Global and National Goals for Every Child:
Progress and Disparities among Children in South African Child Rights context

Paper by Brian Tamuka Kagoro

CONTENTS

LIST OF ACRONYMS

AAA	Accra Agenda for Action
AIDS	Acquired Immune Deficiency Syndrome
BRICS	Brazil, Russia, India, China and South Africa
CSG	Child Support Grant
CSOs	Civil Society Organisations
GEAR	Growth, Employment and Redistribution
HIV	Human Immune Virus
HLF4	Fourth High Level Forum on Aid Effectiveness
ILO	International Labour Organisation
MDGs	Millennium Development Goals
NGOs	Non-Governmental Organizations
NPOs	Non-Profit Organizations
PBOs	Public Benefit Organizations
RDP	Reconstruction and Development Programme
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SAHRC	South African Human Rights Commission
UN	United Nations
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations International Children's Fund

EXECUTIVE SUMMARY

Since the apartheid days, civil society organizations (CSOs) in South Africa have long played an important role in waging the anti-apartheid campaigns, fostering social cohesion, building social capital, provision of social services, advancing socio-economic as well as civil and political rights. South African CSOs were very influential in the trajectory of democratization towards the end of apartheid and in the first decade after 1994. Though more progressive than most of its neighbours, the South African government has tended to look at civil society either with suspicion or as a nuisance factor. For the most part, NGOs in South Africa are supported by foreign donors and are thus seen as non-progressive in some leftist spaces. Their most felt influence has been in the rights of marginalised workers; access to water and sanitation; women's rights; youth and child rights; advocacy for universal care, treatment and support. However, beyond the NGO sector , South Africa also has a robust organised labour sector as well as social movements drawn from various thematic strands. South Africa has often been dubbed the protest capital of the world.

The end of apartheid and the adoption of the South African constitution in 1996 ushered in an era of guarantees and fundamental freedoms. Within the context of the rule of law, these constitutional guarantees and rights set limits to government's actions, protected minorities and dissenters and allowed political debates to take place without censorship or bureaucratic over-reach through unbridled discretion. South Africa has ratified most international human rights treaties protecting and promoting fundamental human rights, thus reinforcing the domestic commitment to constitutionalism and rule of law. As such, CSOs in South Africa can work without undue interference by the government and they are free to criticize government actions and policies without fearing repressive measures from State bodies. Despite this commendable progress in establishing the normative frameworks and supporting institutions and procedures that ensure overall State accountability, there are several aspects that still need to be strengthened. Key amongst these are rights of specific demographic groups such as immigrants, children and the rural and urban poor.

This report discusses the regulatory framework governing CSOs in South Africa and their relationship with the government. It assesses national laws, policies and regulations against international and regional benchmarks such as the Busan Partnership Agreement and Principles, the relevant regional human rights instruments, and South African case law where applicable. The analysis in this report focuses on the main tenets of the Busan Principles as they relate to the Rights of the Child. By extension, the analysis also focuses on the main tenets of four (4) other fundamental rights, namely: the right to freedom of association; freedom of expression; right to information and the right to freedom of peaceful assembly. The report will zero in more on the Child Rights context and some of the complexities related thereto.

In *Nono Cynthia Manana and Others v The Presiding Officer of the Children's Court: District of Krugersdorp and Others* (hereafter: *Manana*) the High Court was examining two main questions:

1. Can a caregiver who owes a legal duty of care be appointed as a foster care parent?
2. Can a foster care grant be granted to the caregiver in this particular case?

More specifically, the court had to decide whether three orphaned children who were in the care of their grandmother could be placed in formal foster care with the grandmother in order for her to obtain foster child grants for the three orphans. The High Court ruled that a caregiver who owes a legal duty of support may be appointed as a foster parent and is therefore entitled to apply for a foster care grant. Although the High Court agreed with existing case law that "neither the Children's Act nor the Social Assistance Act nor the relevant regulations require an examination of the foster care giver's income" (*Manana* para 31), the court examined whether the grandmother had the financial means to support the three orphaned children.

In the *SS* and the *Manana* case, the High Court was concerned with the best interests of the children before the court and essentially had only two choices available to it – turn the appeal down and force the families to survive on the small child support grant (R300/child in 2013) or uphold the appeal so that the care givers could apply for the larger foster care grant (R800/child in 2013). Both cases aimed to further the best interests of the children in front of the court by placing the children into foster care with their relatives so that these families could obtain a foster care grant. However, from a policy perspective, amending section 150(1)(a) of the Children's Act to reflect the wording used in these judgments is contrary to the best interests of the 1.5 million orphaned children currently receiving social support.

In 2015/16 the South African government tabled two proposed amendments to the Children's Act. The Child Rights Institute at the University of Cape Town examines the proposed amendments and concludes that they are neither necessary nor in the best interests of the 1.5 million orphaned and vulnerable Children already receiving social support. The proposed amendment to section 150(1)(a) of the Children's Act –they argue, "*will lead to courts continuing to issue foster care orders in order to ensure that orphans living with extended family can access foster child grants. We submit that using the child protection system for poverty alleviation is inappropriate because it –*

- *Prevents orphans from accessing timeous and adequate social grants;*
- *Prevents abused, neglected and exploited children from accessing state protection services; and*
- *Worsens the current crisis in the child protection system.*

The child protection system is currently in crisis. It fails to respond adequately to abused and neglected children. Cases where children are reported with a suspicion of child abuse or neglect do not receive timely investigation placing them at risk of continued abuse and even death. *Continuing the use of this system for the provision of social grants for orphans will come at the cost of blocking access to protective services for abused and neglected*

children. At the same time, the child protection system will be unable to adequately respond to the large number of orphans requiring social assistance."

There are currently over 500 000 children in the South African foster care system – the vast majority of them (around 90%) are orphans in the care of relatives. Since 2012, the number of foster care grants has been declining despite the large potential population of applicants. At the end of March 2012, 536 747 foster care grants were in payment. Consistent decreases over the next three years reduced this number to 499 774 at the end of March 2015 – the lowest figure since 2009 despite the large number of orphans not in the foster care system. The 2011 court order effectively placed a moratorium on grants lapsing even when foster care orders had not been reviewed. In the absence of this court order, the number of foster care grants would have decreased much more rapidly: according to the Department's own estimates, 300 000 foster care placement orders were due to expire at the end of 2012, indicating that the majority of children in foster care are not receiving the required supervisory or supportive services from social workers. According to the proposed amendment, foster care continues to be the preferred arrangement for orphans to access a social grant. A further 11 360 social workers would be needed just to manage the target of 1 million foster care placements for maternal orphans, if foster care is to be considered the care arrangement of choice for maternally orphaned children[1] .

Notwithstanding these seemingly daunting challenges, the 2015 *South African Child Gauge* which provides an annual snapshot of the country's children; that is, all those under the age of 18 ,indicates that: '*the last decade [since 2005] has seen substantial progress in the overall wellbeing of South African under-18s*'. However, South African children are by no means out of the woods. There are still some major challenges in terms of healthcare, education, unemployment and basic access to services. Researchers at the Children's Institute in Cape Town observe that there have been significant gains over the last ten years. In a nutshell:
- Child poverty has dropped from 74% in 2003 to 54% in 2013, driven primarily by the expansion of the Child Support Grant, which now reaches just under 12 million children;
- Children's access to formal housing has increased to 75%, with access to basic sanitation at 72%;
- Deaths of children under five years old have fallen, following the rollout of the Prevention of Mother to Child Transmission programme [HIV/Aids prevention];
- Access to early childhood development programmes has increased significantly since 2002;
- Access to basic education is nearly universal, at 98%.

These gains are –in part- the result of more progressive policies that have come about because of sustained advocacy and protest by civil society organizations. It is commendable that the South African government has heeded the advice of its citizens on how to improve the lot of children in the country. However, as much as there are gains there are also reversals and some stagnation with respect to specific rights discussed in the recommendations section of this report.

---

[1] www.ci.org.za , 2016 ,2015,2014,2013 and 2012 South Africa Child Gauge Reports

1. Purpose of Paper, Methodology and Approach

1.1. Purpose

This report focuses on areas that are pertinent to children's development and how these relate to the operational environment for CSOs in South Africa. It analyses trends in areas of social inclusion, nutrition, health, Human Immune Virus (HIV), water, sanitation, education and child protection. These sectors are central to achievement of child rights as contained in the South African Constitution, the African Charter on the Rights of the Child and the United Nations (UN) Charter on the Rights of the Child. Reflecting on these sectors is particularly useful for the advocacy on child rights but also for the State, as it reviews its performance in terms of the commitments made under the National Development Plan and the Constitution.

The paper also reflects on the situation in other Southern African countries that has a direct and indirect bearing on the South African context and migration by children from the rest of Africa into South Africa. In essence, this report has three primary enquiries, namely:

- Whether South Africa has a guaranteed framework of equal citizen rights, covering issues such as access to justice; respect for rule of law; the freedoms of expression, association and assembly; as well as basic economic and social rights to enable citizens to exercise these freedoms effectively;
- Whether, South Africa has institutions of representative and accountable governance for ensuring popular participation in the constitution of the government and the monitoring of its performance by citizens and procedures that are designed to ensure the continuous accountability of officials, elected as well as non-elected, to the public;
- Whether South Africa has a vibrant civil society that includes free and pluralistic media and vibrant civil society organizations; public consultation systems that encourage popular participation in the governance and development processes, involve marginalized groups in decision-making, elicit governmental responsiveness to public opinion and improve public service delivery; integration of women, children and other marginalized groups in the consultation?

These broad questions help in the understanding of whether the following objectives of enabling environment are met within South Africa, namely:

- Prevention of intra-country conflict;
- Upholding constitutional democracy, rule of law and human rights;
- Promotion and protection of economic, social and cultural rights, civil and political rights enshrined both in the South African constitution, African Charters and International human rights instruments;
- Upholding of the doctrine and practice of separation of powers, including the protection of the independence of the judiciary and an effective parliament;
- Ensuring accountable, efficient, and effective public office holders and civil servants;
- Combating corruption in both the public and private sphere;
- Promotion and protection of the rights of women;

- Promotion and protection of the rights of children and young persons
- Promoting and protecting the rights of vulnerable groups, including migrants, slum dwellers, internally displaced persons and refugees

Against the above objectives, this report examines the practice in South Africa, as identified (both explicitly and through detailed analysis) using the Busan enabling environment indicators. The following specific questions are discussed towards the end of this report:

a) To what extent are the identified practices in line with the national policies as well as standards and benchmarks outlined in the Busan Partnership Principles?

b) To what extent does is South Africa adhering to the expected standards set out in terms of its own domestic laws and policies as read with international ones (international treaties, agreements, and conventions)?

c) Are there any best practices or short-comings in the current South African laws, policies and practices? How can these be appropriately assessed, remedied or replicated to address similar or related problems in other Southern African countries?

1.2. Methodology

The Report employed traditional methods of research, namely: a combination of primary and secondary research techniques (qualitative and quantitative), desk review and limited interviews, respectively. This included a literature view, Internet research, document analysis, and confirmatory interviews. The Framework for Assessing Progress on CSO Enabling Environment applied in undertaking this research is attached hereto as Annexure 1. We summarised the regulatory typologies in Annexure 2. We analysed the data gathered, triangulated the same with viva voce interviews to formulate a set of findings and recommendations.

1.3. Approach

In answering the questions and sub-questions set-out above, we have been guided by the two-fold aim of this report, namely:

- To assess the structural, legal, policy space and institutional framework for the implementation of the Post Busan agenda, indicating who the main players are.
- To propose to Reality of Aid Africa specific actions that the multi stakeholders can take to ensure that they fully utilize the opportunities for promoting an enabling environment for CSOs, including Children rights and Youth organizations in South Africa

More specifically, this paper seeks to do five (5) things simultaneously, namely:

- Identify challenges to the promotion and protection of the rights of the child;
- Explore the adequacy of redress mechanism;
- Locate child rights and child rights organization within the broader discussion of civil society in South Africa;
- Analyze the regulatory, legislative and policy context for the operational of Non-Profit Organizations or Public Benefit Organizations(NPOs/PBOs);
- Draw specific conclusions on the enabling environment and propose areas for strengthening;

Furthermore, this complex task is situated within the broader political economy of development governance and civil society in South Africa. We have situated the report within the Busan CSO enabling environment framework.

2. Busan Principles

2.1. Context

The general trends identified by this report as well as the recommendations are intended to promote the full enjoyment of all rights in the Convention on the Rights of the Child by all children; through legislation, the establishment of coordinating and monitoring bodies- governmental and independent-comprehensive data collection, awareness-raising, training and development, and implementation of appropriate policies, services and programmes[2]. To this limited extent, the report views these factors as constituting what it terms 'enabling environment'. The concept has a long history, but was most recently reinserted at the centre of international dialogue on development effectiveness through the Paris Declaration on Aid Effectiveness and the Busan Partnership agreement. The Paris Declaration and Accra Agenda for Action (AAA) defined principles and established commitments that have contributed to improving the quality of aid. However, as the 2011 Survey on Monitoring the Implementation of the Paris Declaration showed, there remained much to be done in order to fully put these principles into practice.

Owing to, amongst other things, the global economic, fuel and food crises that started in 2008, the international socio-economic climate had markedly changed since the 2005 Paris Declaration for Aid Effectiveness (PDAE). International co-operation had long transitioned from the classical relationship between "rich" and "poor" governments. With the emergence of Brazil, Russia, India, China and South Africa (BRICS), international partnership had evidently evolved into a complex network that included some middle-income countries that are donors and recipients (South-South co- operation), multilateral organisations, international financial institutions, and non-governmental bodies such as the private sector and civil society organisations. As a result, international development needed to open up to the wider development context; one that also takes into consideration the role of the private sector, the fight against corruption, preventing tax evasion and illicit financial flows. Illicit Financial flows and corruption accounted for the biggest losses to developing countries' domestic resources.

The Fourth High-Level Forum on Aid Effectiveness dubbed the Busan Partnership for Effective Development Co-operation (HLF4) - took place in Busan, Korea in 2011. It aimed both to evaluate progress already made towards achieving more effective aid, and to define an agenda for the future. In the period immediately preceding the 2011 Busan meeting, the increasingly prominent role played by emerging economies, and the

---

[2] UN Committee on the Rights of the Child, General Comment No.5 :*General Measures Implementation for the Convention on the Rights of the Child,* CRC/C/GC/2003/5 , para.5

diversification of development co-operation flows all meant that there was need for a wider perspective and approach. The HLF4 specifically recognised the fundamental contribution of South-South and triangular co-operation to sustainable development. This type of Co-operation goes beyond financial cooperation. The "Busan Partnership for Effective Development Co-operation" was adopted by over 160 countries and around 50 other organisations. The partnership marked a significant shift in international development co-operation. It is based on some specific shared principles to achieve common goals applicable to all development actors that are key to making development cooperation effective. Some of the key principles are:

- Ownership of development priorities by developing counties: Countries should define the development model that they want to implement.
- A focus on results: Having a sustainable impact should be the driving force behind investments and efforts in development policy making
- Partnerships for development: Development depends on the participation of all actors, and recognises the diversity and complementarity of their functions.
- Transparency and shared responsibility: Development co-operation must be transparent and accountable to all citizens

These principles are recognised and accepted by all those involved in development co-operation, from donor and recipient country governments to providers of south-south cooperation, international organisations, civil society, parliamentarians and local government. The wide participation of a range of actors with differentiated responsibilities and shared goals is one of the notable characteristics of the Busan partnership. HLF4 went further than simply reiterating commitments to the Paris Declaration and Accra Agenda for Action; it outlined a set of concrete action points to accelerate the implementation of these commitments, such as:

- Using results frameworks designed with the needs of the partner country in mind as a common tool, and using country-led co- ordination arrangements;
- Untying aid to the maximum extent possible;
- Use of country public financial management systems as the default option for development financing, and support the strengthening of these systems where necessary;
- Strengthening transparency and approving a common standard for the electronic publication of data on development co-operation, to be fully implemented by 2015;
- In 2012, establish common principles to prevent the proliferation of multilateral organisation and global programmes and funds, also in 2012 establish common principles to tackle the issue of countries that receive insufficient assistance (aid orphans);
- By 2013, provide recipient countries with regular, timely, indicative three-to-five-year forward expenditure plans. Increase support given to parliaments and local governments in carrying out their functions;

- Foster an environment for civil society organisations as independent development actors.
- Guiding public policy making and improving support for promoting sustainable development in situations of conflict and fragility and strengthening resilience to disasters.
- Stepping up efforts towards gender equality, including the disaggregation of data by gender, and setting targets to achieve gender parity

One of the main characteristics of the Busan Partnership is its emphasis on the role of aid as a complement to other sources of development financing, since aid on its own cannot break the poverty cycle. Consequently, development co-operation should be a catalyst to mobilise resources to achieve development goals. Development partners are urged to reconsider how - and for what purpose - aid is invested, ensuring that it is in accordance with commitments towards human rights, decent work, gender equality, environmental sustainability and disability. The Busan Partnership proposes:

- That domestic resource be mobilised to increase government resources. To do so, it urges development partners to fight more directly against corruption and tax evasion.
- Taking a strong position on strengthening national institutions under the leadership of developing countries.
- Building stronger relationships between development co-operation and the private sector, by supporting the creation of a favourable environment for the different partners and fostering public-private partnerships

At a country level, the effective and transformational application of the Busan Principles is always difficult to assess. In this report we have combined a civil libertarian lens focused on application of International human right norms, as well as a political economy lens that looks broadly at State-Society relations and in particular the space for civil society. This report seeks to study South Africa's regulatory and operational environment for civil society. For purposes of drawing clear conclusions and recommendations, we have focused the research enquiry on Child Rights and the ecosystem for their implementation.

2.2. Monitoring Frameworks at the Country and Global Level

One of the lessons learned between Paris and Busan was the importance of monitoring as a tool for partners to hold each other accountable for their commitments. As a result, in Busan, three processes were defined that, together with other initiatives, would enable the monitoring of these commitments:

- The establishment of indicators and goals at the country level defined according to the country's own priorities. These will be used to evaluate the progress made by different development actors on their commitments. The results will be made publicly available.

- A global monitoring framework with indicators and common goals that will enable cross-country comparison and foster international accountability. A report will be published periodically.
- The creation of a "Global Partnership for Effective Development Co-operation" as an inclusive, representative forum that will supervise and give political support to the accomplishment of the agreements.

2.3. The Enabling Environment Indicators

The Enabling Environment Index is based on a compendium of indicators focusing on five areas: 1) the legal and regulatory framework; 2) the political environment; 3) the governance context; 4) the socio-cultural context; and 5) the socio-economic context

In this report, particular consideration will be given to those components that relate most directly to the Busan commitments, and are largely within the control of stakeholders adhering to the Busan Partnership, i.e.:

- Legal and regulatory framework for civil society operations; and
- Selected elements of the governance/political environment that have a direct bearing on CSO activity.

This report focuses on civil society organizations, recognizing that their respective constituencies and roles in society are very diverse, and operate at many levels. The report proposes to focus on two key areas for an enabling environment for CSOs, namely:

- The implementation of an enabling regulatory and legal framework for CSOs (consistent with human rights norms for the right to organize, freedom of assembly and freedom of speech); and
- The existence of inclusive policy processes and facilitative institutions (democratic ownership).

These factors only make sense if situated within the historiography of civil society and human rights in South Africa as well as the contemporary factors that shape and re-shape the meaning, forms and praxis of such civil society. We will in the following sections analyse the conceptual, contextual and practice aspects of civil society starting with the historiography. We do not propose to abstract civil society outside its relationship with the State, the market, broader society, and development governance generally. Civil society is embedded in these and implicated in their excesses and short-comings. Though civil society exists on its own, it does not exist in spite of the State. The State is necessary for civil society to assert and enjoy its full rights and freedoms.

3. South African Key Economic and Social Indicators

3.1. Economic and Social Factors

For a significant part of the first decade of the 21st century, South Africa experienced relatively levels of economic growth with an average Gross Domestic Product of 4.5% year-on-year. However, in the second decade of the 21st century, this trend has reversed as various governments have struggled to sufficiently address structural challenges within the economy. Statistics South Africa estimates that the economy will grow by a mere 0.5 per cent in 2017, which is 1% less than the previously projected growth levels. Some of the challenges that persist include: a widening gap between the rich and the poor; low levels of skill among the labour force; high unemployment rate; deteriorating infrastructure; and high levels of corruption and crime rates.

As stated above, South Africa's economic growth rate has been relatively sluggish and below the African average and certainly that of Africa's best performing economies for the last 5 years[3]. The African Economic Outlook in 2014 predicted that South Africa's growth rate in 2014 would increase from the 1.9% 2013 level to 2.7%[4]. Following contractions in the economy in the first and second quarters, the country recorded a growth rate of 1.4% in the third quarter of 2014[5]. Similar declines were experienced in 2015 and 2016 due to a wide range of factors both domestic and external.[6] Other key indicators include an inflation rate of 5.8% and unemployment rate of 25.4%.[7] The graphic and table below presents some key population indicators in assisting to put the economic indicators into perspective for a society that has significant reliance on philanthropic activity. Of note is that South Africa's population is largely youthful, with 37.7% of the population made up of young people between the ages of 15 and 34.

---

[3] Trading Economics, South Africa, www.ieconomics.com/south-africa, 2014.

[4] African Economic Outlook, South Africa, 2014.

[5] Ibid

[6] See Africa Economic Outlook Reports 2015 and 2016

[7]Unemployment in South Africa measures the jobless rate or in other words, the number of people actively seeking employment as a percentage of the labour force; the overall labour force participation rate is 57.4%.

Figure 1: Population Indicators

SA Population
- Total Population-54 Million (mil)
- Female- 28 mil (51%)
- Male- 26 mil (49%)

Provincial Distribution
- Gauteng largest 12.9 mil (23.9%)
- Northern Cape smallest 1.17 mil (2.2%)

Age Categories
- Younger than 15 years - 30% of total
- Older than 60 years - 8.4% of total

Source: Statistics SA: Mid-year population estimates - 2014[8]

Table 1: Youth population (as % of total)

Age (yrs)	2008	2009	2010	2011	2012	2013	2014
15-19	4 989	5 047	5 095	5 130	5 156	5 167	5 164
20-24	4 704	4 752	4 806	4 871	4 940	5 009	5 075
25-29	4441	4 515	4 508	4635	4 688	4 744	4 806
30-3	4 075	4 091	4 127	4 188	4 269	4 363	4 460
Total	18 209	18 405	18 536	18 824	19 053	19 283	19 505

Source: Statistics South Africa, 2014

Furthermore, South Africa is the largest recipient of migrants and the refugees from the rest of the African continent, especially its immediate neighbours. The social and economic ramifications of this historical influx of migrant labour, asylum seekers and refugees remain under-researched and documented. Equally so, the benefits are often obscured in the ethno-nationalist politics of '*us and them*' that informed the xenophobic attacks against black foreign nationals in 2008 and 2013, respectively. An enquiry into how South Africa deals with child rights issues is by extension an enquiry into how it deals with children of migrants, asylum seekers and refugees, rather all children within its territory. It is also by implication an enquiry into how the neighbouring Southern African Development Community (SADC) countries deal with child rights within their respective territories. Data on Child migration suggests that the country-specific child

---

[8]Mid-year population estimates 2014 – Statistical release PO302, Statistics S.A, 2014.

rights issues within SADC have significant ramifications for the ability and capacity of South Africa to holistically and comprehensively address its own child rights obligations under International and domestic law.

3.2. Constitutional Protection of Child Rights

Section 28 in the Constitution of South Africa[9] outlines the rights of the child, that is, South African citizens under the age of 8 years. The section recognizes the following rights:

1. ***Every child has the right:-***
   a. To a name and a nationality from birth;
   b. To family care or parental care, or to appropriate alternative care when removed from family environment; to basic nutrition, shelter, basic health care services and social services;
   c. To be protected from maltreatment, neglect, abuse or degradation;
   d. To be protected from exploitative labour practices;
   e. Not to be required or permitted to perform work or provide services that:
      i. Are appropriate for a person of that child's age; or
      ii. Place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
   f. Not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under section 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be:-
      i. Kept separately from detained persons over the age of 18 years; and
      ii. Treated in a manner, and kept in conditions, that take into account the child's age;
   g. To have a legal practitioner assigned to the child by the State, and at State expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
   h. Not to be used directly in armed conflict, and to be protected in times of armed conflict;

2. ***A child's best interests are of paramount importance in every matter concerning the child***

The law in South Africa creates the following specific rights and responsibilities[10]:
   a. Children have the right to be taken seriously and the responsibility to listen to others
   b. Children have the right to quality medical care and the responsibility to take care of themselves
   c. Children have the right to a good education and the responsibility to study and respect their teachers
   d. Children have the right to be loved and protected from harm and the responsibility to show love and caring to others
   e. Children have the right to be proud of their heritage and beliefs and the responsibility respect the origins and beliefs of others

---

[9] See www.info.gov.co.za
[10] See illustrated Guide issued by the Natonal Children's Rights Committee, South Africa,2009

f. Children have the right to a safe and comfortable home and the responsibility to share in keeping it neat and clean
g. Children have the right to make mistakes and the responsibility to learn from those mistakes
h. Children have the right to adequately fed and the responsibility not to waste food

As shall be demonstrated below, there are a lot of similarities in the Child rights-related issues in the SADC countries. It is important to point out from the outset that the protection of children's rights is allied to and not inconsistent with the dominant Bantu and Khoisan cultures. Consequently, international human rights principles relating to the protection of the child find clear support within the African cultural conception of humanity and human dignity and the construction of childhood. Additionally, all the Southern African Countries have ratified the United Nations Convention on the Rights of the Child and the African Charter on the Rights and the Welfare of the child. There are however some issues that are cross cutting that need to be addressed in all the countries, not least their poor record in terms of Treaty reporting.

3.3. The Policy Context of Child Rights

In 2001, the post-apartheid African National Congress-led government produced an End-Decade Report on children, which documented progress towards the targets that had been set in the 1990 World Summit for Children. A section of the report dealt with government efforts to address poverty and to ensure that children are given priority in economic and social development. As its key response, in 1996 the South African government identified in broad macro-economic policy, 'Growth, Employment and Redistribution' (GEAR). GEAR had been preceded in 1994 by the Reconstruction and Development Programme (RDP). The report argued that a stable macro-economic foundation was essential for sustainable development and economic growth, *"which in turn is good for children"*. At the time the government was spending more than half its budget on social services such as education, health and welfare services. The RDP was a very ambitious programme aimed at reducing poverty quickly through financing and implementing a broad range of programmes to deliver basic and social services to the poor. The GEAR strategy purported to link rapid poverty reduction and by inference –the realization of socio-economic rights to conservative cyclical macro-economic policy whose primary aim was budget deficit reduction, inflation targeting and restrictive monetary policy. GEAR also stressed the need for institution-building at the level of the State to enhance the efficiency of sending and delivery capacity.
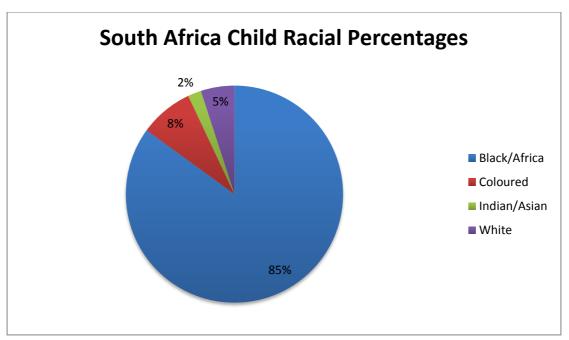
There are 19.7 million children under the age of 18 in South Africa. Over 55 % of these children live in cities and towns. Internal and regional migration is an important demographic process in shaping the distribution of the population. Nearly one-in-ten children nationwide, and one-in-five in Gauteng Province, have migrated from another province. Fluid care-giving arrangements are another common feature of childhoods in South Africa. Furthermore, only one-in-three children live with both their biological

parents and one-in-six have lost a parent. Population projections indicate that the overall number of children in South Africa is reaching its peak and will start to decline gradually. The proportion of children in the total population is projected to decline from 36% today to 29% in 2035.

Overall, South Africa has made significant progress in fulfilling the rights of the child since the advent of democracy in 1994. The South African Constitution has specific provisions on the rights of children, and the State has introduced many targeted legislative and policy advancements. At a programmatic level, the South African State has introduced measures such as the Child Support Grant. The Child Support Grant has been credited with the evident substantial improvement of the financial situation of many poor families. The improvement in household income and savings has –in turn- positively contributed to the well-being of children in South Africa. Notwithstanding the significant progress made as far as children's rights are concerned, much remains to be done, especially in the poorest sections of South African society, where children are most likely to remain trapped in poverty. Focused attention and results-based programming by relevant South African duty-bearers could effectively address challenges in these areas and significantly improve the lives of children in South Africa, in line with the goals of the National Development Plan (NDP) and the United Nations' Sustainable Development Goals (SDGs).
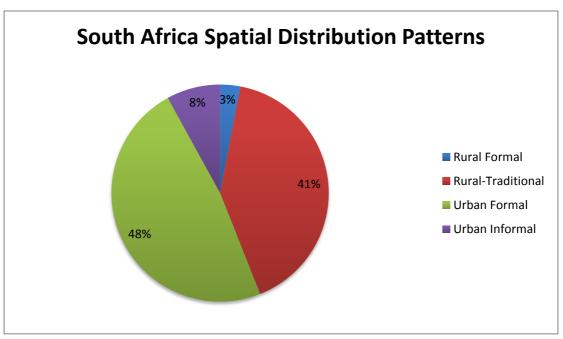
A recent report by the UN and the South African Human Rights Commission (SAHRC) entitled, '***Global Goals for Every Child: Progress and Disparities among Children in South Africa',*** noted amongst other things that growing levels of inequality and deepening poverty pose the greatest danger to South Africa's ability to fully or substantially realise the rights of the child as contained in the Constitution and relevant policies and laws. Many South African children live in dire poverty. The dearth of reliable updated statistical information especially for the poorest communities limits the full understanding of the current status of children. Children who are trapped in poverty are often also because of their social class, socially excluded. Furthermore, in some instances, they are also stigmatised and criminalized. Importantly, there is a correlation between the poverty and inequality data sets, on the one hand and the racial profiles of the children in South Africa on the other. Black South African children are most likely to be poorer and more unequal than their White, Asian and Coloured counterparts. Glaring gaps in opportunity – between rich and poor households, urban and rural communities, and Black African and White children–perpetuate intergenerational cycles of deprivation. Disadvantages based on gender, disability and other socio-economic markers persist. Below are graphical presentations of demographics of children in South Africa:

Figure 2: Percentage of Children 0-17 years old by Population Racial Group, 2014

South Africa Child Racial Percentages

- Black/Africa
- Coloured
- Indian/Asian
- White

2%
5%
8%
85%

[11]*Source*: Calculations based on data from Statistics South Africa's General Household Survey, 2014
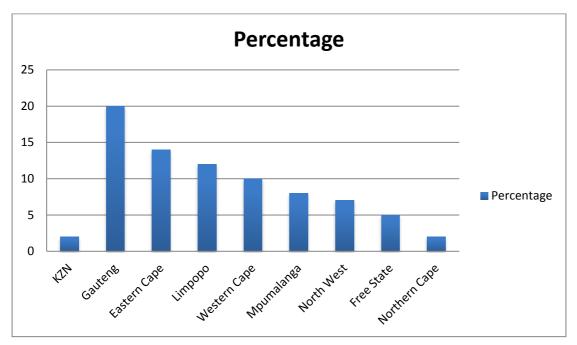
Figure 3: Percentage Distribution of Children 0-17 years Old by Geo-type

South Africa Spatial Distribution Patterns

- Rural Formal
- Rural-Traditional
- Urban Formal
- Urban Informal

3%
8%
41%
48%

Source: Calculations based on data from Statistics South Africa's General Household Survey, 2014

---
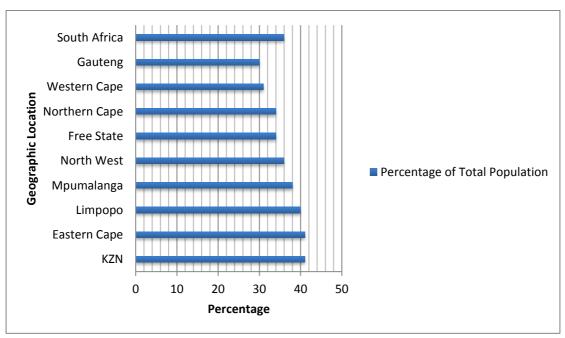
[11]*Source* : Calculations based on data from Statistics South Africa's General Household Survey, 2014

Figure 4: Numbers and Percentage Distribution of Children 0-17 Years Old by Province, 2014[12]

Source: Statistics South Africa [2015], Mid-Year population estimates, 2015.

Figure 5: Population of Children 0-17 years Old as a Proportion of the Total Population

Source: Source of data: Statistics South Africa (2015), Mid-year population estimates, 2015 . Pretoria: Statistics South Africa

---

[12]Source of data: Statistics South Africa (2015), Mid-year population estimates, 2015 . Pretoria: Statistics South Africa

The *Global Goals for Every Child* report presents an analysis of progress and disparities among children in South Africa. The report builds on the SDGs and groups together child-related SDGs and targets into six clusters: ***social inclusion, nutrition, health and HIV, water and sanitation, education and child protection***. It uses selected indicators from the global indicator framework for which data are available to highlight critical gaps and challenges for children in South Africa. It relies on data derived from the latest nationally representative household surveys, such as Statistics South Africa's General Household Survey and the Southern Africa Labour and Development Research Unit's, National Income Dynamics Study, census, administrative data from government departments and agencies, and United Nations inter-agency estimates. The report demonstrates significant progress during the past two decades since 2002/3; in areas such as child poverty, child survival, mother-to-child transmission of HIV and primary school attendance, among others. The challenges and prospects of child rights in South Africa are inextricably tied to the general and specific context of child rights in the Southern African Development Community (SADC) region.

Despite the formal conservative fiscal policy posture adopted by the South African government between 1996 and 2000, it also undertook several wide-ranging direct measures intended to ensure the full realization of children's socio-economic rights. Although there have been significant improvements. There is still to strengthen –amongst other things-child-specific rights in policy formulation, budget allocation process or development programme of implementation at all levels. There is a demonstrable need to link government programmes and budgets to South Africa's International, regional and constitutional obligations[13] in respect of Child Rights. South African children are disproportionately affected by poverty and one-in-five live in overcrowded households, with one-in-three having limited access to water and one-in-four living without basic sanitation. There is a wide gulf still between the rights of the child recognized by the constitution, especially rights pertaining to dignity, equality, education, healthcare and social services and the actual practice on the ground. The gap between the rich and the poor is widening, and inequality is deepening.

4. Child Rights in the SADC Context

Countries in Southern Africa share a history of colonialism. During this era, there was segregation in the way access to basic social services was administered and the legacy of such is still evident. This accounts for a lot of similarities in the issues needing attention in these countries. Arguably though, the protection of children's rights is not a concept alien to traditional African culture. Consequently, international human rights principles relating to the protection of the child find support within the African cultural conception of human rights and the construction of childhood. Most African countries did not have

---

[13] Streak,J., 'Conclusion' in E. Coetzee and J. Streak (eds), *Monitoring Child Socio-Economic Rights in South Africa: Achievements and Challenges,* IDASA: Cape Town, 2004, p.227.

complications in ratifying the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and the Welfare of the child. There are however some issues that are cross-cutting that need to be addressed in all the countries. One such pertinent cross cutting issue requiring urgent attention is the general unavailability of a rights culture in all the countries. SADC countries have come up with good legal instruments meant to protect children. For example, South Africa promulgated the Child Care Act 74 of 1983. In Namibia, the national constitution- Article 15, stipulate the rights of children that should be protected, promoted and respected. Most citizens are not aware of these normative instruments and standards. African children as the rights claimers are even less aware of their rights and the means available for them to demand and enjoy the said rights. There is a palpable need of inculcating a rights culture in the children in the countries in question.

In the majority of SADC countries, there are no institutions in place that facilitate the collection, collation and sharing of up to date information about children's rights. Information on the state of children's rights is scattered in several documents, institutions and government department. Such information cannot be used to make any policy decision or to inform programmatic interventions[14]. National statistical offices, CSOs, ministries and local government structures need mechanisms and institutions that collect, collate and disseminate up to date information on the state of children's rights in each country. Arguably, advocacy at the SADC level and within SADC countries is weak because it is not always empirically based. A handful of child rights organizations have endeavoured over the last decade to draw up data and analyze patterns of child rights abuses within the SADC region.

4.1. *Harmful Cultural Practices*

Despite significant efforts of governments in the SADC region to ensure the rights of children, the latter are prone to harmful cultural practices. Such practices as child pledging, unsafe ritual practices as can be noted in Mozambique, religious beliefs as can be exemplified in Zimbabwe, using the white garment apostolic sect which does not believe in the immunization of children. Additionally, Mozambique has one of the world's highest rates of child marriage. Specific cultural practices where children are considered ready for marriage after initiation rites contribute to a high rate of early marriages. Data from the 2003 Demographic and Health survey indicates that 18% of young women aged 20-24 had been married before the age of 15 and 56 % before the age of 17. In Mozambique, 36.9% of married girls aged 15 to 19 have no education. Teenage pregnancy and childbirth is associated with poor health outcomes for both the mother and child.

---

[14]Lebeau ,2004

4.2. Child Sexual Abuse

Child sexual abuse has been noted as one of the challenges in the identified countries. Available data in Zimbabwe shows that 60% of rape survivors brought to the attention of the authorities are children, and an overwhelming majority of the victims are girls. In 2009, the Zimbabwe Republic Police recorded 3448 child abuse cases while the Victim Friendly Court dealt with 1222 cases. This is believed to be only the tip of the iceberg as the majority of abuse cases are not reported to the authorities. In Mozambique, case studies suggest that 8% of primary school children have been sexually abused and another 35% have experienced sexual harassment. South Africa has promulgated the Child Care Amendment Act, (86 of 1991; 13 of 1999) which makes sexual abuse of children a criminal offense. Despite this law in South Africa, the numbers of child abuse cases are not reducing.

4.3. Access to Quality Education

Access to education in the SADC region has seen positive development since the turn of the millennium, including in post-conflict countries such as Angola and Mozambique. However, other structural factors severely constrain the quality of education and overall learners' performance. For instance, South Africa has done well in terms of access to primary education. Gross enrolment rate in primary education (grade 1-7) is 98% and in secondary education (grade 8-12) is 85%; the gender parity index is 0.98 and 1.08 respectively suggesting that girls and boys have equitable access to education. Attendance of early childhood development forms and reception-year are low due to lack of means at household level, insufficient supply and poor quality at institutional level, and lack of appropriate norms and standards at structural level. Net school attendance of children of primary schools age (7 to 13 years) is 98%, notwithstanding the evident high access to education, actual achievement of learners is below standard in terms of both literacy and numeracy. Systemic evaluation conducted among Grade 3 students in 2007 in South Africa found very low scores: 36% for literacy and 35% for numeracy on average. In the same year, only 50% of the candidates for Senior Certificate passed. Similarly –and for somewhat different reasons- the pass rate for Zimbabwe has been plunging since 2005. In 2008, only 20% of pupils passed primary exams and the pass rate at Cambridge Ordinary Examination level (i.e. after four years of high school) also declined significantly. A number of factors contributed to the poor quality of education in Zimbabwe and South Africa , including –but not limited to the following; prevalence of untrained teachers, dilapidated infrastructure, lack of motivation of teachers, high text book to pupil ratios, the social burden of care, economic hardships, poor governance of schools, general socio-economic and political climate in the country, hyper-commercialization, brain drain from the education sector, education policy, education governance , and unaffordable school fees.

4.4. Social Protection or Child Poverty

According to the Ministry of Gender Equality and Child Welfare of Namibia, there is little data available on the economic exploitation of children, although it is a problem which is known to be particularly acute on farms, where employment relationships often involve entire families – with fathers performing farm labour, mothers performing domestic work, and children often being expected to "help out" without extra compensation. Although it is now illegal for employers to demand the labour of their employee's children, enforcement of this rule on isolated farms will be difficult if not impossible. In South Africa, 68% of the children live in poverty. In Mozambique, child poverty is a pervasive and deep rooted problem, with about 58% of children living below the poverty line. In Zimbabwe, anecdotal information suggests that child poverty is rife. There is however no source of information on the scope and extent of the poverty. While in the same breathe, the social protection safety nets have not been able to cater for all the children needing care. This caused by the fact that the system is not resourced to do such.

4.5. Need for Child Friendly Budgets

A major challenge in Africa is for the governments to significantly increase their level of investment in children. ***Namibia has therefore acknowledged that investing in early childhood development is widely acknowledged to be the best investment in human capital for economic growth.*** In Mozambique, United Nations International Children's Fund (UNICEF) is assisting in the expansion of a social protection programme which provides cash transfers and in-kind material support to the most vulnerable households. Over the past two years, the number of direct beneficiaries has increased from 90,000 to 120,000. The governments in SADC have not been prioritising resource allocation to alleviating child poverty. In Zimbabwe, the public assistance program has failed to capture all needy persons due to the low budget allocation for public assistance. There is need for advocacy with governments to ensure that they adhere to the Dakar Declaration which stipulates that 20% of the national budget should be allocated to education while the Abuja Declaration notes that 15% of the same goes to health.

4.6. Access to Affordable Health Care Liked With HIV/AIDS

In countries like Namibia, Zambia and Zimbabwe, the HIV prevalence rate is around 10-15% and in South Africa the HIV prevalence is 17.8%. Zimbabwe has a higher number of orphans, in proportion to its population, than any other country in the world, according to UNICEF. As many as 1 in 4 children in Zimbabwe are orphaned as a result of parents dying from Acquired Immune Deficiency Syndrome (AIDS). It is estimated that 22% of the Namibian population lives with HIV. The disease has been the leading cause of deaths since 1996. According to the Ministry of Gender Equality and Child Welfare, there are approximately 114,000 children in Namibia defined as orphans, of which 77,000 are orphaned by AIDS.

Child-headed households, school drop-out, prostitution and sex at a young age are some of the consequences of AIDS on children. Namibia adopted the Millennium Development Goals (MDGs) in 2000 at the UN Millennium Summit. Of most importance to HIV/AIDS was MDG 6, with its target of halting and beginning to reverse the spread of HIV/AIDS by 2015 and combating malaria and other diseases. In South Africa, 5.2 million people were living with HIV in 2009 and an estimated 413,000 new infections; South Africa is the hardest hit country by HIV/AIDS in absolute numbers. AIDS is the leading cause of maternal death accounting for 23 percent of all deaths. In Zambia, there are as many as one and a half million orphaned children. The Joint United Nations Programme on HIV/AIDS (UNAIDS) estimates 1.1 million Zambians are living with HIV/AIDS; the prevalence rate for the 15 to 49 year age group is 15.2%. Mozambique has an estimated 1.2 million orphaned children, of which 350,000 have lost their parents to AIDS. Children living in child-headed households are in a particularly precarious situation.

Table 2: Issues Peculiar to Countries

Issues	Countries
Zimbabwe	It is estimated that in 2009, 45% of children under five in urban areas and 70% in rural areas did not have birth certificates. This means that all these children did not have a legal name, nationality or citizenship rights. This can be attributed to stringent rules that do not permit every child despite origin of parents to have birth certificates.
Mozambique	Trafficking children to exploit them as sex-workers and domestic workers in the region is a growing concern. A report by the International Organisation on Migration estimates that approximately one thousand children and women are trafficked from Mozambique to South Africa every year for the purpose of exploitative labour and commercial sexual exploitation. This phenomenon is also growing in Zimbabwe. In Zimbabwe however, they are termed unaccompanied children.
Namibia	The government of Namibia ratified The International Labour Organisation(ILO) Worst Forms of Child Labour Convention in 2000. The Convention requires ratifying governments to take measures to effect the immediate abolition of the 'worst forms of child labour'. The worst forms of child labour include slavery, child prostitution, using a child for illegal activities, and work which by its nature or the circumstances is likely to harm the health, safety or morals of children. Namibia ratified the ILO Convention in 2000.While South Africa is the richest nation in sub-Saharan Africa and should have led the way in ARV distribution, its government was slow to act, and so far, only 37% of those in need of treatment in South Africa are receiving it. There is need to improve access to treatment of children living with HIV.

5. CSO Enabling Environment

"People's practices of collective action have existed throughout history; political, socio-cultural, and socio-economic changes over the last decades, however, have provided a uniquely fertile ground for the emergence of new forms of civic engagement on an unprecedented scale" (Heirich,2007: xxi). Civil society, howsoever, interpreted-is tainted by historical, ideological and cultural baggage, as well as particular Euro-American conceptions of development and progress. Development as a concept is itself severely contested as it is implicated in notions of civility and enlightenment. Within social theory the concern is as much about and with cultures of civil society as it is about the culture of civil society. In the history of South Africa, the idea of 'civil society' has historically been associated with the concept of 'people power' and 'citizenship'. It refers to various forms of organizations with very different characteristics and dynamics. Notions of civil society are often loaded with ideological assumptions and disputes arising out of the history of concept and its multiple elements. As such, 'civil society' is a highly-contested concept.

The Swilling and Russell study (2002) used the term NPO and suggested five criteria that could be used to define an NPO. NPOs should be organized, private(non-governmental), self-governing, non-profit distributing, and voluntary. This earlier definition excluded the aspects of public interest and non-institutionalized forms of civil society. The NDA defined civil society as follows:

"Civil society is the sphere of organizations and/or associations of organizations located between the confines of the family, the State and the market, which is bound by a set of shared civic rules, and in which people associate voluntarily to advance common interests"

The 2008 NDA Report adopted five criteria for indentifying NPOs, namely:

Box 1: Five criteria for indentifying NPOs

- For public benefit;
- Having a common purpose, usually (but not exclusively) around service delivery, social watch, advocacy, research and education;
- Private (occupying the space outside the State or market);
- Self-governing; and
- Does not distribute profit

We have for ease of reference adopted a definition that does not purport to resolve the contradictions, but offers clarity regarding the entities analyzed by this report. The Centre for Civil Society at the London School of Economics and Political Science(LSE), defines civil society as follows:

"Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the State, family and market, though in practice, the boundaries between State, civil society, family and market are often complex, blurred and negotiated. Civil Society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power"

As a caveat, it is important to note that civil society goes beyond formalized organizations and in practice includes groups that are not legalized or registered. It encompasses many associational forms, including: registered philanthropies, development non-governmental organizations (NGOs), community groups, women's organizations, children's and youth organizations, faith based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions, networks and advocacy groups. In South Africa, the term NPO or 'civic organization' is preferred by policy makers.

From the definitions above civil society, therefore, possesses the following elements:

- It is an arena for action, and such action does not need to be performed by collective actors who conform to specific organizational forms (e.g. associations, trusts, foundations, NGO, etc.), although they often do. Loosely organized, non-institutionalized forms like social movements are gaining ascendancy as has been the case with #FeesMustFall and #RhodesMustFall movements in South Africa. In essence, civil society is diverse and transcends the more vocal and visible NGOs;
- Civil society actors perform their actions collectively, and individuals are free to voluntarily join and participate in collective action without prior coercion
- Civil society group actions are based on shared interests, purposes and values. This does not at all imply that civil society is homogenous, in reality it is a plethora of different and even opposed purposeful groups;
- The idea of separability of societal arenas such as the State, the market, the family and civil society is not always clinically applicable in South African context. In reality, the different arenas of social action interact. Although these four arenas are supposedly autonomous from each other, what is important is the degree of permeability between the different arenas and the risk of dominance of one or some over the rest

Civil society organizations have –in many contexts-served as an effective bridge between the State, the Market and the masses of impoverished citizens suffering the ravages of under-development and impoverishment by both internal and external actors. In this regard, a confluence of the following factors defines narratives about the political economy of civil society in South Africa, namely:

- Conceptions of imperialism, colonialism (neo-colonialism), apartheid, globalization and the popular struggles against these forms of domination and power;
- Experiences of democracy and democratization as well as human rights in the post-apartheid era;
- Experiences and conceptions of under-development and development during the age of economic liberalization and economic structural transformation under the RDP and GEAR policies; and
- Conceptions of the internal dimension of sovereignty (as democratization) and the external dimension (as regionalization) in the context of inter-governmental and citizen-driven efforts at regional integration within the SADC region
- Conceptions of citizenship, solidarity and 'Africanness' in light of an influx of labour migrants and political refugees from neighbouring Southern African countries and the rest of Africa

The above factors are inextricably interlinked and they –to a large extent- define the contours of the South African regulatory framework for civil society organizations, their rights, privileges, form, programmatic interventions and governance architecture. The political economy of civil society in South Africa is highly complex as is the different visions of development propounded by different types of civil society. The contestations and preferences of the dominant groups in civil society, politics and business inform and shape the behaviour and policy choices of various political and economic elites as well as subaltern classes that engage and/or benefit from civil society organizations. They define the developmental and governance roles of civil society as well as its numerous contradictions. As such, the very notion of civil society space, enabling environment and development effectiveness is also highly contested and inescapably contradictory within the South African context.

Civil society structures form an important space for social cohesion and solidarity, service delivery and a voice of critique and expression requisite for the building of democratic and free societies. In South Africa, civil society played a critical role in the transition to democracy. Under Apartheid civil society was generally defined or categorized based on its relationship the State. Some CSOs positioned themselves to serve minority white interests and thus aligned themselves with the Apartheid State. Other CSOs aligned themselves with the anti-apartheid cause and thus were deemed to be in opposition to the State.

In post-Apartheid, South Africa, the term civil society sanitizes, modernizes and replicates relations of power, privilege, exclusion and inclusion (and dominance) that development practice has long discarded or significantly modified. Ideas about 'givers' and 'receivers', 'knowers' and 'learners' that are both inorganic and abstracted from contextual reality often re-incarnate under the guise of modern civil society interventions. The current forms, structures, processes, programmes and struggles of

civil society reflect lingering racial, class, gender and generational contradictions of both nation-building and state formation(and reformation) in post-Apartheid South Africa. This is more so when one asks the following critical questions: *which CSO does what ?For whom? Where? Why? And How?*

Since 1994, CSOs have had to renegotiate their relationship with the State. Some who were highly supportive in the beginning have become avid opponents upon discovering that the State has not delivered on its promises and as a result have opted to align themselves with poor communities, either against the State or without State assistance or interest. Civil Society's recent association with 'holiday celebrity' and the billionaires club has created the impression that it may merely be the public relations arm of extractive national and global finance capital. That it may be telescopic and idealistic to the point of long-term irrelevance except for its ability to throw money at South Africa's structural poverty.

There are no agreed indices and tools for measuring the performance of investments by civil society organisations. It is therefore difficult to effectively and accurately measure civil society's real contribution towards local and national development, without a measure of either subjectivity or resorting to anecdotes. Indices developed by CIVICUS, multilateral and private such organizations such as USAID are not always well suited to non-NGO forms of civil society such as social movements and online mobilization platforms. Most indicators are not closely connected to tangible features of civil society reality and as such their validity is impugned. The realiability of data sets used as well as objectivity of the analysis is often questioned because indicators tend to either be subjective perceptions as opposed to measurable indicators.

Globally, there are growing calls to link civil society programming to broader State or international SDGs. However, the desirability of imposing lofty transformational objectives to what is essentially a private expression of empathy and social solidarity is debatable. Suffice it to state that, private giving actuated largely by private subjective considerations is difficult to classify or measure within the same realm and using the same tools as those applied to public development initiatives financed by taxes and official development assistance. However, because CSOs often approach the State for specific rights and privileges such as customs duty exemptions and tax deductions, they may be an arguable case for alignment of their interventions with consensually agreed national development strategies and goals. The obvious difficulty of such an approach lies in the assumptions it makes regarding legitimacy of the State, government and existent of consent of the governed. The further difficulty arises when entities such as social movements specifically constitute themselves to oppose specific State policies or to be anti-State.

The search for globally and nationally unifying development frameworks must –of necessity contend with national and local particularities and contradictions. Unlike NGOs,

social movements often do not approach the State for tax or customs benefits and privileges. Their lived realities shape the course, content and form of their popular struggles outside the neat formulaic parameters of SDGs. However, the fact that all citizen associations work directly with the publics and the possibility that some of them can and does get incentivised through public benefits thus justifies imposition of a measure of objective scrutiny or impact assessment. Even when CSOs do not derive any public benefit from public taxes, the impact of CSOs on socio-cultural and economic behaviours within communities justifies their assessment against objective developmental aspirations of society or at the very least ethical and other values that govern such society. Such an assessment is only feasible if the objective operational environment is enabling in every sense of the word. In order to be enabling such environment must be characterised by law, policies and practices that respect and promote human rights, access to justice and rule of law. It must be an environment in which there is no undue interference by the State nor restrictive sanction of the activities and participation of civil society organizations in both development and governance processes. Ideally there must exist the policy space for CSOs to input into and influence policy trajectory.

6. Child Rights in South Africa: Findings and Recommendations

6.1. Child Rights in the Constitution of South Africa

Although the South African Constitution protects children's rights, children continued to experience high levels of violence across multiple settings. It is imperative to find innovative ways to protect children from violence and to build children's resilience so they are able to recover from negative experiences. It is vital for South Africa to continue to monitor the status of children, identifying critical gaps and opportunities to strengthen policy and programmes.

6.2. Child Support Grants

As is explained below, one of South Africa's big success is the expansion of social grants, in particular, the child support grant. In 2005, five million children were receiving the Child Support Grant (CSG), and it was only available to children up to the age of fourteen. By 2016, the CSG was available to all children, children being constitutionally defined as under-18; and it now reaches nearly 12 million every month. Although a potential difficulty lies in the sustainability of grants given the sluggish performance of the South African economy, the outcomes to date have been positive. The effects of the grant confirmed in multiple studies include the following: children who receive grants, or even those who live in households where others receive grants, have better health and nutritional outcomes when controlling for other variables, and they tend to do better at school. CSG are also associated with less risky behaviour among teenagers. Child poverty rates have dropped over the last decade, although they remain relatively high.

Another improvement for South Africa's children lies in the decreasing number of orphans. In the 2000s, the number of maternally orphaned children rose steadily, reaching a high of 1.6 million in 2009. This may have been due to HIV-related maternal deaths and the failure to roll out an efficient antiretroviral programme. Since 2009, maternal orphaning rates have dropped substantially – much faster than those predicted by the modelled estimates – and are now around the 2005 figures, at 1.2 million. Orphaning rates are expected to continue falling, owing to recently-announced eligibility criteria for enrolment into HAART.

6.3. United Nations Committee on the Rights of the Child Report

In response to the 2016 South African government report, the United Nations Committee on the Rights of the Child issued a comprehensive set of recommendations to the Government of South Africa requisite to strengthen the realisation of child rights in the country. The Committee recognised and acknowledged follow-up measures undertaken and the significant progress that South Africa has made to improve children's lives in areas such as early childhood development, the child support grant and the reduction in child mortality. The Committee welcomed the progress achieved by South Africa in various areas, including the ratification of or accession to international instruments, in particular, the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2009 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2003. The Committee also welcomed the adoption of a number of new legislative acts and institutional and policy measures related to children's rights since its last review, including the Children's Act 38 of 2005 and the Child Justice Act 75 of 2008, which are largely in line with the Convention. The Committee also welcomed the progressive application of the rights and principles stipulated in the Convention by the judiciary in South African jurisprudence, the overall reduction of infant and child mortality and mother-to-child transmission of HIV/AIDS, the increase in birth registration, as well as efforts made to develop a strong legal and policy framework to combat violence. In our research, we found several recommendations of the Committee compelling as they resonated with our own research. Below we have listed issues and areas where we think that the government of South Africa can do to further improve on the progress they have already made in terms of child rights.

6.3.1. Main Issues and recommendations

The recommendations below focus extensively on main areas of concern, systemic challenges and critical areas that require further attention and action. The following are our recommendations to the South African government:

- Improved governance on children's rights overall, which entails the establishment and financing inter-ministerial level leadership and coordination on children's rights;
- Strengthening the existing independent oversight mechanisms;

- Planned and effective child rights budgeting, so that laws, policies and plans can be implemented in a manner that positively impacts on children's lives;
- Addressing the alarming rates of violence against children by improving measures for violence prevention, child protection and access to justice;
- Increase equitable access to health rights, including improving access to adolescent health, and addressing the unacceptably high rates of child malnutrition in South Africa;
- Address the myriad rights violations against children with disabilities and against migrant, refugee and asylum seeking children in South Africa in terms of access to education, healthcare and social security amongst others;
- Addressing and giving direction to the need for greater efficiency and accountability in expenditure in the education system to increase both equitable access and the quality of education;
- Fixing problems with birth registration processes that result in the most marginalised children not accessing services, and leaving some at risk of statelessness;
- Consider increasing the amount of the Child Support Grant to address the impact of poverty on children in South Africa;
- Ensure implementation of commitments implied and agreed to under the SDG's in all areas pertaining to children's rights.

6.3.2. Some Selected Thematic Specific Recommendations

In general, the Committee that South Africa takes all measures to address recommendations related to legislation, data collection, budgetary allocations, domestic violence, ill-treatment and abuse, corporal punishment, primary health care, adolescent health, education and juvenile justice. In accordance with the general measures of implementation (Articles. 4, 42 and 44 (6)), the Committee made, amongst others, some of the following recommendations:

Table 3: Thematic Recommendations from the UNCRC Report	
Theme	**Recommendations**
Definition of the child	The Children's Act (2005) sets the minimum age for marriage at 12 years for girls and 14 for boys and the Marriage Act (1961) and the Recognition of Customary Marriages Act (1998) set different conditions for marriages for girls and boys under 18 years old. It is recommended that South Africa harmonize all its legislation in order to ensure that the minimum age for marriage is established at 18 years for both girls and boys.
Comprehensive policy and strategy	The adoption of the National Plan of Action for Children in South Africa 2012-2017 is welcoming. However, there is some concern that the implementation of the Plan has been weak, and that no reports on progress have been issued. Therefore, South Africa should: • Expedite the completion of a comprehensive mid-term review of the Plan; • Ensure timely issuance and publication of reports as stipulated in the Plan; • Develop a national plan of action for children for the period after 2017, based on the outcome of the Plan currently in force and with a clear accountability mechanism and sufficient human, technical and financial resources.
Coordination	The establishment of the National Children's Rights Intersectoral Coordination Committee in 2015 is a positive step. However, it remains unclear whether the mandate of the UNCRC includes the implementation of the Convention and the Optional Protocols, as well as the implementation of the National Plan of Action for Children 2012 to 2017, and whether it has been given sufficient authority to effectively coordinate activities of all relevant sectors within the Government. South Africa should ensure an appropriate coordinating body is established at a high inter-ministerial level, as it was originally placed, with a clear mandate and sufficient authority to coordinate all activities related to the implementation, monitoring and evaluation of the Convention at cross- sectoral, national, regional and local levels and provided with the necessary human, technical and financial resources for its operation.
Allocation of resources	The overall increase in public expenditure relevant to education, health, social protection and juvenile justice during the period under the review is welcoming. However, the following are of concerned: • The lack of a system to identify and track budget allocation and spending for children; • The fluctuation of annual increase of expenditure; • The planned budget cut for personnel expenditure of the Department of Social Development which may undermine the human resources necessary to deliver services to children; • The lack of robust audits on public expenditure and existence of wasteful or irregular expenditure, including corruption. Regarding public budgeting for the realization of children's rights, South Africa should set up a budgeting process which includes a child rights perspective and specifies clear allocations to children in the relevant sectors and agencies, including specific indicators and a tracking system to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention, including by: • Setting performance targets linking child-related programme goals to budget allocations and actual expenditures, to allow monitoring of outcomes and impacts on children, including those in vulnerable situations; • Developing detailed budget lines and codes for all planned, enacted, revised and actual expenditures that directly affect children; • Using budget classification systems that allow expenditures related to the rights of the child to be reported, tracked and analysed.

	• Ensuring that the fluctuation or reduction of budget allocation for the delivery of services does not reduce the existing level of enjoyment of children's rights; • Strengthening audits to increase transparency and accountability of public expenditure across all sectors and adopting measures to eradicate corruption and to reduce irregular expenditure, in order to mobilize maximum available resources for the implementation of the rights of the child.
Children's rights and the business sector	It is concerning that the activities of business enterprises operating in South Africa, those of extractive industries have negative impact on the enjoyment of the rights of the child, including through environmental pollution and exploitation of child labour. Regarding the impact of the business sector on children's rights, South Africa should establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly about children's rights. It recommends that South Africa: • Establish a clear regulatory framework for the business enterprises operating in the State party to ensure that their activities do not negatively affect human rights or endanger environmental and other standards, especially those relating to children's rights; • Conduct an independent study on the impacts of environmental pollution caused by the activities of extractive industries on children's health, including those of mining dust and water pollution. • Ensure effective implementation by business enterprises, especially both large-scale and artisanal enterprises of extractive industries, of international and national environment and health standards; • Establish an effective mechanism for monitoring of adherence to above- mentioned standards by business enterprises, especially both large-scale and artisanal enterprises of extractive industries, and appropriately sanction in case of violation and provide remedies to child victims; • Be guided by the United Nations "Protect, Respect and Remedy" Framework (2008).
Violence against children	The very high prevalence of violence against children, including corporal punishment, gender-based violence and harmful practices is very concerning. About the right of the child to freedom from all forms of violence and taking note of target 16.2 of the Sustainable Development Goals on ending abuse, exploitation, trafficking and all forms of violence against and torture of children, South Africa should develop, adopt and effectively implement a comprehensive national strategy to prevent and address all forms of violence against children and to protect and support child victims of violence. In developing such strategy, South Africa should: • Ensure that policy responses to violence are developed based on the analysis of objective data; • Ensure meaningful participation of all stakeholders, including children and organizations working with children; • Address structural cases of violence, including inequality, poverty, alcohol and drug abuse and xenophobia; • Pay due attention to groups of children at heightened risk of exposure to violence, including children living in rural areas and urban informal settlements, refugee, asylum-seeking, migrant and stateless children, children in street situations, children belonging to sexual minorities, children with disabilities, indigenous children and children with albinism.
Administration of juvenile justice	It is noteworthy that the Child Justice Act (2008) raised the minimum age of criminal responsibility to 10 years. However, the following concerns remain: • A legal minimum age of 10 years is still low; • A large number of children are held in pre-trial detention, some for unduly lengthy periods of time; • There is a lack of access to educational, health and other services, especially for those in pre-trial detention; • Detention facilities are overcrowded.

	With reference to children's rights in juvenile justice, South Africa should provide effective implementation of national legislation, in line with international standards, in particular: • Expedite the review of the minimum age of criminal responsibility with a view to raising it to an internationally acceptable level. • Reduce the number of children held in pre-trial detention and ensure, by explicit legal provisions, that the competent court makes a final decision on the charges not later than six months after children are presented; • Guarantee access to education, health and other benefits to all children in detention, including those who are awaiting trial or have not been sentenced; • Take immediate and necessary measures to reduce over-crowding. Child victims and witnesses of crimes There is concern at the lack of a legal framework to protect the rights of child victims and witnesses of crimes and at the lack of quality support and rehabilitation services for them. Therefore, South Africa should: • Consider developing legislation to protect and empower child victims and witnesses of crimes, addressing, among others, services for physical, psychological and social rehabilitation of victims; • Allocate adequate human, technical and financial resources to the provision of rehabilitation and support services for child victims and witnesses of crimes in order to make them more sustainable and improve their quality.
Cooperation with civil society	The South African Constitution guarantees the access by the public to central and local legislative bodies, and that civil society organizations play a key role in service delivery. However, it was concerned at: • Insufficient systematic involvement of civil society organizations working on children's rights in the development of laws, policies and programmes relevant to the implementation of the Convention; • Limited resources made available for civil society organizations working on children's rights in service delivery. It is recommended that South Africa: • Establish a strategy that enhances the active and meaningful participation of civil society organisations in the development, implementation and monitoring of laws, policies, budgets and programmes relevant to the implementation of the Convention, with transparent and non-discriminatory criteria for the identification of participating organizations, clear objectives and roles for civil society participation and financial support to enable their effective coordination and participation; • Provide sufficient resources to civil society organizations for the delivery of services for children.
General principles on Non-discrimination	The discrimination faced by girls, children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum-seeking and refugee children, children in street situations, LGBTI children, and children with albinism, in accessing basic and child protection services, and their heightened exposure to violence, abuse and harassment. The Committee was also concerned at the serious divide in access to basic services and adequate standard of living in the country based on race, geography and economic status, with disproportionate disadvantage for children living in rural areas and in urban informal settlements. The Committee recommended that South Africa: • Place strong focus on the eradication of structural inequality and discrimination in all legislative, policy and programmatic measures to advance the rights of the child, paying particular attention to children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum- seeking and refugee children, children in street situations, LGBTI children, children with albinism and the accumulative impact of multiple discrimination; • Enhance its efforts to raise awareness of children and the general public on gender equality and actively promote it in education from early childhood education in order to eradicate discriminatory gender-stereotype and gender discrimination.

Corporal punishment	It is welcoming that the prohibition of corporal punishment of children in detention are in alternative care settings under the Children's Act (2005). However, it is concerned that corporal punishment in the home has not been prohibited and is widely practiced and that corporal punishment at school persists in practice despite the legal prohibition. It is also concerning that the lack of data on incidents of corporal punishment in child care facilities. With reference to the issue of corporal punishment, the it is recommended that South Africa: • Expedite the adoption of legislation to prohibit all forms of corporal punishment in the home, including "reasonable chastisement"; • Develop, adopt and implement a national strategy to prevent and eradicate all forms of corporal punishment; • Strengthen its efforts to raise awareness and build capacity of families, communities, as well as professionals working for and with children, including teachers and care givers on positive, non-violent and participatory forms of child- rearing and discipline; • Regularly and systematically collect data on corporal punishment in all settings, including at home, in schools and child care facilities, and use such data as a basis for effective prevention and eradication of corporal punishment; • Promote regular consultations between students and teachers on how to deal with disciplinary issues in a human rights sensitive manner; Ensure that those who perpetrate corporal punishment are held accountable. The development of a legislative, policy and institutional framework to fight gender-based violence is welcoming. However, there is a serious concerned at: • The high prevalence of gender-based violence against children, in particular in rural areas and urban informal settlements, both at home and in schools; • The high prevalence of sexual violence and the low age of the victims, the majority of them being under 15 years of age, and with reportedly an increase of victims younger than 7 years of age; • The low rates of reporting, prosecution and conviction of perpetrators; • The Domestic Violence Act (1998) not typifying domestic violence as a criminal offence and being insufficiently gender-sensitive; • The overall lack and regional disparity of support services to child victims, including emergency shelters, and heavy reliance for delivery of such services on civil society organizations.

7. NPO/CSO Operating Environment

7.1. Overview of the Types of NPO/CSO Vehicles

This category includes non-profit organisations (NPO)[15], grant-making foundations, family trusts and other entities such as high net worth individuals. Non-profit organisations are legally classified as voluntary associations, trusts and Section 21 Companies.

Table 3:Types of NPOs in South Africa

Type of NPO	Characteristics/ requirements
Voluntary Association	• An agreement (verbal or written) between three or more people to achieve a common objective (other than the making of profits) • A common structure for small or informal community-based initiatives • Product of common law, not regulated by statute
Trusts (Non-profit trusts) *Trust Properties Control Act 57 of 1988*	• Formed when ownership is transferred to another party to be administered for the benefit of certain persons or the achievement of a particular goal • Property can be transferred by written agreement, testamentary writing or court order • Administrator of the trust is called a *trustee* • Trusts are established for private benefit or public purpose • Property of trusts is held in name of trustees (Trust Properties Control Act, 1).
Section 21 Companies (Non profit companies) *South African Companies Act 71 of 2008*	• Separate category of company established with or without members but must have at least 3 directors (Companies Act 3 {1}) • Can be established with or without members but must have at least three directors • Incorporated for a public benefit objective, or an objective relating to one or more cultural or social activities or communal or group interests (Companies Act Schedule 1, Para 1)

Table 4: Distribution of registered NPOs

Type of Organisation	Number of registered NPOs
Voluntary Association	53,051
Trust	1,526
Section 21	1,667

---

15 Chapter 1, Section 1 of the Non-Profit Organisations Act 71 of 1997 available
http://www.saflii.org/za/legis/consol_act/noa1997287/

Total	56,244

Source: The State of NPO Registration in SA[16]

7.2. Regulatory Framework of Philanthropy in South Africa

Over the last two decades of democracy, there have been significant shifts in the environment within which NPOs operate. The apartheid era was extremely restrictive in terms of the legislative frameworks within which philanthropic (NPO) worked. For example, registration of entities to enable them to fundraise was mandatory, there were limited tax benefits applicable to a small number of NGOs and the state had the discretion to declare the objectives of some associations unlawful thus limiting the existence of many such groups. With the advent of democracy in 1994, the new state prioritised the creation and enactment of an enabling legislative environment for civil society and this led to shifts in the NGO laws.

The right of NPOs and other philanthropic entities to exist in South Africa is enshrined in the Constitution and in particular, the Bill of Rights (Chapter 2 of the Constitution) that enshrines the fundamental rights enjoyed by all persons and groups. The group of rights covers equality (Chapter 2, Section 9), privacy (Chapter 2, Section 14), right to property (Chapter 2, Section 25), freedom of expression (Chapter 2, Section 16), freedom of association (Chapter 2, Section 18) and various socio-economic rights such as the right to housing (Chapter 2, Section 26) and education (Chapter 2, Section 27)[17][18]. The significant shift in legislation came in 1993 when the Abolition of Restrictions on Free Political Activity Act (1993) amended the Internal Security Act (1982) that included offences such as terrorism and sabotage, aimed at curbing the activities of the anti-apartheid movement. This amended Act essentially did away with the banning of associations[19].

The legal framework for NPOs or NGOs in South Africa consists of four primary tiers. The first tier allows for the establishment under statutory and common law of three forms of NPO, namely, voluntary associations, non-profit trusts and non-profit or Section 21 companies established for a public benefit objective or social, cultural activities[20]. The second tier enables any of the first tier organisations to apply for the status of "Registered Non-profit Organisation" under the application of specific governance criteria; these organisations cannot distribute profits. The third tier enables an NPO to apply for the status of "Public Benefit Organisation" (PBO) and allows for partial tax exemption. Within this tier the sole purpose of the organisation must be to undertake one or more public benefit activities that are executed in a not-for-profit manner, with altruistic or

---

[16] The State of NPO Registration in South Africa, "A Report from the National NPO Database", July 2009.
[17] The Constitution of South Africa, Chapter 2, the Bill of Rights, available
http://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng-02.pdf
[18] "Laws and regulations governing NPOs in South Africa", 2004, p. 2.
[19] Ibid.
[20] South Africa NPO Regulations, 2014.

philanthropic intent. PBOs are however restricted from using their resources to directly or indirectly support, advance or oppose any political party. PBOs have access to a wide range of fiscal benefits that include a partial income tax exemption, exemption on donations tax and to a limited extent, an exemption of transfer duty on fixed property[21]. The fourth tier allows PBOs to apply for the right to receive tax-deductible donations[22]. Other NPO legal forms comprise trade unions, employer's organisations, political parties and friendly societies founded for the advantage of their members.

Table 5: Four Primary Tiers of the Legal Framework of NPO

TIER	Legal Provisions	Legal Entities that Qualify	
TIER 1	Common law & Statutory law	➢ Voluntary Associations ➢ Trusts ➢ Section 21 Companies	Legal entities available to NPOs
TIER 2	Non-profit Organisations NPO Act (71) of 1997	➢ Voluntary Associations ➢ Trusts ➢ Section 21 Companies	Able to register as NPOs
TIER 3	Income Tax Act 58 of 1962, Section 30 (1)	Registered entities under the (NPO Act 71 of 1997) are able to register as PBOs under the Income Tax Act. PBOs are entitled to a broad range of tax benefits including income tax exemption.	
TIER 4	Application for tax-deductible or "donor" deductible status	PBOs can apply for the right to receive tax-deductible donations. Part 2, Ninth Schedule, Income Tax Act 58 of 1962).	

---

[21] Ibid
[22] Ibid

Table 6: Legal Rights and Restrictions on different types of Organisations

Types of organisations	Inurement	Proprietary Interest	Dissolution	Activities	Economic Activities	Political Activities & Racial Discrimination	Control of Organisation
Voluntary Association	*Specific* prohibitions included in association's founding documents; and *Governing* board members bound by duty to act in good faith and avoid conflicts of interest.	*Any prohibition* against proprietary interest in organisation's assets on the part of members, directors or employees, must be detailed in the founding documents.	*Founding documents* contain relevant provisions on the transfer of assets and property of a voluntary association applicable upon dissolution – regardless of it being a *universitas* or an informal voluntary association.	*Any lawful activities* in pursuit of a legitimate objective are permissible; and *These activities* cannot be for gain and must be in line with provisions in founding document.	*Associations* may to conduct subsidiary activities to earn profits with the provision that acquisition of gain is not the primary objective.	*Organisations* not approved as PBOs are free to engage in political activities; and *South African law* does not explicitly restrict lobbying by any organisations.	A management committee is appointed for Voluntary Associations that has executive powers to manage the association.
Trusts / Non-profit trusts	*Remuneration* may be regulated by instrument establishing trust; *Trustees* may receive reasonable remuneration when executing official duties (TPCA, 22); *Master* may set an amount in the event a dispute arises; Auditor of the trust's accounts	*Trust* property may not form part of the personal estate of a trustee; *Exceptions* arise in the case a trustee is also a beneficiary entitled to the property under the trust instrument (TPCA, 12); and *Beneficiaries* of the trust are identified within	*Trust* can be terminated or have trust provisions altered in rare instances; *Trustee* or an appointee of the Court found to have sufficient interest in the trust property may do this; *Provisions* can be altered in circumstances where they	*Trustees* permitted to undertake lawful activities; *Activities* must remain in the bounds of their fiduciary duties to trust beneficiaries and within the bounds of the trust deed;	*Trusts* are flexible structures used for a variety of structures; TPCA permits trust instrument to designate the objective of beneficiaries; *However, TPCA* does not enumerate limitations to objectives and beneficiaries; and	*Constitutional provisions* are clear that the state or any person may not unfairly discriminate against another person on the basis of race (Constitution, 9, 3 and 4); *Section 29* of the Constitution carries several provisions on the right to basic	*Law* does not restrict individuals and legal entities from serving as promoters or trustees of NPOs; *NPOs* with foreign trustees, directors and governing board members have found it increasingly difficult to open bank accounts in South Africa

	obliged to report any material irregularities in the accounts to trustees (TPCA, 15); and ***Trustees*** required to "act with care, diligence and skill which can reasonably be expected of a person who manages the affairs of another" (TPCA, 9, 1).	the trust documents.	"prejudice the interests of the beneficiaries or are against the public interest" (TPCA, 13); ***The Trust Property Control Act*** is silent on the treatment of assets of a trust upon termination; however ***A trust deed*** must speak to treatment of assets if registered as an NPO or approved PBO.		***A trust*** cannot be invalidated if it has a charitable primary purpose and a non-charitable subsidiary purpose.	education, right to further education, right to receive public education in a language of one's choice; and ***Further provisions*** are contained on the right to "establish and maintain independent educational institutions, as long as they do not discriminate on the basis of race (Constitution 29, 3).	owing to the requirements imposed by the Financial Intelligence Centre Act (FICA).
Non-Profit Companies	***Non-profit Company*** prohibited from directly or indirectly paying any portion of income or transferring assets to any incorporator, director or member – regardless of how income was derived; ***Exceptions*** include:	***All assets*** and income must be applied to advance objectives set out in ***Memorandum of Incorporation*** (CA Schedule 1, 2); ***Upon dissolution,*** total net value of the company must be distributed; ***Director***, and past or present members cannot	***Upon dissolution,*** must distribute the entire net value of the company to one or more non-profit companies, external non-profit companies carrying on activities in South Africa, non-profit trusts or voluntary associations; ***These entities*** must have similar	***Permitted*** to undertake activities that promote public benefit, related to cultural or social activities or to communal or group interests (CA, Schedule 1, 1); and	***Permitted*** to undertake business, trade, or other initiatives consistent with it stated objectives (CA, Schedule, 1).		***Foreign nationals*** can serve as directors of local companies; Legal persons can however not serve as directors of non-profit companies; and ***This limitation*** makes it possible for a South African NPO to be controlled by a non-South

	reasonable remuneration for goods delivered or services rendered, reimbursement for expenses incurred to advance organisation's objectives, payment payable in terms of bona fide agreement, payment in respect of any rights of that person to advance a stated objective of the company, and payment in respect of any legal obligation binding the company (CA, 3, Schedule 1)	benefit from any part of the net value of the company after obligations and liabilities have been satisfied (CA Schedule 1, 4).	objectives as the dissolved entity; and *Directors*, past or present members cannot benefit from any part of net value of the company after all obligations and liabilities have been satisfied (CA, Schedule 1, 4).				African grantor charity.
Registered Non-Profit Organisation	*Eligibility* to register under NPO Act, NPO must state that income and property are not distributable to members, officers and trustees within founding documents; and	*Founding document* of registered NPO clearly states must carry provisions to the effect that members, officers and trustees have no rights to the assets of the	*Dissolution modalities* must be clearly outlined in founding documents of the organisation; *This is a requirement* for registration under the NPO	*NPO Act* does not speak to allowable activities; *Such activities* are determined by laws that govern non-profit companies or trusts, as NPOs			

	Exceptions apply as compensation for services rendered (NPO Act, 12, 2).	organisation merely by being members, trustees or officers (NPO, 12, 2).	Act and must be clear that assets remaining upon dissolution or winding up will be transferred to another NPO with similar objectives (NPO Act, 12, 2); and *Failure to transfer* assets may result in fine, imprisonment or both responsible persons.	are usually one of the two; *In addition, tax laws* provide guidelines on allowable activities; and; *Founding documents* will specify activities.			
Approved Public Benefit Organisation	*Eligibility* for PBO status, an organisation cannot conduct any activity intended directly or indirectly to promote economic self-interest of any fiduciary or employee of the organisation; *Reasonable remuneration* is permitted; **Organisation** cannot distribute its funds to any person other than what is related to	*Organisation* prohibited from accepting any donation that is revocable at donor's request; and *Donor* may not impose conditions that enable donor or any person associated with donor to benefit directly or indirectly from receipt of such donation (ITA 30, 3 (b)(v)).	*Dissolution modalities* and processes must be clearly delineated in founding documents; More so, this is a requirement for approval of PBO status from the Commissioner under Section 30 of the Income Tax Act; *Any assets remaining* upon dissolution or winding up must be transferred to a similar PBO (approved under	*Over 60 activities* are defined in the ITA with regard PBOs;	*Law is explicit* on the extent to which economic activities of approved PBOs are tax exempt; *Tax exemption* is applicable if activities follow these requirements: *Activities* are "integral and directly related to the sole objective of the PBO; *Substantially* the whole of its revenues are directed toward recovery of its costs; and	*PBOs restricted* from directly or indirectly using resources to support, advance or oppose any political party (ITA, 30, 3 (h)).	

40

public benefit activities; and ***Funds*** must be used solely to fulfil objectives of establishment (ITA, 30, 3 (b)(ii)).		Section 30), an institution, board or body exempt from tax under ITA Section 10, 1 (c)(i) and with a similar objective – public benefit activity or a department of state (ITA, 30, 3 (b)(iii)); and ***Should these provisions*** not exist within the founding documents, three representatives of the organisation are required to sign a written undertaking confirming the organisation will comply with relevant provisions of the ITA.		***It does not result in unfair competition*** in relation to taxable entities": ***Tax exemption*** is further applicable if activities are of an occasional nature and substantially performed by uncompensated volunteers; ***Activities*** are approved by the Minister of Finance by a Government gazetted notice that considers: the scope and generous nature of the activity; direct connection between the activity and the sole purpose of the PBO; profitability of the activity; and the economic distortion possible if a tax-exempt organisation undertook the activity;

					Revenues created by activity do not exceed 5% of the PBO total receipts and accruals during relevant year of assessment and 200,000 ZAR (ITA, 10, 1 (c)(n)); and *Investment* of PBO funds is permissible and restricted only by provisions of common law.		

Source: South Africa NPO Regulations, 2014

8. References

Child Institute , 2012,2014, 2015, and 2016   South Africa *Child Gauge* Reports , www.ci.org.za

Chibwana, Musa 2015. "The State pf Children's Rights in Southern Africa," Available at: http://www.crnsa.co.za/the-state-of-childrens-rights-in-southern-africa/

Constitutional Court of South Africa (2017). "Children's rights."   Available at: http://www.constitutionalcourt.org.za/text/rights/know/children.html

Conteh, Michael (2010). "Child Trafficking, child prostitution and the potential dangers of the 2010 FIFA World Cup in South Africa." Available at: www.kas.de/upload/auslandshomepages/namibia/Children_Rights/Children_v.pdf

LeadSA (2015). "Children's rights in South Africa." Available at: http://www.leadsa.co.za/articles/8184/childrens-rights-in-south-africa

Lebeau, Vicky (2001) Another child of violence. *New Formations* (42). pp. 19-29.

Lebeau, Vicky (2004) The unwelcome child: Elizabeth Eckford and Hannah Arendt. *Journal of Visual Culture*, 3 (1). pp. 51-62.

Lebeau, Vicky (2006*) Children of violence: Frantz Fanon's Black Skin, White Masks*. In: Silverman, Max (ed.) Frantz Fanon's 'Black Skin, White Masks'. Texts in Culture. Manchester University Press, pp. 128-145.

UNICEF (2017). Children's Rights. Available at: https://www.unicef.org/southafrica/resources_5237.html

USAID. (2009). A baseline Assessment of Human Trafficking in Namibia. Available at: http://pdf.usaid.gov/pdf_docs/PA00JBJQ.pdf.