit-suicide-revealed/>> accessed 9 November 2018.

199 International Youth and Advisory Congress (IYAC) on Online Safety of 2008. <<https://www.canada.ca/en/news/archive/2008/07/young-canadians-attend-international-youth-advisory-congress-online-safety-security-conference.html>> accessed 7 June 2018.

200 *ibid*.

201 Monica Bulger, Patrick Burton, Brian O'Neill and Elisabeth Staksrud, 'Where Policy and Practice Collide: Comparing United States, South African and European Union Approaches of Protecting Children Online' (2017) *New Media and Society* 759.

202 Sexual extortion is blackmailing a person with the help of images of that person in order to extort sexual favours, money or other benefits from them under the threat of sharing the material beyond the

having their pictures copied or used in collections of child sexual abuse material.²⁰³ Children therefore need to be educated about the risks and potential consequences of sexting. Governments should cooperate with internet service providers to prevent the circulation of sexting content online and with mobile operators to ensure that appropriate measures are implemented to ensure collaboration with the authorities when required.²⁰⁴

In South Africa the law contains broad definitions of child pornography and the various modes by which child pornographic images can be created and distributed. With the enactment of the Criminal Law Sexual Offences Act, South Africa has also introduced new offences, namely, the exposure or display of child pornography to children and the sexual grooming of children. South Africa is one of the few countries that regulates internet service providers and requires them to take measures to prevent access to child pornography. It is an example that should be emulated.

In connection with child pornography and child sexual exploitation, Zimbabwe uses terms such as ‘immoral’, ‘obscene’ and ‘harmful’. Although the international instruments do not prescribe the terminology Member States should use, it is advisable for Zimbabwe to use terms that are widely used in order to dispel any doubts about its prohibition of child pornography. The absence of the correct terminology affects the levels of protection aimed at eradicating the sexual exploitation of children. In addition, the use of non-universal terms has an adverse effect on data collection and also on the identification of different types of victim. It furthermore results in imprecision; and advocacy work is undermined by the confusion arising from the use of non-standard language and terms.²⁰⁵ Moreover, Zimbabwe needs to adopt the language that accurately describes the phenomena that we are addressing and makes clear that, in the context of sexual violence against children, the child is never the culprit but the person in need of protection.²⁰⁶ The Zimbabwean laws currently in place are not specific to child pornography, nor do they adequately define child pornography. Nor do the current laws specifically criminalise computer-facilitated offences or simple possession of offensive materials or the devices used to create or distribute them. The contemplated Cyber Security and Data Protection Bill addresses the matters surrounding computer-

consent of the depicted person, eg posing the images on social media. ECPAT, ‘Online Child Sexual Exploitation: A Common Understanding’ (ECPAT International 2017) <http://www.ecpat.org/wp-content/uploads/2017/05/SECO-Booklet_ebook-1.pdf> accessed 12 June 2018.

203 ECPAT International (n 203) 13.

204 ECPAT International (n 203).

205 ECPAT International, *Handbook for the Translation and Adaptation of the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* (ECPAT International Thailand 2017) 16–23.

206 ECPAT International (n 206).

facilitated offences, but this Bill should be revised further before it becomes an Act of Parliament because it still contains some loopholes.

Uganda, like Zimbabwe, should also do more to improve its legislation dealing with child pornography and commercial sexual exploitation. In the first place, its legislation does not adequately describe child pornography and as one outcome of this, people have acted violently towards women who have worn mini-skirts. In Uganda the possession or production of pornography per se, whether its content is adult or child, is not permitted. But the legislation does not in any way address the lack of criminal liability of children who are involved in the creation or distribution of pornography; also, the legislation does not clearly indicate that the child should be considered a victim in such circumstances. The legal provisions that allow for the child as victim should differentiate between adult and child offenders and should ensure that the child offenders are treated in a manner consistent with the promotion of the child's sense of dignity. It is crucial that there be conceptual clarity regarding the issue of pornography in Uganda.

Both Uganda and Zimbabwe should take a leaf out of South Africa's book regarding the legislative framework of child pornography and commercial sexual exploitation. South Africa's legislation is praiseworthy, although the South African authorities appear to lack the political will to implement the different legislative frameworks.

Conclusion

The instruments that seek to prohibit CSEC complement one another and ultimately seek to prioritise and eliminate it as a matter of urgency. South Africa has commendable legislation that prohibits the exploitation of children for the purposes of pornography. In Uganda the use of children in this manner has been sufficiently addressed in the Anti-Pornography Act, which prohibits the use and procurement of children for the purposes of pornography and proposes penalties for contravening such laws. In Uganda, however, the government needs to dispel certain misconceptions about the relevant legislation. In Zimbabwe, the use of children for the purposes of pornography is not adequately outlawed: for one thing, the legislation uses terminology such as 'immoral acts' that is not in line with that adopted in international instruments. It is advisable, therefore, for Zimbabwe to use universally agreed-upon terminology in order for its legislation to dispel any doubts about the prohibition of child pornography.

Part B

Part B analyses the extent to which the three countries of choice have incorporated the international instruments prohibiting child prostitution specifically. All three countries have adopted legislation that seeks to prohibit child prostitution, South Africa's legislation being the most comprehensive and praiseworthy. Uganda has, in recent times, enacted laws that comply with international standards and it has prohibited

prostitution involving both boys and girls which was previously lacking. In clear terms, both South Africa and Uganda make the use of children for the purposes of prostitution a form of abuse and the child in question is classified as a victim. These countries furthermore punish those who enable such activities and profit from them, not only the wrongdoer. To a limited extent it can be argued that child prostitution has been outlawed in Zimbabwe. But the Zimbabwean legislation does need to be subjected to some reconsideration: the Children's Adoption Act, for instance, should expressly define 'child prostitution' and undoubtedly make it a crime.

Legislative Analysis of the Prohibition of Child Prostitution in South Africa, Uganda and Zimbabwe

South Africa

South Africa has enacted several pieces of legislation that seek to prevent the commercial sexual exploitation of children. The Children's Act, for instance, defines the commercial sexual exploitation of children as

(a) the procurement of a child to perform sexual activities for a reward, including acts of prostitution and pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or the care-giver of the child, or any other person; or

(b) trafficking in a child for use in sexual activities, including prostitution or pornography.²⁰⁷

The Children's Act, however, does not expressly define the terms 'prostitution' and 'pornography'. The Act provides that no person can use, procure, offer or employ a child for the purposes of commercial sexual exploitation.²⁰⁸ It importantly also classifies the use of children for the purposes of commercial sexual exploitation as a form of sexual abuse,²⁰⁹ which means that children ought to be viewed as victims. Moreover, it provides that in the event of a child's being used for CSE, such cases should be referred to a police official, a designated child-protection organisation or a provincial department of social development.²¹⁰ Such a child is classified as a child in need of care and protection and they are supposed to be removed to a place of safety.²¹¹

207 Section 1 of the Children's Act 38 of 2005 as amended by Act 41 of 2007.

208 Section 1 of the Children's Act 38 of 2005 and s 141(b) Act 41 of 2007.

209 Section 1 of the Children's Act 38 of 2005.

210 Section 110 of the Children's Act 38 of 2005.

211 Section 110.

Complementing the Children's Act is the Criminal Law (Sexual Offences and Related Matters) Amendment Act.²¹² The Act provides that a person who forces a child to perform a sexual act, performs an act of self-masturbation or exposes their body is guilty of an offence.²¹³ The Act further provides that a person, irrespective of whether there is some kind of reward, who unlawfully offers the services of a child for the commission of a sexual act is guilty of an offence;²¹⁴ it importantly criminalises an attempt at a sexual act.²¹⁵ In terms of the Act, anyone who unlawfully and intentionally offers the services of a child by means of persuasion, abuse of authority, threat, force, coercion or deception will have performed an illegal act;²¹⁶ in the same vein, a parent, guardian or caregiver who intentionally allows or knowingly permits the commission of a sexual act is guilty of an offence.²¹⁷ The Act punishes not only the person who actually performs a sexual act with a child but acknowledges that, regarding the commercial sexual exploitation of children, there can be many perpetrators and it accordingly punishes any person who may offer or employ a child for commercial sexual services. The Act also provides that a person who has control of any movable or immovable property and who intentionally allows or knowingly permits such property to be used for the purposes of commissioning a sexual act with a child is guilty of child sexual exploitation.²¹⁸

Any person who exposes or displays the genital organs, anus or female breast of a child, with or without the consent of the child, is guilty of an offence.²¹⁹ In addition, a person who is the owner, lessor, manager, tenant or occupier of any premises on which the commercial sexual exploitation of a child has occurred is guilty of an offence if that person, on gaining information about that occurrence, fails promptly to take reasonable steps to report the occurrence to the South African Police Service (SAPS).²²⁰ In order to maintain records of sexual offenders and possibly to act as a deterrent, South Africa has established a National Register for Sex Offenders, in which is included the designation of any sexual offence against a child.²²¹ South Africa also prescribes heavy penalties for

212 Rushiella Songca, 'Evaluation of Children's Rights in South African Law: The Dawn of an Emerging Approach to Children's Rights?' (2011) CILSA 350.

213 Section 18(2)(b) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007; see also Susan Coetzee, 'Educator Sexual Misconduct: Exposing or Causing Learners to be Exposed to Child Pornography or Pornography' (2015) PELJ 2113, who argues that there must be intent and the distribution should have been made knowingly for the required offence.

214 Coetzee (n 213).

215 Section 17(1)(a).

216 Section 17(2).

217 Section 7(3)(a).

218 Section 17(3)(b).

219 Section 22.

220 Section 305 of the Children's Act 38 of 2005 as amended by Act 41 of 2007.

221 Sections 42, 43 and 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. See the Constitutional Court case of *J v the National Director of Public Prosecutions & Another* (2014) ZACC 13, in which the court extensively discussed the placing of a name on the Sexual Offences Register. See also *Teddy Bear Clinic for Abused Children & Another v Minister of Justice*

offenders, the nature of the penalty taking into account factors such as whether the offence was committed for the purpose of financial gain.²²² In South Africa a person can be imprisoned for more than ten years or receive a fine for such offences.²²³ A person convicted of an offence more than once is liable to a fine or imprisonment for a period not exceeding 20 years, or to both a fine and imprisonment.²²⁴

To prevent trafficking in persons, the South African legislature passed the Prevention and Combating of Trafficking in Persons Act.²²⁵ 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 for the purpose of any form or manner of exploitation, is guilty of an offence.²²⁶ The Act provides, in addition, that any person who abducts or abuses a position of authority for the purposes of trafficking is guilty of an offence, as is a person who, directly or indirectly, gives or receives payments or benefits to obtain the consent of a person having control or authority over another person.²²⁷ The Act further penalises those who benefit financially or otherwise from the services of a victim of trafficking.²²⁸ This Act also prescribes certain sanctions for these offences, such as a fine amounting to R100 million or imprisonment.²²⁹ In addition, it provides for protective measures for the purposes of investigating and prosecution involving foreign victims of trafficking.²³⁰ The Act finally

and Constitutional Development & Another (2013) ZACC 35 at para 57; Nina Mollema, 'The Viability and Constitutionality of the South African National Register for Sex Offenders: A Comparative Study' (2015) Potchefstroom Electronic Law Journal 2717, who discusses the purpose of this register in detail.

222 Section 56A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

223 Section 305 of the Children's Act 38 of 2005 as amended by Act 41 of 2007. See the case of *S v Coetzee* 2016 (1) SACR 120 (NCK), where the court prescribed a minimum sentence of 10 years for the crime of child pornography.

224 Section 305 and the case of *Coetzee* (n 223).

225 Act 7 of 2013.

226 Section 4.

227 Section 4.

228 Section 7 of Act 7 of 2013 provides that any person who intentionally benefits, financially or otherwise, from the services of a victim of trafficking or uses or enables another person to use the services of a victim of trafficking and knows or ought reasonably to have known or suspected that such person is a victim of trafficking, is guilty of an offence. Section 8 penalises conduct facilitating trafficking in persons such as owners of buildings it provides that any person who intentionally leases or subleases any room, house, building or establishment for facilitating or promoting trafficking in persons or allows it to be used or ought reasonably to have known or suspected that it will be used to facilitate or promote trafficking in persons is guilty of an offence. Section 9 provides the liability of carriers (1) a carrier who transports a person within or across the borders of the Republic, and who knows that the person is a victim of trafficking or ought reasonably to have known that the person is a victim of trafficking, is guilty of an offence.

229 Section 13 Act 7 of 2013.

230 Sections 15–17.

provides for the removal and placement in temporary care of a victim of child trafficking. The Criminal Law (Sexual Offences and Related Matters) Amendment Act likewise also prohibits trafficking in persons for sexual purposes.²³¹

South Africa's legislation is comprehensive; it favours an interpretation that is sympathetic to and aligned with international law. And the definitions of commercial sexual exploitation of children comply with international standards. South Africa's case law further reveals the importance of international law.²³² In the case of *Jezile v The State*, the customary practice of 'ukuthwala'²³³ was not recognised as a valid defence in the trafficking, rape and assault of a child. The court took into account Article 24(3) of the CRC, which stipulates that member states must take effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.²³⁴ In addition, the court took into account the African Charter on the Rights and Welfare of the Child, which prohibits child marriage or betrothal; and the sexual exploitation and inducement, coercion or encouragement of a child to engage in any sexual activity are likewise prohibited.²³⁵

While South Africa ought to be commended for its laws that provide comprehensive legislative protection for children, there are nevertheless some concerning aspects. First, South Africa lacks sufficient statistics on the actual number of children involved in prostitution.²³⁶ The government does not make available the number of investigations opened, closed or resolved, or the number of case citations and convictions achieved.²³⁷ Furthermore, the country's data-collection systems are not integrated so as to create a national database or information system and, in general, they do not yet provide data in accordance with the categories of prohibited conduct and offences as contemplated by

231 Section 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

232 Julia Sloth-Nielsen and Benyam Mezmer, 'A Dutiful Child: The Implications of Article 31 of the African Charter' (2008) 52(2) *Journal of African Law* 8; see also Ronaldah Ngidi, 'The Role of International Law in the Development of Children's Rights in South Africa: A Children's Rights Litigator's Perspective' in Killander Magnus (ed), *International Law and Domestic Human Rights Litigation in Africa* (PULP 2010) 174; and Ann Skelton, 'The Development of a Fledgling Child Rights Jurisprudence in Eastern and Southern Africa Based on International and Regional Instruments' (2009) *African Human Rights Law Journal* 487.

233 *Ukuthwala* is a form of abduction that involves a man and his friends kidnapping a girl or a young woman with the intention of compelling her family to endorse marriage negotiations.

234 *Jezile v The State* (2014) unreported High Court case no A127/of 2014 at 36
<http://www.centreforchildlaw.co.za/images/files/ourcases/2015.03.23_Jezile%20v%20S.pdf>
accessed 7 November 2018.

235 Article 27.

236 UN Committee on the Rights of the Child, Consideration of Reports submitted by State Parties under Article 12 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).

237 United States Department of Labour 'Findings on the Worst Forms of Child Labour: Uganda' (Washington, DC, Bureau of International Labor Affairs 2013) 826–834.
<<https://www.dol.gov/ilab/reports/child-labor/findings/2013tda/2013tda.pdf>> accessed 7 June 2018.

the Protocol.²³⁸ In addition, because there are no data available, it is unclear how many children are subjected to such activities: owing to the clandestine nature of the crime, the real situation is unknown.²³⁹ As mentioned previously, it is especially difficult to obtain proper statistics because sexual exploitation is a hidden and subversive crime.²⁴⁰

Furthermore, there appear to be various forms of prostitution involving children. For instance, there is currently a predominant culture of young girls getting into so-called ‘relationships’ with older men where there is an exchange of money or some reward, sometimes with the awareness of their parents.²⁴¹ There are also other forms of contractual sex, such as when adults pimp out children to their friends and other contacts.²⁴² In some cases, pimps or madams recruit children from desperately poor areas where there is little alternative to earning an income.²⁴³ Such child victims are often controlled by drugs and alcohol.²⁴⁴ The trafficking of children from rural to urban areas in Bloemfontein, Cape Town, Durban and Johannesburg for the purposes of CSE has also been reported.²⁴⁵ Furthermore, child prostitutes face harassment from the police, who, instead of protecting them, actually extort or rob them and/or demand sex with them.²⁴⁶

Uganda

The Penal Code defines a prostitute as a person who, in public or elsewhere, regularly or habitually holds themselves out as available for sexual intercourse or other sexual gratification for monetary or other material gain.²⁴⁷ The Penal Code further provides that any person who practises or engages in prostitution commits an offence and is liable to imprisonment for seven years.²⁴⁸ Prostitution is not acceptable for any person, whether an adult or a child, in Uganda. This legislation seems only to punish the prostitute; it does not seem to punish a third party such as a pimp or the person who

238 UN Committee on the Rights of the Child (n 239).

239 Marcel van der Watt, ‘Human Trafficking in South Africa: An Elusive Statistical Nightmare’ (*The Conversation* 16 July 2015) <<https://theconversation.com/human-trafficking-in-south-africa-an-elusive-statistical-nightmare-43949>> accessed 6 November 2018.

240 See part A of this article.

241 ECPAT Status of Action against Commercial Sexual Exploitation of Children South Africa 2013 at 12 <http://www.ecpat.org/wp-content/uploads/legacy/a4a_v2_af_s.africa_0.pdf> accessed 8 November 2018.

242 ECPAT (n 244).

243 ECPAT (n 245) 12.

244 ECPAT (n 245) 12.

245 United States Department of Labor, 2016 Findings on the Worst Forms of Child Labor – South Africa (30 September 2017) <<http://www.refworld.org/docid/5a00225d0.html>> accessed 12 June 2018.

246 Kropiwnicki Zosa and Olenka De Sas, ‘The Politics of Child Prostitution in South Africa’ (2012) *Journal of Contemporary African Studies* 254; Kotie Geldenhuys, ‘Policing Sex Work: The Challenges & the Abuse’ (2018) *Servamus* 27–28.

247 Section 138 of the Penal Code of 1950 as amended by Act 8 of 2007.

248 Section 139.

actually uses a prostitute for sexual activities. With regard to the position of children, section 129(1) of the Penal Code provides that any person who unlawfully has sexual intercourse with a child (ie a person under the age of eighteen years) commits an offence and is liable to a sentence of life imprisonment.²⁴⁹ The Penal Code furthermore makes it an offence to attempt to perform a sexual act with a person below eighteen years of age; such person is liable to imprisonment not exceeding eighteen years.²⁵⁰ The Penal Code also prohibits the unlawful and indecent assault of children:²⁵¹ Any person who commits such an act is liable to imprisonment for fourteen years.²⁵² And any person who unlawfully detains another person for the purpose of sexual intercourse commits an offence.²⁵³ The Penal Code, section 131, criminalises only those who procure or attempt to procure a girl or woman for the purpose of commercial sexual exploitation and does not protect boys from being procured for the same purpose, which is a violation of international law. This position has, however, since changed with the passage into law of the Children's Amendment Act in 2016.²⁵⁴

The Children's Amendment Act defines the use of children in child prostitution and child pornography as 'child exploitation'.²⁵⁵ Child exploitation is classified as the employment of a child in activities from which other people derive a benefit, whether financial, sexual or political.²⁵⁶ The Act prohibits a person from engaging a child in any work or trade that exposes the child to activities of a sexual nature, whether paid or not.²⁵⁷ The Act provides, in addition, that it is unlawful for any person to use (a) inducement or coercion to encourage a child to engage in any sexual activity and (b) children in prostitution or any other unlawful sexual practises.²⁵⁸ Any person who contravenes this law is liable on conviction to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.²⁵⁹ The legislation states that it is unlawful for any person to induce or coerce a child into any sexual activity or to encourage the engagement of a child in any sexual activity, but it does not clearly or expressly extend punishment, as South Africa's legislation does, to third parties such as parents or guardians who may offer or procure a child for prostitution. Any person who witnesses an abuse against the rights of a child is requested to report the matter to the police or any authority responsible for child welfare.²⁶⁰ The Act seems to punish only

249 Section 129(10).

250 Section 129(2).

251 Sections 128(1) and 147.

252 Section 128(2).

253 Section 134.

254 Section 8A of the Children's Amendment Act 2016.

255 Section 3.

256 Section 8A.

257 Section 8A.

258 Section 8A.

259 Section 8A(c).

260 Section 42A.

the actual use of a child for sexual activities; it does not seem to punish any attempt to use a child for sexual services: that is, it seems to punish the offender when the act is already done and not in cases where there is contemplation of the crime. The officer or the designated child protection officer to whom the report has been submitted must ensure the safety and wellbeing of the child concerned and ensure that a proper investigation is conducted.²⁶¹ Children who are exposed to abuse should be placed in alternative care.²⁶²

In addition to these measures, the Prevention of Trafficking in Persons Act prohibits the trafficking of persons in Uganda.²⁶³ This Act prohibits the recruitment, procurement, transfer or harbouring of a person for the purposes of prostitution.²⁶⁴ It is such a serious offence to traffic a child for the purposes of prostitution that it warrants the death penalty.²⁶⁵ A person who promotes trafficking, such as a person who knowingly leases or subleases or allows a house to be used for the purpose of prostitution, is liable on conviction to a fine or imprisonment.²⁶⁶ Uganda's legislation also punishes any person who aids in the buying and selling of persons.²⁶⁷ It further punishes any person who falsifies government documents or information relating to the immigration regulations.²⁶⁸

Despite the relevant legislation, there is an increase in the number of children engaged in prostitution, especially in urban centres, among fishing communities and in war zones.²⁶⁹ Some children are exploited by bar owners, others are promised work in hotels, where they end up being sold to men.²⁷⁰ Prostitution is most prevalent in urban centres, tourist towns and along transportation routes.²⁷¹ Uganda is a source, transit and destination country for children trafficked for sexual purposes, although there are no concrete data as to the actual number of children trafficked each year.²⁷² Research shows that the recruitment and trafficking of children for the purpose of sexual exploitation is well coordinated.²⁷³ The exploiters are usually known to the victims or their families and the majority use false promises of job opportunities to deceive the victims. A

261 Sections 42A(2), (4) and (7).

262 Sections 42A(2), (4) and (7).

263 Prevention of Trafficking in Persons Act 6 of 2009.

264 Section 3(1)(a).

265 Section 5.

266 Section 7(a).

267 Section 7(g) of the Prevention of Trafficking in Persons Act 6 of 2009.

268 Section 7(c) and (d).

269 ECPAT International, 'Executive summary of Uganda report of 2011'

<http://www.ecpat.net/sites/default/files/EXSUM_A4A_AF_UGANDA.pdf> accessed 7 June 2018.

270 *ibid*.

271 Uganda Youth Development Link (n 177).

272 ECPAT International (2013) 'Status of action against commercial sexual exploitation of children in Uganda' 13.

273 *ibid*.

Children and Family Protection Unit (CFPU) in most police stations handles cases of child abuse and neglect.²⁷⁴ This CFPU has been instrumental in protecting women and children from violence and abuse as well as educating the public about the relevant laws and legal procedures. However, it is noteworthy to indicate that some districts or police stations do not have officers trained specifically in combatting human trafficking and commercial sexual exploitation.²⁷⁵ Criminal law-enforcement officials in Uganda have been accused of not being aware of key human-trafficking laws, and some children, including victims, are routinely arrested and detained by the police.²⁷⁶ In a study undertaken in Kiyindi, it was documented that disco halls, bars, lodges and film halls are places where girls go to meet older men.²⁷⁷ Participants in this study highlighted the fact that the police and community elders have tried to chase away some of the children in these halls, especially those that go there during the day. Unfortunately, parents warn off the authorities and the efforts by local authorities to intervene are thwarted.²⁷⁸

Zimbabwe

The Children's Protection and Adoption Act does not define what is meant by 'child prostitution' but it nevertheless makes reference to it. The Act provides that any person who allows a child to reside in or to frequent a brothel will be guilty of an offence.²⁷⁹ It further provides that any person who causes or conduces to the seduction, abduction or prostitution of a child or young person is guilty of an offence.²⁸⁰ Such a person is liable to a fine or imprisonment of five years.²⁸¹ In addition, the Act provides that if there are reasonable grounds for believing an offence has been committed towards a child, any police officer, health officer, education officer or probation officer may remove such child to a place of safety.²⁸²

To complement the provisions of this Act and to prohibit the use of children in prostitution, the Criminal Law Codification and Reform Act provides that any person who publicly solicits another person for the purposes of prostitution will be guilty of

274 United States Department of Labor (n 245); Committee on the Rights of the Child Consideration of Reports Submitted by State Parties under Art 12(1) of the Optional Protocol to the Convention on the Rights the Child on the Sale of Children, Child Prostitution and Pornography in Uganda CRC/C/OPSC/UGA/1 2008

275 United States Department of Labor (n 245).

276 United States Department of Labor (n 245); see also Andre Renzaho, Joseph Kihika Kamara, Brian Stout and Gilbert Kamanga 'Child Rights and Protection in Slum Settlements of Kampala, Uganda: A Qualitative Study' (2018) *Journal of Human Rights* 303–321.

277 Agatha Kafuki, Sharlotte Tusasiirwe and Timothy Opobo, 'A Study of Community Based Child Protection Mechanisms in a Fishing Community in Central Uganda' (AfriChild 2015) 33.

278 *ibid*.

279 Section 8(1) of the Children's Act Chapter 5:06 2001.

280 Section 8(2).

281 Section 8(4).

282 Sections 14–15.

soliciting and liable to a fine or imprisonment for a period not exceeding six months, or to both such fine and imprisonment.²⁸³ This Act also criminalises persons who keep brothels. Those who demand from a prostitute any payment or reward are guilty of living off or facilitating prostitution and are liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years, or to both such fine and imprisonment.²⁸⁴ Section 83 stipulates that any person who procures a child for the purpose of engaging in unlawful sexual conduct or of becoming a prostitute, or of leaving Zimbabwe with the intent that such child may become a prostitute, is liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding ten years, or to both such fine and imprisonment.²⁸⁵

If the owner of a place knowingly induces or allows a child to enter or be in a place for the purpose of engaging in unlawful sexual conduct with another person or with other persons generally, the owner shall be guilty of permitting a young person to resort to a place for the purpose of engaging in unlawful sexual conduct and is liable to a fine or imprisonment, or both.²⁸⁶ The Criminal Law Codification and Reform Act provides further that any person who allows a child or a young person to reside in or frequent a brothel shall be guilty of an offence. In Zimbabwe, any parent or guardian who causes or allows their child under the age of eighteen years of age to associate with prostitutes, or to be employed by any prostitute as a prostitute or to reside in a brothel, is guilty of allowing a child to become a prostitute and liable to a fine or imprisonment for a period not exceeding ten years, or to both the fine and imprisonment.²⁸⁷ The wording of this legislation prohibits children to be associated with prostitutes and seems to exceed the necessary prohibition of child prostitution. The legislation therefore seems extreme and creates the impression that prostitutes themselves are a select group of people who should be shunned. In some instances a child may associate with a prostitute simply because that person may be their parent or guardian; for this reason, it is suggested that the focus should rather be on whether such a person is influencing a child to participate in prostitution.

Zimbabwe, like the other countries in this study, has enacted a Trafficking in Persons Act.²⁸⁸ In terms of this Act, if a victim was trafficked for the purposes of prostitution, such victim shall not be charged with any crime.²⁸⁹ Any person who conspires with others to commit the crime of trafficking or knowingly performs any of the following acts will be found guilty of a trafficking offence:

283 Section 81.

284 Section 82.

285 Section 83.

286 Section 87.

287 Section 87.

288 Trafficking in Persons Act [Zimbabwe], Chapter 9:25, 2014.

289 Section 3(7).

- (i) recruits, transfers, harbours or receives another person whom they know or suspect is being or is likely to be trafficked; or
- (ii) attempts, assist, abets, conceals, procures, incites, solicits, connives at, or conspires with others for, the commission of the crime of trafficking; or
- (iii) leases or subleases or allows the use for the purpose of trafficking of any premises or land which belongs to them or over which they have control; or
- (iv) for the purpose of trafficking assists any other person to obtain false identity or travel documents or tampers with identity or travel documents.²⁹⁰

Despite these legislative provisions, child prostitution in Zimbabwe is on the rise,²⁹¹ poverty being the main driver. People do not have reliable sources of livelihood as a result of unemployment and children are forced to supplement their household incomes.²⁹² Some of the children are encouraged by their mothers to engage in the activity to relieve poverty.²⁹³ The result is that children from Zimbabwe are being trafficked to neighbouring countries such as Mozambique and South Africa.²⁹⁴ In Musina, a town near the Zimbabwean–South African border, Zimbabwean children are often seen loitering and pleading for sustenance.²⁹⁵ This makes them easy targets for pimps, who traffic them to big cities and exploit them through engaging them in commercial sexual activities.²⁹⁶ Child prostitution is also highly prevalent in transit towns such as Ngundu, Neshuro, Hwange and Lukosi, where in some cases it is highly organised and in others opportunistic.²⁹⁷ According to Saurombe and Vambe, girls as

290 Section 3(1)(b).

291 Organizing for Zimbabwe, ‘Storify: Child Prostitution ... A Tale of a 9-Year-Old’

<<http://www.o4z.org.zw/index.php/news/round-up-and-commentary/834-storify-child-prostitution-a-tale-of-9-year-old>> accessed 11 June 2018.

292 Organizing for Zimbabwe (n 291); see also Vincent Mabvurira, Rosemary Chigevenga, Faith Kambarami, Rachel Chavhi and Chamunogwa Nyoni, ‘The Realities of Children in Prostitution in Zimbabwe: A Case of Beitbridge and Plumtree Border Towns’ (2017) *Child Abuse Research: A South African Journal* 68–76.

293 Organizing for Zimbabwe (n 291); Mabvurira (n 292).

294 Blessing Mushohwe, ‘Child Prostitution in Zimbabwe and the Tragedy of the ‘Victim by Choice’ Tag: An Overview’ (2018) *Zimbabwe Rule of Law Journal* 6; see also United States Department of Labor, (n 245).

295 Mushohwe (n 294) and United States Department of Labor (n 245).

296 Mushohwe (n 294) and United States Department of Labor (n 245).

297 Zimbabwe Youth Council, ‘Eliminating Harmful Cultural and Social Practices Affecting Children: Our Collective Responsibility’ (2014) x, 20–21
<https://www.unicef.org/zimbabwe/Report_on_Harmful_Social_and_Cultural_Practices.pdf> accessed 3 July 2018.

young as 12 years of age are known to engage in prostitution along the transport corridor between Zimbabwe and the Mozambican port of Beira in the Sofala district.²⁹⁸

There are a number of constraints on the implementation of legislation aimed at protecting children from sexual exploitation. First, the government lacks sufficient resources, mainly financial, to investigate and pursue violations of laws generally.²⁹⁹ Another constraint that prevents the successful prosecution of perpetrators of sexual violence and particularly the use of children in prostitution in Zimbabwe is the patriarchal foundations of society.³⁰⁰ A considerable number of men regard women and girls as dispensable and find it hard to consider them as full members of society. Such men view women and girls as useful only to the extent that they can satisfy their lustful needs.³⁰¹ Women and girls are consequently kept in subservient positions, which suggests that women are meant to serve boys and men.³⁰² For example, on 7 May 2018, the President of the Movement for Democratic Change (which is arguably the biggest opposition political party in Zimbabwe), Nelson Chamisa, during an MDC rally made a statement about marrying off his sister.³⁰³ In his statement, Chamisa declared that he would ‘give away his 18-year-old sister to President Emmerson Mnangagwa if the incumbent managed to get just 5 per cent of the total vote in a free and fair election.’³⁰⁴ Such statements reinforce a patriarchal view of society that empowers the oppressors and weakens the victims of such practises. He created the impression that a man has the authority to give away a woman as though she were a commodity. His statement also implies that women do not have the right to choose their spouse, reinforcing the notion of an oppressive patriarchal society.

Assessment

In all three of the countries surveyed, legislation that prohibits child prostitution is present. All three provide that a child who is exposed to prostitution ought to be taken to a place of safety. All three, in addition, punish those who promote child prostitution, such as those who lease property, parents and guardians. For such offences all three

298 Beauty Vambe and Amos Saurombe, ‘Child Labour Laws in South Africa, Zambia and Zimbabwe: A Comparative Analysis’ (2017) *Commonwealth Youth and Development* 10–11.

299 *ibid.*

300 Anna Chitando and Maurice Vambe, ‘Children’s Welfare in Zimbabwean Music: Insights from Selected Artists’ (2013) *Journal of Music Research in Africa* 123; Molly Manyonganise, ‘Oppressive and Liberative: A Zimbabwean Woman’s Reflections on Ubuntu’ (2015) 36(2) *Verbum et Ecclesia* 2–3.

301 Chitando and Vambe (n 300).

302 Chitando and Vambe (n 300) 124; Manyonganise (n 300) 3.

303 Editorial Staff, ‘Mixed Reactions as Chamisa Promises His Sister if ED Manages 5 Percent of Vote’ (*Pindula News*, 7 May 2018) <<https://news.pindula.co.zw/2018/05/07/mixed-reactions-as-chamisa-promises-his-sister-if-ed-manages-5-percent-of-vote/>> accessed 7 June 2018.

304 *ibid.*

have adopted sanctions, including fines and imprisonment, for those who contravene the law.

When we compare all three countries, the most extensive and distinct legislation that ought to be commended is that of South Africa. In clear terms, it prohibits the commercial sexual exploitation of children but does not expressly refer to the term ‘child prostitution’. The absence of the term ‘prostitution’ in South African laws is nevertheless immaterial, because the South African government has clearly defined the concept ‘commercial sexual exploitation’ and it is clear that it relates to child prostitution. Uganda, on the other hand, ought to be commended for its efforts to align its laws to international standards. The Penal Code, which specially relates to child prostitution involving girls, was amended by the Children’s Amendment Act, which criminalises the procurement and use of both boys and girls for the purposes of prostitution, a provision that was not present in previous legislation. The Ugandan laws, like those of South Africa, make child prostitution a form of child exploitation and, in addition, punish those who may promote or facilitate child prostitution. Both South Africa and Uganda clearly make the use of children for CSE a form of sexual abuse and make the child the victim and as a result, such a child will not be prosecuted for the crime for prostitution. The South African and Ugandan laws, moreover, are clear and concise about those who facilitate and benefit from the crime and punish not only the perpetrator. To a certain extent it can be argued that child prostitution has been adequately outlawed in Zimbabwe. The legislation in Zimbabwe is, however, in need of some useful revisions. In its current state, the Children’s Adoption Act prohibits the unlawful sexual conduct of a child and their engagement with prostitutes. The Children’s Act should expressly define child prostitution and make it undoubtedly a crime. Moreover, this Act should highlight the fact that child prostitution is sexual abuse or sexual exploitation and that such a child must be classified as a victim.

Legislation passed in isolation from a national debate and broader engagement can push practices underground and generate a backlash.³⁰⁵ A legal reform objective should be accompanied by broader awareness-raising and advocacy efforts; indeed, the very object of legislation should be to change attitudes traditions and practices, and extensive literature exists on behavioural change.³⁰⁶ All three governments should strengthen awareness-raising and mobilisation to fight CSEC. Education about this matter is vital.³⁰⁷ It will empower children so that they can protect themselves from abuse, and it should also give them the skills to change and improve their lives.³⁰⁸ Schools must educate children to recognise and avoid high-risk situations. Education should be

305 Karin Landgren, ‘The Protective Environment: Development Support for Child Protection’ (2005) 27(1) Human Rights Quarterly 232.

306 *ibid.*

307 Archbishop Diarmuid Martin, ‘Bought and Sold 12 Times (from Nigeria to Italy)’ in *Profiting from Abuse: An Investigation into the Sexual Exploitation of our Children* (UNICEF 2001) 8.

308 *Handbook on the Sale of Children* (n 13) 18–19.

brought to the doorsteps of the poor by facilitating non-formal education in community schools.³⁰⁹

The UN has described good practices in several countries:

- In Albania, parents are learning about the dangers facing their children who are trafficked to neighbouring countries.³¹⁰
- In the Dominican Republic, judges are learning about the issue of family violence and the importance of enforcing the new legislation that prescribes penalties for violence against women, family abuse, sexual assault, procuring and trafficking in women and desertion of the family.³¹¹
- In Kenya, teenage girls are learning income-generating skills as well as how to protect and respect themselves.³¹²
- In Cambodia, entire communities—parents, police officers, teachers and healthcare personnel—are understanding the consequences of sexual abuse and the effects of all forms of violence against children.³¹³
- In Thailand volunteers inform girls and women in villages about the hazards of the commercial sex trade.³¹⁴ Volunteers are recruited from the community and equipped with knowledge. The volunteers are selected partly on their standing in their communities, as their messages are more likely to be heard.³¹⁵

These practices are good examples that could be implemented in the countries selected for this case study. These countries may not have the necessary financial or human resources to undertake such campaigns, but it is advisable for them to collaborate actively with organisations such as ECPAT International who work to bring national laws and policies into alignment with international child-rights conventions and to help governments to meet their commitments.³¹⁶

The research has revealed various challenges with regard to the proper implementation of legislation. In some cases CSEC takes place in the home or in the informal sector and

309 ILO, *Guidelines on the Design of Direct Action Strategies to Combat Commercial Sexual Exploitation to Children* (ILO 2007) 29.

310 *ibid.*

311 *ibid.*

312 *ibid.*

313 *ibid.*

314 *ibid.*

315 *ibid.*

316 ECPAT International, 'What we do' <<http://www.ecpat.org/what-we-do/>> accessed 12 June 2018.

is difficult to monitor, and often goes unreported as a result. Public awareness campaigns, however, can inform communities about what constitutes CSEC and its costs to children and society. Governments and other stakeholders should make intensive efforts to reduce public tolerance and indifference. Political leaders and all those who are in positions of authority in these countries of interest should send the right signals to those they have influence over. Statements that reinforce the oppression of certain groups of people in society should be publicly condemned. Men and boys need to be central in trying to alter such perceptions. Protection and prevention must be seen as part of a community's responsibility. For their efforts to be effective and sustainable, communities need to be aware of the threats to children and assume child-focused and supportive systems of monitoring and reporting. The community can identify teachers and religious leaders to disseminate such information effectively. In addition, inspectors should be trained to identify victims of abusive practises. Parents, and guardians should be required to teach children appropriate values long before they can be influenced by peer pressure. Children should, in addition, be used as peer educators, using techniques such as school plays and dance to influence their peers.

Traditional leaders can also play a major role in their communities as they can advocate and drive social mobilisation initiatives.³¹⁷ However, they need to be equipped with the relevant knowledge of CSEC so that they can in future also influence their communities. Through *imbizos* or *lekgothas* or community dialogues they can consult with communities on the needs of children who are at risk of exposure to CSE, such as children in child-headed households and children living on the streets. In addition, community dialogues should be platforms to provide information to their communities about the relevant laws and how to help children at risk. Traditional leaders can also drive campaigns to confront the cultural norms, values and social practices that permit the commercial social exploitation of children. Furthermore, traditional leaders can promote customs and values within the community and advocate respect for children. They could work closely with police and medical service-providers to support the victims of CSE by sensitising the community and urging them to report instances of CSE. Traditional leaders could also be actively involved in monitoring taverns, bars and community bottle stores to ensure that children are not permitted to enter such premises.³¹⁸ The owners of these should also be engaged to ensure that children are not permitted on their premises; and they must be penalised if children are found lurking around their premises. Traditional leaders also officiate over customary-law courts in rural areas and maintain law and order by imposing fines on perpetrators.³¹⁹ The police should work in collaboration with traditional leaders to ensure that the orders given by

317 Mantshi Teffo-Menziwa and Saiqa Mullick, 'The Role of Traditional Leaders in Preventing and Addressing Sexual and Gender-based Violence: Findings in KwaZulu-Natal, North West and Limpopo Provinces in South Africa' Final Report (Population Council 2010) 3.

318 *ibid* 14.

319 Teffo-Menziwa and Mullick (n 317) 13–14; see also s 8 of the Traditional Courts Bill B1–2017.

traditional leaders are enforced and heeded. When perpetrators are discharged and released into the community, traditional leaders, in collaboration with other stakeholders such as the police, should ensure that the rights of victims are ensured and that they face no additional risks or psychological distress.

Conclusion

All three countries surveyed prohibit the use of children for the purposes of prostitution but do not necessarily employ the same terminology for the use of children in such activities. South Africa has adequate legislation that prohibits the use of children for the purposes of prostitution and has created a Sexual Offenders Register which has a deterrent effect on potential offenders. Uganda has recently abolished prostitution for both boys and girls in compliance with international child labour conventions. Zimbabwe, on the other hand, should refine its laws to adequately protect children.

All three countries face common challenges in implementing legislation that seeks to prohibit the use of children in CSEC. In all, poverty and the effects of certain diseases have been major push factors for children to undertake such work. Children from impoverished backgrounds, especially those from child-headed households, are forced to work in order to survive. In none of these countries the actual number of children involved in these activities is known: They are criticised for not collecting and providing sufficient or accurate statistics on the number of children who participate in these forms of child labour. These countries are also at fault for not providing data on the prosecutions, convictions and arrests of people who use children in child labour. In some cases, exploitation is conducted by those in the home and such cases go unreported. These governments lack sufficient financial and human resources to inspect workplaces: The statistics collected are not a true reflection of reality. While legislation is key in the elimination of this phenomenon, its eradication requires a multi-faceted approach and depends on the positive action of governments in the Member States. The research provides evidence that communities can no longer rely on governments and NGOs alone to offer long-term protection. The communities, learners, parents, educators and children themselves should be vigilant in trying to eliminate CSEC. Government for their part, and other stakeholders must make rigorous efforts to diminish public tolerance of and indifference to CSEC.

References

- Action for the Rights of Children (ARC), 'Abuse and Exploitation – Revision Version 04/01: Critical Issues Abuse and Exploitation' <<http://www.unhcr.org/3bb81aea4.pdf>> accessed 5 June 2018.
- Admassie A, 'Explaining the High Incidence of Child Labour in sub-Saharan Africa' (2002) 14(2) African Development Review.
- Alrimawi I, Saifan AR and AbuRuz M, 'Barriers to Child Abuse Identification and Reporting' (2014) Journal of Applied Sciences.
- Bulger M, Burton P, O'Neill B and Staksrud E, 'Where Policy and Practice Collide: Comparing United States, South African and European Union Approaches of Protecting Children Online' (2017) New Media and Society.
- Breglia MG, Guarcello L, Rosati FCS and Vincent F, 'Understanding Children's Work in Uganda' *Understanding Children's Work: Program Country Report Series* (World Bank, 2008) <<https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/660511468318329452/understanding-childrens-work-in-uganda>> accessed 28 April 2016.
- Staff Reporter, 'Child Pornography goes Viral on Facebook' (*Bulawayo News*, 23 March 2013) <<https://bulawayo24.com/index-id-technology-sc-internet-byo-27917-article-Child+pornography+goes+viral+on+Facebook.html>> accessed 9 November 2018.
- Cheney K, 'Killing them Softly? Using Children's Rights to Empower Africa's Orphans and Vulnerable Children' (2012) International Social Work.
- Child Frontiers, 'Commercial Sexual Exploitation of Children in Lao PDR' (2011) <https://www.researchgate.net/publication/281244672_The_Commercial_Sexual_Exploitation_of_Children_in_Lao_PDR> accessed 6 November 2018.
- Children's Institute Reporting Child Abuse and Neglect, 'What you Need to Know' (*Inclusive, Enabling Communities Learning Brief* 2015) <<http://www.dgmt-community.co.za/organisations/childrens-institute/learning-briefs/reporting-child-abuse-and-neglect-what-you-need>> accessed 8 November 2018.
- Chirwa D, 'The Merits and Demerits of the African Charter on the Rights and Welfare of the Child' (2002) The International Journal of Children's Rights.
- Chitando A and Vambe M, 'Children's Welfare in Zimbabwean Music: Insights from Selected Artists' (2013) Journal of Music Research in Africa.
- CIPESA ICT, 'How Recently Enacted Laws Undermine Ugandan Citizens' Rights' (Policy Briefing Series 2014) <http://www.cipesa.org/?wpfb_dl=158> accessed 7 June 2018.

Coetzee S, 'Educator Sexual Misconduct: Exposing or Causing Learners to be Exposed to Child Pornography or Pornography' (2015) Potchefstroom Electronic Law Journal.

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Research and Policy Development Unit, 'Report on Public Hearings on Male Initiation Schools in South Africa 2010' (2010) <<https://www.health-e.org.za/wp-content/uploads/2014/06/CRL-Report-on-Public-Hearings-on-Male-Initiation-Schools-in-South-Africa.pdf>> accessed 5 June 2018.

Corrigan T, 'Socio-economic Problems Facing Africa: Insights from Six APRM Country Review Report' *Occasional Paper 34* (South African Institute of International Affairs 2009).

Csáky C, *No One to Turn to: The Under-reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peace Keepers* (Save the Children 2008).

Davy D, 'Regional Overview: Sexual Exploitation of Children in Southeast Asia' (2017) ECPAT International Journal <http://www.ecpat.org/wp-content/uploads/2018/02/Regional-Overview_Southeast-Asia.pdf> accessed 8 November 2018.

Dawson Hayes J, and Capaldi M, 'Tackling the Data Death: The Global Scale of Commercial Sexual Exploitation of Children' (2015) ECPAT International Journal.

Dennis M, 'Newly Adopted Protocols to the Convention on the Rights of the Child' (2000) American Journal of International Law.

Department of Justice and Constitutional Development (Brochure)
<<http://www.justice.gov.za/brochure/2014-cyber-bullying.pdf>> accessed 7 June 2018.

Department of Social Development, 'South African Integrated Programme of Action Addressing Violence against Women and Children 2013–2018' (2014)
<http://www.dsd.gov.za/index2.php?option=com_docman&task=doc_view&gid=607&Itemid=39> accessed 7 June 2018.

Detrick S, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers 1999).

De Wet E, 'The Reception Process in The Netherlands and Belgium' in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (Oxford University Press 2008).

De Wet E, 'The Reception of International Law in the South African Legal Order: An Introduction' in Holger Hestermeyer and Rüdiger Wolfrum (eds), *The Implementation of International Law in Germany and South Africa* (PULP 2015).

Dugard J, *International Law: A South African Perspective* (Juta 2009).

ECPAT International, 'Fact Sheet Produced by ECPAT International – Programme Combating Sexual Exploitation of Children Online' <<http://www.ecpat.org/wp-content/uploads/2016/04/Sexual-Extortion-Factsheet.pdf>> accessed 6 June 2018.

ECPAT International, *The Commercial Sexual Exploitation of Children in Africa: Developments, Progress, Challenges and Recommended Strategies* (ECPAT International 2014).

ECPAT International, 'Child Sexual Exploitation: A Common Understanding' (2017) <http://www.ecpat.org/wp-content/uploads/2017/05/SECO-Booklet_ebook-1.pdf> accessed 12 June 2018.

ECPAT International, *Handbook for the Translation and Adaptation of the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* (ECPAT International Thailand 2017).

ECPAT Online, 'Child Sexual Abuse Material/Child Pornography' <http://www.ecpat.org/wp-content/uploads/legacy/SECO%20Manifestations_CSAM.pdf> accessed 7 June 2018.

ECPAT Online, 'Child Sexual Abuse Material – The Facts' <<http://www.ecpat.org/news/online-child-sexual-abuse-material-the-facts/>> accessed 6 November 2018.

ECPAT, 'Status of Action Against Commercial Sexual Exploitation of Children in South Africa' (2013) 14 <https://www.ecpat.org/wp-content/uploads/2016/04/a4a_v2_af_s.africa_0.pdf>.

Pettinger T, 'Structural Adjustment – Definition and Criticisms' (*Economics Help*, 3 March 2019) <<https://www.economicshelp.org/blog/glossary/structural-adjustment/>> accessed 22 October 2018.

Editorial Staff, 'Unemployed Youths Turn to Gambling' (*News Day*, 5 September 2012) <<https://www.newsday.co.zw/2012/09/05/2012-09-05-unemployed-youths-turn-to-gambling/>> accessed 12 June 2018.

Editorial Staff, 'The Porn War in Zimbabwe' (*Sunday Mail*, 17 August 2014) <<http://www.sundaymail.co.zw/leisure-4-17-august-2014-the-porn-war/>> accessed 7 November 2018.

Editorial Staff, 'Mixed Reactions as Chamisa Promises His Sister if ED Manages 5 Percent of Vote' (*Pindula News*, 7 May 2018) <<https://news.pindula.co.zw/2018/05/07/mixed-reactions-as-chamisa-promises-his-sister-if-ed-manages-5-percent-of-vote/>> accessed 7 June 2018.

Ending the Sexual Exploitation of Children International (ECPAT), 'Child Pornography and Sexual Exploitation of Children Online' (3rd World Congress 25–28 November 2008, Brazil) <http://www.ecpat.org/wp-content/uploads/legacy/ECPATWCIIIReport_FINAL.pdf> accessed 5 June 2018.

Ending the Sexual Exploitation of Children International (ECPAT), 'Online Child Sexual Exploitation: A Common Understanding' (*ECPAT International* 2017) <http://www.ecpat.org/wp-content/uploads/2017/05/SECO-Booklet_ebook-1.pdf> accessed 12 June 2018.

Engel B, 'Stop Shaming Victims of Sexual Assault for not Reporting: Ten (Understandable) Reasons why Victims of Sexual Assault do not Report' (*Psychology Today* 2018). <<https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201809/stop-shaming-victims-sexual-assault-not-reporting>> accessed 4 June 2018.

Fagan P, and Churchill A, 'The Effects of Divorce on Children' (Marriage and Religion Research Institute 2012).

Fronza E and Summerer K, 'The Implementation of ILO Child Labour Standards in Domestic Legal Systems: The Role of Criminal Law' in Giuseppe Nesi, Luca Nogler and Marco Pertile, *Child Labour in a Globalized World: A Legal Analysis of the ILO Action* (Ashgate Publishing 2008).

Gallinetti J, Kassan D and Ehlers L, 'The Use of Children in Illicit Activities: Child Justice and Child Labour Meet' (Conference report for the workshop: 'Child Justice in South Africa: Children's Rights Under Construction' Johannesburg, 1–2 August 2006).

Geldenhuys K, 'Policing Sex Work: The Challenges & the Abuse' (2018) Servamus.

George S and Matthew PC, 'Families in Crisis: Marital Breakdown in India' <http://familyinamerica.org/files/7615/0609/7301/George__Matthew.pdf> accessed 6 June 2018.

Gondo T, 'Terrence Sex Tape Latest: Full Name of Culprit who Caused Girlfriend to Commit Suicide Revealed' (*ZimEye*, 18 April 2018) <<https://www.zimeye.net/2018/04/18/name-of-man-who-caused-girlfriend-commit-suicide-revealed/>> accessed 9 November 2018.

Grant A, Grabosky P and David F, 'Commercial Sexual Exploitation of Children' (Paper presented at the Children and Crime: Victims and Offenders' Conference convened by the Australian Institute of Criminology, Brisbane, 17–18 June 1999)
<<https://pdfs.semanticscholar.org/2731/e0e78e80c88b51d80ffdeff8679e3bd2cb2c.pdf>>
accessed 6 June 2018.

Editorial Staff, 'Confusion over Uganda's "Miniskirt Ban" Leads to Public Attacks on Women' (*The Guardian*, 24 February 2014)
<<https://www.theguardian.com/fashion/fashion-blog/2014/feb/28/uganda-miniskirt-ban-attacks-women>> accessed 7 June 2018.

Hesselink-Louw A, Bezuidenhout C and Pretorius R, 'Child Sex Work: The Nature of Factors Contributing to and Consequences of Child Prostitution' (2002) *Acta Criminologica*.

Hg.org Legal Resources, 'Child Pornography' <<https://www.hg.org/child-pornography.html>>
accessed 7 June 2018.

Humanium, 'Child Prostitution' <<https://www.humanium.org/en/child-prostitution/>> accessed 8 November 2018.

Hunter S, 'South Africa has a Serious Child Porn Problem' (*Crime, Lifestyle, Sex, South Africa*) <<http://www.2oceansvibe.com/2018/04/25/south-africa-has-a-serious-child-porn-problem/>> accessed 7 June 2018.

Hurungudo P, 'Porn Addiction Hits Zimbabwe' (*Daily News*, 14 October 2018)
<<https://www.dailynews.co.zw/articles/2018/10/14/porn-addiction-hits-zimbabwe>>
accessed 8 November 2018.

International Centre for Missing & Exploited Children (ICMEC), *Child Pornography: Model Legislation & Global Review* (8 edn, US Department of State 2016)
<<http://www.icmec.org/wp-content/uploads/2016/02/Child-Pornography-Model-Law-8th-Ed-Final-linked.pdf>> accessed 8 November 2018.

International Centre for Research on Women Girls not Brides, 'Taking Action to Address Child Marriage: The Role of Different Sectors: An Overview' (2016)
<<https://www.girlsnotbrides.org/resource-centre/child-marriage-brief-role-of-sectors/>>
accessed 8 November 2018.

International Labour Organization (ILO) Website
<<http://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm>>
accessed 5 June 2018.

International Labour Organization (ILO), *Guidelines on the Design of Direct Action Strategies to Combat Commercial Sexual Exploitation to Children* (ILO 2007).

International Labour Organization (ILO), 'A Shared Responsibility: Workers' Organizations in the Fight Against the Commercial Sexual Exploitation of Children and Adolescents' (2008) <http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_9212/lang--en/index.htm> accessed 3 July 2018.

International Labour Organization (ILO), Committee of Experts on the Application of Conventions and Recommendations: Concluding Observations for Switzerland (99th ILC Session, 2010)
<http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2309396,102861,Switzerland,2009> accessed 3 July 2018.

International Labour Organization (ILO), Committee of the Experts on the Application of Conventions and Recommendations and Direct Request Zimbabwe (101st ILC Session, 2012)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0:::P13100_COMMENT_ID:2700658> accessed 7 June 2018.

International Labour Organization (ILO), *Commercial Sexual Exploitation and Trafficking of Children in a Nutshell: A Resource for Pacific Island Countries* (ILO 2014).

International Labour Organization (ILO), 'Commercial Sexual Exploitation of Children and Adolescents: The ILO's Response' <http://www.ilo.org/global/docs/WCMS_100740/lang--en/index.htm> accessed 3 July 2018.

International Labour Organization (ILO), 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage 2017'
<https://www.alliance87.org/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf> accessed 5 June 2018.

International Labour Organization (ILO), 'SDG Alliance 8.7: Joining Forces Globally to End Child Labour, Forced Labour, Modern Slavery and Human Trafficking' (February 2016)
<http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_450718.pdf> accessed 12 June 2018.

International Youth and Advisory Congress on Online Safety of 2008
<<https://www.canada.ca/en/news/archive/2008/07/young-canadians-attend-international-youth-advisory-congress-online-safety-security-conference.html>> accessed 7 June 2018.

Innocence Lost Working Group, 'Commercial Sexual Exploitation of Children: A Fact Sheet'
<http://www.pollyklaas.org/safe/pdf/2016/ccse_fact_sheet.pdf> accessed 7 June 2018.

IN SITU – the Blog of the SDSU School of Social Work, 'Social Workers and Commercial Sexual Exploitation of Children'
<<https://socialwork.sdsu.edu/insitu/adolescentschildren/social-workers-and-commercial-sexual-exploitation-of-children/>> accessed 6 June 2018.

Instituto Promundo, 'Hidden Violence: Preventing and Responding to Sexual Exploitation and Sexual Abuse of Adolescent Boys: Case Studies and Directions for Action' Prepared for OAK Foundation (2012).

Kafuki A, Tusasiirwe S, and Opobo T, 'A Study of Community Based Child Protection Mechanisms in a Fishing Community in Central Uganda' (AfriChild 2015).

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

Kasalwe R, 'Bridging the Gap Between Commercial Sexual Exploitation of Children and Responses from Law Enforcement' (Master's Dissertation, Kennesaw State University 2014).

Kropiwnicki Z, and De Sas O, 'The Politics of Child Prostitution in South Africa' (2012) *Journal of Contemporary African Studies*.

Landgren K, 'The Protective Environment: Development Support for Child Protection' (2005) 27(1) *Human Rights Quarterly*.

Mabvurira V, Chigevenga R, Kambarami F, Chavhi R, and Nyoni C, 'The Realities of Children in Prostitution in Zimbabwe: A Case of Beitbridge and Plumtree Border Towns' (2017) *Child Abuse Research: A South African Journal*.

Manyatera G, 'Oxford Constitutions of the World Country Report on the Republic of Zimbabwe' <<http://www.icla.up.ac.za/country-reports>> accessed 7 June 2018.

Manyonganise M, 'Oppressive and Liberative: A Zimbabwean Woman's Reflections on Ubuntu' (2015) 36(2) *Verbum et Ecclesia*.

Martin D, 'Bought and Sold 12 Times (from Nigeria to Italy)' in *Profiting from Abuse: An Investigation into the Sexual Exploitation of our Children* (UNICEF 2001).

Mavunga R, 'A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999' (2013) *Potchefstroom Electronic Law Journal*.

Miamingi R, 'Constructing a Conception of Childhood in Africa' (LLD thesis, University of Pretoria, 2014).

- Ministry of Gender, Labour and Social Development Uganda (MGLSD), *Elimination of the Worst Forms of Child Labour Making Schooling the Principal Occupation of Children* (International Labour Organisation 2018)
<<http://www.ilo.org/ippecinfo/product/viewProduct.do;jsessionid=38a956b00b50309a2dcafc140aca12df3528bb63a35416a50eb6f58da19c616.e3aTbhuLbNmSe3qRa00?productld=20616>> accessed 7 June 2018.
- Mollema N, 'The Viability and Constitutionality of the South African National Register for Sex Offenders: A Comparative Study' (2015) Potchefstroom Electronic Law Journal.
- Mude T, 'The History of International Human Rights Law in Zimbabwe' (2014) Journal of Social Welfare and Human Rights.
- Mupazviriho F, 'Dilemma of Social Media, Child Protection' (*Herald*, 25 September 2017)
<<https://www.herald.co.zw/dilemma-of-social-media-child-protection/>> accessed 8 November 2018.
- Mushohwe B, 'Child Prostitution in Zimbabwe and the Tragedy of the 'Victim by Choice' Tag: An Overview' (2018) Zimbabwe Rule of Law Journal.
- Ngidi R, 'The Role of International Law in the Development of Children's Rights in South Africa: A Children's Rights Litigator's Perspective' in Killander Magnus (ed), *International Law and Domestic Human Rights Litigation in Africa* (PULP 2010).
- Njaya T and Mazuru N, 'Land Reform Process and Property Rights in Zimbabwe: Constraints and Future Prospects (1980–2002)' (2010) Journal of Sustainable Development in Africa.
- Noguchi Y, 'ILO Convention No 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child' (2002) International Journal of Children's Rights.
- Onoria H, 'Uganda' in Shelton D (ed), *International Law and Domestic Legal Systems: Incorporation, Transformation and Persuasion* (Oxford University Press 2011).
- Pappas S, 'Child Abuse: Why People so Often Look the Other Way' (*Live Science*, 2011)
<<https://www.livescience.com/17031-penn-state-child-abuse-eyewitness-psychology.html>> accessed 4 June 2018.
- Phiyega R, Statement by the National Commissioner at the Gauteng SAPS Provincial Office (10 September 2015)
<<http://www.saps.gov.za/newsroom/msspeechdetail.php?nid=5950>> accessed 7 June 2018.
- Phooko MR, 'Legal Status of International Law in South Africa's Municipal Law: *Government of the Republic of Zimbabwe v Fick and Others* (657/11) [2012] ZASCA 122' (2014) African Journal of International and Comparative Law.

- Renzaho A, Kamara KJ, Stout B and Kamanga G, 'Child Rights and Protection in Slum Settlements of Kampala, Uganda: A Qualitative Study' (2018) *Journal of Human Rights*.
- Riggio E, and Hecht ME, 'Power, Impunity and Anonymity Power, Understanding the Forces Driving the Demand for Sexual Exploitation of Children' (2016) *ECPAT International Journal*.
- Roby J and Tanner J, 'Supply and Demand: Prostitution and Sexual Trafficking in Northern Thailand' (2009) *Geography Compass*.
- Scholtz W, 'A Few Thoughts on Section 231 of the South African Constitution, of 1996: Notes and Comments' (2004) *South African Yearbook of International Law*.
- Sheykhi M, 'Development and Divorce: A Sociological Appraisal' (2017) *World Wide Journal of Multidisciplinary Research and Development*.
- Siddiqi F and Patrinos H, 'Child Labour: Issues and Causes' (1995) *Human Capital Development and Operations Policy Working Papers*.
- Singh MM, Parsekar S and Nair S, 'An Epidemiological Overview of Child Sexual Abuse' (2014) *Journal of Family Medical Primary Care*.
- Skelton A, 'The Development of a Fledgling Child Rights Jurisprudence in Eastern and Southern Africa Based on International and Regional Instruments' (2009) *African Human Rights Law Journal*.
- Sloth-Nielsen J and Mezmur B, 'A Dutiful Child: The Implications of Article 31 of the African Charter' (2008) 52(2) *Journal of African Law*.
- Songca R, 'Evaluation of Children's Rights in South African Law: The Dawn of an Emerging Approach to Children's Rights?' (2011) *Comparative and International Law Journal of Southern Africa*.
- Songca R, 'Theorising Children's Rights as a Multi- and Inter-Disciplinary Field of Study' (2012) *Comparative and International Law Journal of Southern Africa*.
- Tamarkin E, 'The AU's Cybercrime Response: A Positive Start, but Substantial Challenges Ahead' (ISS Africa: Policy Brief, 20 January 2015).
- Teffo-Menziwa M and Mullick S, 'The Role of Traditional Leaders in Preventing and Addressing Sexual and Gender-based Violence: Findings in KwaZulu-Natal, North West and Limpopo Provinces in South Africa' Final Report (Population Council 2010).
- Tiessen R, *Everywhere/Nowhere: Gender Mainstreaming in Development Agencies* (Kumarian Press 2007).

UBS Optimus Foundation, 'Optimus Study South Africa Technical Report Sexual Victimization of Children in South Africa' (May 2016) <http://www.cjcp.org.za/uploads/2/7/8/4/27845461/08_cjcp_report_2016_d.pdf> accessed 7 June 2018.

Uganda Bureau of Statistics (UBOS) in Collaboration with Understanding Children's Work (UCW) Programme, 'Understanding Children's Work and Youth Employment Outcomes in Uganda Inter Agency Report' (UBOS 2014) <http://www.ucw-project.org/attachment/Uganda_report_child_labor_youth_employment20141016_154929.pdf> accessed 8 November 2018.

Uganda Youth Development Link, 'Commercial Sexual Exploitation of Children in Uganda: A Critical Review of Efforts to Address CSEC 2005–2011' <<https://ssa.riselearningnetwork.org/wp-content/uploads/sites/5/2015/12/CSEC-in-Uganda-2011-UYDEL-booklet-23-08-2011pdf-20111206-115302.pdf>> accessed 9 November 2018.

United Nations (UN), *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (UN 2009) 5 <https://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf> accessed 3 July 2018.

United Nations (UN), *Overview of the Refugee Situation in Africa*, Background Paper for the High-Level Segment of the 65th Session of the Executive Committee of the High Commissioner's Programme on 'Enhancing International Cooperation, Solidarity, Local Capacities and Humanitarian Action for Refugees in Africa' (Geneva, 29–30 September 2014) <<http://www.unhcr.org/54227c4b9.pdf>> accessed 1 June 2018.

United Nations Aids, 'HIV/AIDS Pandemic is Threatening the Fabric of Societies and Families by Causing the Deaths of Millions' <<http://www.unaids.org/en/resources/fact-sheet>> accessed 6 November 2018.

United Nations (UN), 'Sustainable Development Goals' <<https://sustainabledevelopment.un.org/?menu=1300>> accessed 22 October 2018.

United Nations Children's Fund (UNICEF), 'Analysis of the Situation of Sexual Exploitation of Children in the Eastern and Southern Africa Region' <https://www.unicef.org/about/annualreport/files/ESARO_AR_2014.pdf> accessed 9 November 2018.

United Nations Children's Fund (UNICEF), 'Analysis of the Situation of Sexual Exploitation of Children in the Eastern and Southern Africa Region: The Vicious Cycle of Sexual Exploitation, HIV/AIDS, Vulnerability of Children and Violations of Children's Human Rights' <https://www.unicef.org/events/yokohama/csec-east-southern-africa-draft.html#_Toc527979960> accessed 5 June 2018.

United Nations Children's Fund (UNICEF), 'A Situational Analysis on the Status of Women and Children's Rights in Zimbabwe 2005–2010' (2010)

<http://www.unicef.org/zimbabwe/SitAn_2010-FINAL_FINAL_01-02-2011.pdf> accessed 22 August 2016.

United Nations Children's Fund (UNICEF), 'Factsheet on Commercial Sexual Exploitation and Trafficking of Children'

<https://www.unicef.org/indonesia/Factsheet_CSEC_trafficking_Indonesia.pdf> accessed 5 June 2018.

United Nations Office on Drugs and Crime, 'Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children' (UNODC 2015)

<https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf> accessed 3 July 2018.

United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, '25 Years of Fighting the Sale and Sexual Exploitation of Children: Addressing New Challenges'

<<http://www.ohchr.org/Documents/Issues/Children/SR/25YearsMandate.pdf>> accessed 28 May 2018.

United Nations Website, 'Special Rapporteur on the Sale and Sexual Exploitation of Children'

<<https://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx>> accessed 27 June 2018.

United States Department of Labor, '16th Annual Report on 2016 Findings on the Worst Forms of Child Labor'

<<https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/TDABook.pdf>> accessed 5 June 2018.

Vambe B, and Saurombe A, 'Child Labour Laws in South Africa, Zambia and Zimbabwe: A Comparative Analysis' (2017) Commonwealth Youth and Development.

Van der Watt M, 'Human Trafficking in South Africa: An Elusive Statistical Nightmare (*The Conversation* 16 July 2015)

<<https://theconversation.com/human-trafficking-in-south-africa-an-elusive-statistical-nightmare-43949>> accessed 6 November 2018.

Verdier P-H, and Versteeg M, 'Law in National Legal Systems: An Empirical Investigation'

(2015) American Journal of International Law.

Vorholter J, 'Homosexuality, Pornography and Other "Modern Threats" – The Deployment of Sexuality in Recent Laws and Public Discourses in Uganda' (2017) Critique of Anthropology.

Zimbabwe Department of Labor, 'Findings on the Worst Forms of Child Labour in Zimbabwe' (Bureau of International Labour Affairs 2013)
<https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.co.za/&httpsredir=1&article=2809&context=key_workplace> accessed 8 November 2018.

Zimbabwe Youth Council, 'Eliminating Harmful Cultural and Social Practices Affecting Children: Our Collective Responsibility' (2014)
<https://www.unicef.org/zimbabwe/Report_on_Harmful_Social_and_Cultural_Practices.pdf> accessed 3 July 2018.

Cases

De Reuck v Director of Public Prosecutions Witwatersrand Local Division 2003 CCT5/03.

Government of the Republic of Zimbabwe v Fick & Others (657/11) [2012] ZASCA 122.

J v The National Director of Public Prosecutions & Another (2014) ZACC 13.

Jezile v the State (2014) Unreported High Court Case No A127/2014.

S v Coetzee 2016 (1) SACR 120 NCK.

S v Koralev and Another 2006 (2) SACR 298 (N).

Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another (2013) ZAC.

Uganda Law Society v Attorney General Constitutional Petition no 2 and 8/2002 (2009) UGCC 1 (CC).

Legislation

Censorship and Entertainments Control Act Chapter 10:04 of 1967.

Children's Act Chapter 5:06 of 2001.

Children's Act 38 of 2005 (as amended by Act 41 of 2007).

Children's Amendment Act 2016.

Children's Protection and Adoption Act 22 of 1971 (as amended by Act 23 of 2001).

Computer Crime and Cyber Crime Bill B7–2017.

Constitution of Zimbabwe Amendment Act 20 of 2013.

Criminal Law (Codification and Reform) Act 23 of 2004 (as amended by Act 109 of 2008).

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (as amended by Act 43 of 2013).

Films and Publications Act 65 of 1996.

Penal Code of 1950 (as amended by Act 8 of 2007).

Refugees Act 21 of 2006.

Prevention and Combating of Trafficking in Persons Act 7 of 2013.

Prevention of Trafficking in Persons Act 6 of 2009.

Trafficking in Persons Act 4 of 2014.

Trafficking in Persons Act [Zimbabwe], Chapter 9:25 of 2014.

Traditional Courts Bill of 2017.

International Conventions

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

African Union Convention on Cyber Security and Personal Data Protection 2014.

Convention on the Rights of the Child 1989.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2002.

Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime 2002.

UN Committee on the Rights of the Child see Consideration of reports submitted by States parties under article 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 Reports of States parties due in 2005 South Africa CRC/C/OPSC/ZAF/1.

UN Committee on the Rights of the Child Consideration of Reports Submitted by State Parties under Article 12(1) of the Optional Protocol to the Convention on the Rights the Child on the Sale of Children, Child Prostitution and Pornography in Uganda CRC/C/OPSC/UGA/1 2008.

UN Committee on the Rights of the Child on the Consideration of Reports submitted by State Parties under Article 12 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).

UN General Assembly Universal Declaration of Human Rights of 1948.

UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000.

ILO Worst Forms of Child Labour Convention No 182 of 2000.

Stockholm Declaration and Agenda of Action Sweden, 27–31 August 1996.

<https://www.kinderrechte.gv.at/wp-content/uploads/2013/10/The-Stockholm-Declaration-and-Agenda-for-Action_1996.pdf> accessed 2 July 2018.