Child Rights in Zimbabwe: A Review of Literature

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Abstract: This is a review of literature which has been generated on children’s rights in the context of international laws and various conventions which have been signed by Zimbabwe at international level. In addition a background of the Zimbabwean situation and the particular laws which specifically address children’s rights is also critically appreciated, with the intention of placing the same in the specific context of this study.

Theoretical framework of child rights as International human rights

According to Jankowicz, P.[1] international human rights law is the body of international law that is meant to protect human rights at the international, regional and municipal levels. International law is primarily made up of treaties, agreements between states intended to have a binding effect between the parties that have agreed to them. Shaw [2] states that it also consists of customary international law, that is, rules of law that are derived from the consistent conduct of states acting out of the belief that the law required them to act that way.

This study is informed by the international relations theory of idealism and its later versions such as institutionalism, which places a lot of emphasis on the setting up of institutions based on international law and organized interaction, and neo-conservatism which places emphasis on universal values, democracy and human rights. Idealism is also known as Wilsonian Idealism. Weber [3] states that “in the international community-a formal or informal collective cooperative set of social relationships among sovereign nation-states-maybe an alternative to world government and an alternative to international anarchy.” The author was making a distinction between the realist school of thought that the international system is anarchic and that conflict is an inevitable aspect of international affairs with the idealist school of thought that there is there is a basic goodness to people. The international relations tradition of idealism believe that if people could be organized in ways that allow them to put in place rules and laws to temper conflict and facilitate cooperation.

Idealists emphasize the importance of universal bodies such as the United Nations in galvanizing and organizing public opinion. More importantly, idealists tend to stress the existence of natural harmony of interest between all people. This underlying harmony supersedes the superficially conflicting interests of their states. Idealists believe that human beings desire the same things such as collective security, compulsory adjudication of disputes, open diplomacy and human rights.

Kegley [4] is of the view that the idealist worldview is made up of the following principles:

a. Human nature is essentially good and people are capable of mutual aid and cooperation.

b. The fundamental human concern for the welfare of others makes progress possible.

c. Bad human behaviour is the product not of evil people but of evil institutions and structural arrangements that motivate people to act selfishly and to harm others-including making war.

d. War and injustice are the international problems that require collective or multinational efforts to eliminate them.

e. International society must organize itself institutionally to eliminate anarchy.

The United Nations and all other intergovernmental organisations were therefore established on the idealist notions of collective human security. They are premised on the belief propounded by Kegley [4] that the fundamental concern for the welfare of others makes progress possible. The same idealist notions resulted in the formation of various organisations such as the now defunct League of Nations, the African Union, SADC and so forth. Mearsheimer [5] says the influence of idealism manifests itself in the manner that nation states form and observe international law and international conventions and treaties. It is these conventions in so far as they relate to child rights that this research is concerned with.
The Evolution of Child Rights

The League of Nations adopted the Declaration of the Rights of the Child on September 16, 1924, which was the first international treaty concerning children’s rights. In five chapters, the declaration laid out specific rights of children and responsibilities to the adults. This was as a result of the suffering that was caused to children because of World War 1.

World War 2 had its casualties, which left thousands of children in a dire situation. Consequently, the United Nations International Children’s Emergency Fund for the Children was created in 1947, which became UNICEF and was granted the status of a permanent international organization in 1953. It is important to note that from its inception, UNICEF focused particularly on helping young victims of WW2, taking care mainly of European children. In 1953 its mandate was enlarged to a truly international scope and its actions expanded to developing countries. UNICEF then put in place several programs for helping children in their education, health, and their access to water and food. The United Nations Children’s Fund (UNICEF) was created to work with others to overcome the obstacles that poverty, violence, disease and discrimination place in a child’s path. In 1946 UNICEF’s first major challenge was to assist children in Europe whose lives had been devastated by World War II. In 1953 the organisation became a permanent part of the United Nations. Over the past sixty five years UNICEF has been the driving force behind the vision of a world fit for all children. UNICEF has the global authority to influence decision-makers, and works with partners at grassroots level to turn innovative ideas into reality. This is what makes UNICEF unique among world organisations, and unique among those working with the young.

From its beginnings in Europe in the 1940s UNICEF currently works in 190 countries and territories through country programmes and National Committees. In Zimbabwe the UNICEF office was opened in 1982. (UNICEF website: 2015)[6]

According to Bernstorff [7] the Universal Declaration of Human Rights of December 1948 recognized that motherhood and childhood are entitled to special care and assistance. However, it contains only brief references to children. In 1959, the United Nations General Assembly then adopted the Declaration of the Rights of the Child which actually cites the 1924 League of Nations declaration in its preamble. This declaration was not signed by all the countries and while its principles had only an indicative value, it however, paved the way to a Universal Declaration of Human Rights.

The year 1979 was declared International Year of the Child by the UN. That year saw a real change of spirit, as Poland made the proposal to create a working group within the Human Rights Commission, which is in charge of writing an international charter. The Convention on the Rights of the Child was adopted unanimously by the UN General Assembly on November 20, 1989. Its 54 articles describe the economic, social and cultural rights of the children. The Convention on the Rights of the Child is the treaty in relation to human rights which has been the most rapidly adopted. The drafting of the Convention on the Rights of the Child marked the culmination of decades of standard setting with respect to the rights of the child. It has the status of international law.

The Organization for African Unity (now the African Union) adopted the African Charter for the Rights and Welfare of the Child on July 11, 1990 (Chirwa) [8]. The author goes on to make the observation that Africa is the only continent with a region specific child rights instrument. It was borne out of a realisation that the CRC had left out many issues which are peculiar to the African child. As of January 2014 all member states of the African Union had signed the charter.

In May 2000, the Optional Protocol to the International Charter of the Child Rights regarding the participation of children in armed conflicts was ratified. It became operative into force in 2002. This protocol prohibits minors taking part in armed conflicts. Zimbabwe is yet to sign this protocol. (Ndungu: 2012) Zimbabwe is also yet to sign or ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in addition to the Optional Protocol on the Involvement of Children in Armed Conflict.

In the SADC region, most issues affecting the child are cross-cutting and thus are scattered over the different thematic concerns of the regional body. Consequently, there is no one instrument on child protection for the region, as is the case, for instance, with the SADC Protocol on Gender and Development. The Gender Protocol, among other things, encompasses commitments made in all regional, global and continental instruments for achieving gender equality and enhances these instruments by addressing gaps and setting specific measurable targets where these do not already
exist. A similar protocol on child protection would be useful as it would streamline the various child protection obligations and make it easier to monitor compliance among SADC states.

**Zimbabwean Laws on Children’s Rights**

Zimbabwe has an array of fragmented laws which touch on the rights of children. The country has also ratified international conventions on the rights of children, and two of the most important have been the Convention on the Rights of Children and the African Charter on the rights and welfare of children. The country has also reacted to the need to harmonize international laws on children’s rights with its own laws.

According to Magidie and Goro [9], Zimbabwe ratified the CRC in September 1990 but has not ratified the two Optional Protocols to CRC on the involvement of children in armed conflict and child prostitution and pornography. Of importance is that the Zimbabwean government by approving the CRC committed itself to allowing children to develop their potential in a context without hunger, without poverty, without violence, without negligence or other injustices or hardships through respecting their civil, economic, social, cultural and political rights. Thus, the treaty came to endorse, for the first time, the idea that the child should be considered as being in possession of rights and fundamental liberties.

It is imperative to note that there are many child rights regulatory laws in the country. There also exist mechanisms such as the National Program of Action for Children (NPAC) to facilitate and coordinate the implementation, monitoring and evaluation of the CRC and the ACRWC to ensure survival, development and protection. Moreover, to cement the implementation of child related laws, measures have since remained in place in line with Article 4 of CRC. For instance, the independence of the Judiciary is enshrined in Section 86 and 87 of the Constitution of Zimbabwe. With its adjudicating function, the judiciary is an important arm of the state when it comes to the vindication and interpretation of constitutional rights and values. The Office of the Public Protector is established by the Constitution and is mandated to investigate any action taken by an officer or person in any Ministry or department where there are allegations that an individual has suffered injustice arising out of that person or authority’s action. This study then will seek to examine the efficacy of these arrangements and whether these have met the harmonization thresholds required to domesticate international laws on children rights.

An extensive study of Zimbabwe’s laws on the rights of children by Magidie and Goro [9] reveals some challenges of the international laws at the local level. They assert that the main problem in Zimbabwe’s jurisdiction is the main species of the laws which concern the rights of the child. Article 1 of CRC defines a child as every human being below the age of 18 years. The Children’s Act of Zimbabwe, on the other hand, defines a child as anyone below the age of 16. The problem also arises from legislation such as The Marriage Act [Chapter 5:11], which sets the minimum age of marriage to be 18 for boys and 16 for girls. The Criminal Law generally permits sexual relations between an adult man and a girl of twelve, which, in effect, entails that sexual intercourse between minors and adults, is permitted. One very negative manifestation of this lacuna is that in terms of the Criminal Law (Codification and Reform) Act, it is an offence for an adult male to have sexual intercourse with a girl below the age of 16 years. Even when the girl consents to the sexual relations, it is still an offence as she is deemed now capable of making their own decisions. For most of these unscrupulous offenders who help themselves with little children, the obvious escape route from a conviction of statutory rape becomes marriage to the minor girl. The Customary Marriages Act [Chapter 5:07] does not provide for a minimum age of marriage. Thus, this obviously opens a minor girl child to sexual exploitation which contravenes Article 19 of CRC which our law has not as yet criminalized. Countries like Eritrea also have a long standing battle to reconcile its laws and the harmonization process is very slow as compared to Zimbabwe. The above highlighted challenges offer a glimpse of the challenges of harmonizing laws which address children’s rights in Zimbabwe. The exploratory study by Magidie and Goro [9] while revealing the conflicting nature of the country’s laws does not focus on efforts made to implement the harmonization of these laws. Against this backdrop this research seeks to assess the extent to which the harmonization attempts have been successful and what might need to be done more efficiently and effectively.

**The Context of a Plural Legal System**

Tensions and contradictions have been noted in administering laws in many countries who have a plural legal system (Madhuku,) [10]. This issue is particularly contentious as it has the potential to infringe on children’s rights owing to differences in interpretation of law. The adoption of international laws and provisions also adds an interesting mix to the cocktail of legal systems which are employed by many countries in Africa.
According to UNICEF Report of 2012 [11], plural or multiple legal systems refer to the presence of more than one source of law in a country’s legal system. Multiple legal systems may include English common law, French civil or other law, statutory law, customary law, and some form of religious law. They exist in virtually all African jurisdictions as well as in a number of countries in Asia and the Americas. In some States, tribal courts act alongside religious and statutory courts. In countries with plural legal systems the nature of a case and the status and identity of the parties will often determine the court’s jurisdiction. In other words, issues governed mainly by religion are dealt by religious courts (as long as at least one of the parties subscribes to the religion) whereas issues falling within custom and tradition are dealt with where they occur by customary courts or adjudication procedures.

According to Napier [13] in plural legal systems, people rarely confine their actions within one system of law. Rather, they tend to draw from all the various systems and to follow the one that may suit them best. Therefore, judges have a continuing task of determining the applicable law in each matter, particularly in the private-law realm, where issues of a private nature, especially those within the domestic sphere, are entertained. On its face, legal pluralism may appear to be accessible, fair, and non-discriminatory and to reflect the historical, legal and other developments of a country. In reality, however, it may allow for the justification of harmful practices on grounds of culture; religion or tradition based on sources of law that may compromise the realization of human rights. Customary law consists largely of unwritten rules that may be applied informally by traditional leaders or, in some cases, by courts within the formal judicial structure. Created to preserve indigenous customs and appease traditional leaders, these customary laws and practices have sometimes placed vulnerable groups, especially women and children at risk of harmful practices. This study will, also seek to assess the plural nature of Zimbabwe’s legal system and the challenges which have been experienced in the harmonization of the country’s laws.

As noted by some authors, plural legal systems have resulted in fundamental contradictions when applying customary law to treaty-based human rights standards. A special system of courts, which is sympathetic to the cultural or religious affiliation of the litigants, is an important component of legal pluralism, because it can give full and proper expression to their beliefs and practices. Mudekunye, Napier, Shamu, Soneson, Kembo, and Long [14] assert that this has given rise to the belief that matters falling in the purview of customary courts should not be subject to any review or scrutiny by the State or other judicial bodies, even when decisions from such courts uphold harmful practices. This perspective raises a major problem that the national process of law enactment and enforcement, as well as this study seeks to address.

Many advantages have been cited about the use of customary law. Van Bueren and Detrick [15] are the opinion that customary law courts can be more accessible to people at the grassroots level than courts within the formal judicial system. In some cases, the minimal presence of civil and other authorities in distant parts of a country compels governments to recognize traditional courts, or courts of elders, which apply customary law to most cases in remote and rural areas, including private law matters and criminal cases. When compliance with human rights is secured, this may be a positive development that can be built upon to secure the right to access to justice.

Zimbabwe also employs a plural legal system which effectively recognizes both civil and customary law (Madhuku) [10]. Numerous studies have done which have highlighted the extent to which such overlapping laws present contradictions which ultimately work against children’s rights. Ndlovu [16] on adolescent reproductive rights in the country showed the challenges of a plural legal system. The study revealed the complex and overlapping penal and civil law provisions pertaining to the legality of adolescent sex are contradictory and result in a denial of adolescent access to dual protection methods and information. This creates a gray zone where the law appears to prevent healthcare professionals from providing services and information regarding contraception and STI prevention to certain adolescents (ages 16–17) who are legally capable of consenting to sex.

Additionally at national level laws and policies generally uphold parental consent requirements for adolescents below the age of 18 to access services and information on contraception and STI prevention. Ndlovu [16] asserts that in practical terms, these laws and policies severely inhibit adolescents from seeking vital medical advice and services. In fact, they present almost insurmountable obstacles for adolescents seeking health services where sensitive and crucial issues regarding reproductive and sexual health are concerned. Therefore, these laws and policies violate adolescents’ rights to health, to information and to education. Taken together, these laws and policies effectively deny adolescents under the age of 18 the legal capacity to control their bodies,
thereby failing to ensure their rights to privacy and confidentiality and discriminating against them on the basis of age. The above highlighted scenario captures some of the practical challenges which have been captured in the administering of children’s rights.

The inadequacy of national anti-discrimination provisions is also apparent as they are insufficient to protect adolescents from discrimination on the basis of age, marital status and socioeconomic status in the exercise of their right to access dual protection methods and information. An analysis of article 23(3) of the Zimbabwe Constitution reveals that customary African law is exempted in laws relating to personal matters from anti-discrimination protections. In addition, there are no national legal instruments that explicitly prohibit discrimination on the basis of age, marital status or socioeconomic status. In addition to being inherently violatory, the laws and policies when taken as a whole fail to uphold international standards. Zimbabwe is not only obligated to eliminate legal and policy barriers to adolescents’ full enjoyment of their rights, but the government also has a duty to affirmatively enact and implement laws and policies that will ensure their rights. However, the overall national legal and policy framework fails to do so. In its inconsistency and ambiguity, the national framework is insufficient, allowing for restrictive interpretation on the part of government officials and public health service providers. The above captured narrative while highlighting the ambiguities which characterize a plural legal system does not focus on the proactive strategies which have been implemented and the level of success registered for such an endeavor.


The Convention on the Rights of the Child (CRC), adopted as a UN treaty in 1989, was the culmination of a decade of work and negotiation between governments and non-governmental organisations. It heralded a critical shift in perspectives on children, from victims and recipients of welfare to individual rights holders. There have been three key phases in the development of child rights from the beginning of the last century to the present.

The first phase began in 1924 with the adoption of the Geneva Declaration on the Rights of the Child by the League of Nations. The second phase saw the adoption of the Declaration on the Rights of the Child in 1959 followed by the International Year of the Child in 1979 to celebrate its 20th anniversary. This year also saw the beginning of the drafting of the Convention on the Rights of the Child, a process that was completed in 1989 when the General Assembly of the UN adopted the text. It was followed by a record number of ratifications, partly thanks to the World Summit on Children in September 1990. In the third and current phase, the focus is on implementation, accountability and monitoring of the CRC, following its unprecedented and near universal ratification (van Bueren and Detrick) [17]. The CRC remains the most rapidly and widely ratified international human rights treaty. The USA and Somalia signed the treaty in 1995 and 2002 respectively, but are the only two countries in the world yet to ratify it.

In 1990, Zimbabwe was one of the first countries in the Eastern and Southern Africa region to ratify the convention. Uganda was the first to review its legal system, a process that resulted in its landmark Children's Act of 1996. Kenya came up with its own Children's Act in 2001, operational since 2002, while Namibia drafted legislation in 2004 that is still pending. South Africa and Swaziland were the last in the region to ratify the CRC, in 1995, but they have both since undertaken reviews of their laws relating to children. In South Africa, that has resulted in a Children's Act and a Child Justice Bill. (Bueren) [18]

The CRC has 41 substantive articles, setting out key rights covering everything from child justice and child labour to education and health. The importance of the near universal ratification of the CRC cannot be overstated, as it demonstrates the global commitment to the rights of children as a basis for action. The Convention has been supplemented by two optional protocols: the Optional Protocol on the Involvement of Children in Armed Conflict, which raises the minimum age for involvement in armed conflict to eighteen, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which strengthens the CRC's protection in these areas. (Van Bueren and Detrick) [17]

The African Charter on the Rights and Welfare of the Child

Member states of the Organisation of African Unity (OAU) adopted a Declaration on the Rights and Welfare of the African Child on the 17 to 19 July 1979 in Monrovia, Liberia. The year 1979 was the International Year of the Child. This prefigured the African Charter on the Rights and Welfare of the Child, which was adopted in 1990 by the Assembly
of Heads of State of the Organisation of African Unity (OAU) and which entered into force in 1999.

Like the CRC, the African Charter is a comprehensive instrument that sets outrights and defines universal principles and norms for the status of children. The African Charter and the CRC are the only international and regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights. The rationale for the African Charter was the feeling by member states that the CRC missed important socio-cultural and economic realities of the African experience. It emphasizes the need to include African cultural values and experience in considering issues pertaining to the rights of the child in Africa. The African Charter challenges traditional African views that conflict with children's rights on issues such as child marriage, parental rights and obligations towards their children, and children born out of wedlock. Chirwa [8] raises the point that it expressly proclaims its supremacy over any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter. It includes provisions addressing harmful cultural practices under Article 21, outright prohibition on the recruitment of children (defined as any person under eighteen years of age) in armed conflict under Article 22(2) the prohibition of marriages or betrothals involving children under Article 21 prohibition of use of children as beggars under Article 27(1) (b) and grants girls the right to return to school after pregnancy under Article 11(6).

The African Charter under Article 26, also explicitly tackles specifically African issues; for example, calling for apartheid and similar systems to be confronted and abolished. Apartheid may have been defeated in South Africa, but this provision is also applicable to children living under regimes practicing ethnic, religious or other forms of discrimination that justify special measures to be taken for the welfare of children in those countries (Chirwa) [8]. The Charter by addressing the issue of conscription of children into the armed forces, the Charter deserves credit for addressing a critical issue affecting the African child. However, the African Charter does have some drawbacks. This omission is regrettable, as it means the African Charter has no mechanism to place a duty on a state to provide resources to ensure the realization of children's rights. Unlike the CRC, which under Article 30 specifically ascribes rights to children of minorities there is no similar provision in the African Charter, despite many countries in the region having significant populations of minority and indigenous groups. The African Charter has been ratified by 41 of the 53 countries on the continent. Zimbabwe signed this Charter in January 1992.

**Implementation of International Laws at Local Level**

International law is traditionally defined as the law governing relations between states, though it is expanding to include others such as NGOs and other non-state actors. Though this might be changing, states still constitute the main actors in crafting of international laws according to Rehman, [19] and Dixon [20]

When states agree to a formal treaty, the usual process is for parties to sign, indicating their intention to be bound in the future, and then ratify at a later date once the state has done whatever is necessary to approve the treaty in their home country (UN Office of Legal Affairs, 2006; Dixon, 2005). Some countries allow their executive to ratify treaties on their own, while others may require approval by a body of representatives or by a certain portion of internal provinces/states (Dixon, 2005). Once a state party has fully consented to be bound, and the treaty enters into force (usually on a date specified in the treaty document), the treaty is legally binding on that state (UN Office of Legal Affairs [18] and; Dixon. [20].

This makes the treaty binding in the international sphere – for instance, in international courts and in international diplomacy. However, it does not necessarily make the treaty binding within the domestic law of the state party. For monist states, international treaties have automatic legal effect internally – for example, international laws can be used in national court cases and they take precedence over national laws. But most states hold to some variation of “dualism”; they see international law as operating exclusively in the international sphere – governing only relations between states – and having no effect on domestic law. For dualist states, international treaties are only binding internally if they have been enacted or implemented by domestic legislation that makes the treaty part of national law. (Dixon) [20]. International law has other unique characteristics compared to other kinds of law. For instance, there is no single legislature, judiciary or executive (Rehman). [19]

However, there are bodies that take on some characteristics of these institutions, such as the UN General Assembly, the International Court of Justice and the International Criminal Court, and the UN Secretariat. There is also no clear, higher authority in international law, comparable to the
way each state acts as an authority over its residents (Rehman [19]). In principle there is a horizontal structure between states in international law, though in practice certain states have more power to enforce authority over others, for instance by virtue of permanent membership in the UN Security Council. Because international law has limited enforcement capability and is often of limited legal effect without supporting domestic law, some people question if international law is really ‘law’ in the strict sense or just a form of ‘positive morality’, where norms exist but they are not regularly enforced by institutions (see e.g. Rehman ; Dixon). Others argue that no system of law has perfect enforcement, and that international law is usually enforced in atypical ways, such as by political pressure.

Human rights law is probably the most important area of international law for indigenous children and youth, and includes the Convention on the Rights of the Child, the subject of this report. It is largely a product of the post-Second World War period, and constitutes a major paradigm shift in international law. As earlier on touched there has been growing concern over the slow and even non implementation of international laws. While states have been quick to ratify conventions at the international stage it has not always translated into reality for the intended beneficiaries as many governments have failed to speedily implement the policies and in some instances have merely sat on the bills. In the context of this research there will be an exploration of the tensions, contradictions and opportunities for implementing international law with focusing on Zimbabwe’s specific cultural and socioeconomic context.

International law, according to Shaw [2] has developed rapidly over the past few decades, especially since the dawn of the UN, when rules and norms regulating activities carried on outside the legal boundaries of nations were developed. Numerous international agreements – bilateral, regional or multilateral in nature – have been concluded and international customary rules, as evidence of a general practice accepted as law, have been established. Two approaches can be followed with regards to the application of international law, and these can either be monist approach or the dualist approach. The first, the monist approach, assumes that international laws are automatically incorporated into domestic law; the second, the dualist approach, follows the rule that international laws are not automatically incorporated into domestic law and are said to require an act of legal transformation into domestic law. Zimbabwe follows the latter approach which effectively means that enactment of international laws have to be passed through an act of parliament.

According to Sibanda [21] in Zimbabwe the ratification of international law does not immediately make it part of the Zimbabwean law and for this to happen it requires an Act of Parliament, a process which can be quite cumbersome and ultimately can slow the pace of implementation of international laws. A comparative analyses, however, of states like Namibia shows that the Namibian legal system incorporates international law after ratification and does not require an Act of Parliament to immediately come into effect. In Namibia, Article 144 of its Constitution explicitly incorporates international law and makes it part of the law of the land. Thus, public international law is part of the law of Namibia; it needs no transformation or subsequent legislative act to become so. However, as the Constitution is the supreme law of Namibia, international law has to be in conformity with the provisions of the Constitution in order to apply domestically. Where a treaty provision or other rule of international law is inconsistent with the Namibian Constitution, the latter will prevail. As such there is a need to explore the Zimbabwean context further and this study will seek to unpack some of these legal concepts and it will do so by interviewing legal experts, and law makers who have been involved in the arena of children’s rights.

An in-depth study of the application of international law in South Africa revealed the extent to which there remain challenges in the whole process in the area of socio economic rights. In an analysis of a number of court rulings which pertained socioeconomic rights of children, the basic conclusions of the findings of the study were that in all the cases, the Court should have outlined the scope and content of the relevant socioeconomic rights by referring to the United Nations Conventions on the Rights of children, and the African charter on the rights and welfare of children before it embarked on a reasonableness analysis of the program aimed at implementing the right. This would have made it clear that, for example, the right of access to adequate health care as it appears in the Constitution, includes the elements listed in the ICESCR and the UNCRC and that the right is inextricably related to other socioeconomic rights. The Courts cannot ignore the huge obstacles related to the implementation of all socio-economic rights that are faced by the government; however they should still outline the full extent of the rights using international law, even if they do not order immediate implementation. The above study was aimed at
looking at the application of international law in the area of socio economic rights of children. While this study was intensely focused on the application of international law this study intends to look at the extent to which there has a harmonization of laws so as to gauge understand the process as it related to Zimbabwe as a country.

In addition to the above a vast amount of literature has also been generated which has consistently highlighted the challenges of implementing international laws at local level. A comparative study on three African countries, South Africa, Uganda and Sierra Leone reveals some the state of affairs in as far as adoption of freedom of expression under the UN Convention on the rights of children. This study was looking specifically at article 12 and article 13 of the CRC which focus on respect for children’s views and freedom of expression respectively. There are a number of important issues which arise from the three sub-Saharan African case studies. Article 12 of the CRC may be uncomfortable for many in government and society, but Article 13 has fared much worse. It seems itself to have become a victim of censorship. To a certain extent, the reason for this is understandable. The right to freedom of expression provided for children in Article 13 is virtually identical to that given to adults in Article 19 of the ICCPR.

More importantly in the three cases studied they have tended to ignore all together the application of international law. To cope with the disjuncture between the two, Article 13 has so far largely been refracted or even displaced - in South Africa, Uganda and Sierra Leone through the prism of Article 12, which makes it clear that the rights which children can expect to enjoy will not be identical in extent to those of adults – and, indeed, that older children should have greater independent scope in exercising their right to be listened to than young children. Article 7 of the African Convention on the Rights and Welfare of the Child, which Uganda and Sierra Leone have ratified and South Africa has signed, provides for a “weaker” and in many ways problematic definition of freedom of expression, but its explicit recognition of the importance of a child’s evolving capacity chimes more clearly with Article 12 of the CRC.

This survey of implementation efforts in South Africa, Uganda and Sierra Leone has demonstrated that there does not yet exist in any of these countries a clear conceptualization of what children’s right to freedom of expression can and should mean. At present, there is a tendency to focus on issues of child welfare and protection, areas with which those in authority feel more comfortable. Difficult and fraught as it will be to negotiate such a conception, there is no escaping the need to do so if these countries are eventually to fully meet their obligations under the CRC. The longer it is avoided or fudged, the more fragile the foundations for a better future for South Africa, Uganda and Sierra Leone will be.

Harmonization of Laws

There is a complex patchwork of existing legislation relating to child rights across Eastern and Southern Africa. This poses a significant barrier to the effective harmonization of laws and legal protection of children. Provisions relating to children's rights are found in a broad range of laws, from penal codes and specific legislation on adoption, education and social welfare, to those on divorce and separation proceedings. The problem is further compounded by the pluralist nature of legal systems in the region, where common and civil law coexists with customary and religious law. As long as child-centered provisions remain in this fragmented and complex state, legislation relating to children will continue to suffer from inconsistency and poor implementation.

Researches done on the harmonization processes in East and Southern Africa have also revealed some positive developments in this area. A review by the African Child Policy Forum (ACPF) [12] showed that nine out of the nineteen countries surveyed - Botswana, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Namibia, South Africa and Uganda - have undertaken comprehensive reviews of their legal systems. As a result, they have either enacted or drafted a comprehensive Children's Act or grouped their rights into thematic legislation, such as child justice and child welfare. This is a significant development, but it is important that such reviews should not be seen as a one-off exercise. Reviews and amendment of laws should be an ongoing process that continually addresses new or emerging issues, gaps and challenges in law and practice. It is particularly encouraging to see that Uganda has decided to look again at its landmark Children's Act ten years after it was first enacted. Against such developments in some countries this study will seek to assess the measures which have been put in place in Zimbabwe to harmonize the country’s laws on the rights of children. In addition this study will also come up with recommendations on ways of improving the harmonization process as well.

As it turns out the harmonization process encompasses a broad array of strategies which and does not include a straight jacketed approach. This
is because of varying contexts which are found from country to country. A review of the harmonization efforts in some African countries reveals a plethora of ways of going about the process. According to the ACPF report (2007) the harmonization process can be achieved at different levels by a broad review of existing policies and legislation and consolidation of laws relating to children into a single piece of legislation or ad hoc amendments and/or formulation of laws relating to children targeting existing or new issues and leading to specific amendments or statutes on particular issues.

In addition this review demonstrates that, despite some progress, gaps continue to exist between standards in the CRC and African Charter on the one hand, and the realities of children's lives and the state of legal protection in Eastern and Southern Africa on the other. There is a need to devise and share strategies that will bring about harmonization of national laws with the provisions of the CRC and the ACRWC and their effective implementation for the realization of child rights. Reforms in Botswana, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Rwanda, South Africa, Swaziland and Uganda are encouraging, and can serve as examples for other countries that have yet to start or complete the process of harmonization.

The law does not operate in a vacuum and having a comprehensive legal framework on children's rights will not automatically lead to full observance of these rights. There must be accompanying political, economic, social and financial support for their effective realization. Governments must keep the promises they made when they ratified the CRC and the African Charter, and citizens and stakeholders must keep them accountable to their promises.

In Zimbabwe the harmonization process has also been initiated mainly through the provisions of the new constitution, adopted in 2013. Before Amendment (No 20) of 2013, children’s rights were not set out in the Constitution of Zimbabwe. With Amendment (No 20) of 2013 children’s rights were set out in the superior law of the land. Children’s rights are now set out in section 19 of the Constitution. Section 19 (1) clearly sets out that the State must adopt policies and measures to ensure that in matters relating to children, the best interests of the children concerned are paramount. In section 19 (2) the State has undertaken to ensure that children enjoy family or parental care, or appropriate care when removed from the family environment, have shelter and basic nutrition, health care and social services, are protected from maltreatment, neglect or any form of abuse and have access to appropriate education and training.

From the literature gathered on the harmonization process in the country, the general conclusions have depicted a rather bleak process which has been affected by the constraining socio economic conditions. The Magidie and Goro [9] study which also zeroed the socio economic impact on the persistence early marriages revealed the extent to which economic effects have a ripple effects on violating children’s rights, particularly the issue of early marriages. Ultimately it is clear that while significant progress has been achieved in relation to legislative reform, gaps still remain in the implementation of laws and policies which promote children’s rights. They assert that Conservatism, paternalism and marginalism have blocked the transformation of attitudes towards children’s rights which are lagging behind in terms of legislative reform.

As already pointed out, economic instability has seen Zimbabwe lose human development gains and has presented multiple challenges for children’s organizations which are largely Non-Governmental Organizations. However, as Zimbabwe progresses, there is great potential for the children’s rights movement to influence the direction of the country so that the ideals of gender equality and children’s rights are fully realized. In the end, the question is always about the way forward. Challenges that have since culminated

In Zimbabwe arise not only from the economic problems that the country is currently reeling from, but also from the socio-political context.

Conclusion

The vast literature which was reviewed mainly was on the Zimbabwean law systems, specifically child related which touched on various aspects of children’s rights in the country. More importantly there was also a review of the various international conventions, in particularly the UN Convention on the rights of children and the African Charter on the welfare and rights of children which were all adopted by Zimbabwe. The accompanying challenges of implementation are also explored in the context of the research objectives. Various authors have produced a lot of work on the challenges of implementing international law at local level. The challenges are also magnified in the context where a plural legal system is employed and there becomes ambiguity in the application of law. Lastly the idea of harmonization being very vital in the whole matrix of international law, it is very important to ensure the process occurs

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smoothly. Various cases form the African continent were reviewed, where such efforts have been initiated. A critical appreciation of the successes, challenges and opportunities was also explored, Zimbabwe included. Bearing in mind that children constitute the future it is important to always find ways to make the future even better for them.

References


[18] UN Office of Legal Affairs, 2006

