

Evaluating the Rights of Children and Young People in Africa: The Policies and Practices in South Africa



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1 Introduction

This chapter discussed the gaps that exist in laudable governmental policies and legislations vis-à-vis the partial or non-implementations of the evaluation of the rights of children and young people in Africa; by paying close attention to the policies and practices in South Africa. Despite the numerous policies, legislation, and institutions aimed at protecting and promoting children and young people's rights, extensive studies have shown that children remain powerless and are sometimes abused in many ways by those who are to protect them (Bell, 2002; Breen et al., 2015; Gwandure & Mayekiso, 2011). Thus, children and young people are some of the vulnerable groups of people with limited or no voice to influence and change the status in society (Bell, 2002; Cairns & Brannen, 2005).

Nonetheless, the United Nations Convention of the Rights of the Child in 1989 paved the way for protecting and promoting the rights of children and young persons. Thus, they have become the focus of many demodectic and international laws and legislation that perceived them as the future and need to be nurtured and protected against any threat and suppression (Bell, 2002; Carletti, 2020). The African Union Charter on the Rights and Welfare of the Child was adopted in 1990 to make the rights and freedom of the African child non-negotiable. The rights of children and young people have since been a policy issue in most African

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countries, including South Africa. However, the ladder from childhood to adulthood comes with varying social, political, and economic rights coupled with its challenges (Kayizzi-Mugerwa, 2019; Masa et al., 2020; Muchemwa, 2019).

Children and young people occupy a very vague status in society (Masa et al., 2020; Muchemwa, 2019). They are perceived to be innocent, vulnerable, and need protection, yet are sometimes deemed to be a dangerous and timebomb population that needs to be restricted, controlled, and suppressed. It is not surprising, therefore, that there is such ambiguity about legislation, protocols, and conventions governing the affairs of young people. Despite these pieces of legislation, the abuse of children and young peoples are rampant in most countries in Africa. However, there are some slight variations among the countries.

While there are several legislations tilted toward the promotion and protection of children and young people in South Africa including the 1996 Constitution, Children's Act 38 of 2005, Refugees Act 130 of 1998/Immigration Act 13 of 2002, and the Social Assistance Act 13 of 2004, yet there are several children and young people who are victims of cases of human rights abuse. Nelson Mandela in his inaugural address during the launch of the Nelson Mandela Children's Fund, Pretoria in 1985 said, "There can be no keener revelation of a society's soul than how it treats its children" (Mandela, 1995). The critical question is how do children and young people cope and thrive despite the negative experiences they are exposed to? Thus, this chapter unraveled the legislation, policies, and institutions and how they have otherwise protected and promoted children and young people's rights in South Africa.

2 Policy Review of Children and Young People's Rights in Africa

The African Union (AU) endorsed the African Charter on the Rights and Welfare of the Child (the Charter) on July 11, 1990, and it went into effect on November 29, 1999. This Charter is the second but first binding instrument regionally that recognizes a child as the owner of certain rights and allows the child to exercise such rights in judicial or administrative processes (Mezmure, 2020). The Charter, as a regional human rights document, is expected to situate the discussion of children's rights within the African context. Since the passage of the Charter 32 years ago, Africa has undergone numerous transformations. The child demographics of the African continent are distinctive. This is because African children are more important to the future of the continent when compared to others (Mezmure, 2020). Most importantly, children constitute 47% of the African population (UNICEF, 2017b Generation 2030: Africa 2.0.). By 2050, the continent's population is expected to account for 42% of all global births and nearly 40% of all children under the age of 18 (UNICEF, 2017a). Therefore, investing in education and health systems remains the most vital means for making the most of the demographic benefit and creating an

Africa that recognizes children's rights. Increasing urbanization, globalization, and the dynamic socio-cultural environment must all be acknowledged as part of the changing scenario (UNICEF, 2020), which often erodes social safety nets and increases vulnerabilities, especially for children.

However, the continental adoption of the Convention of the Rights of the Child (CRC) has been slower than that of its international counterpart. At the onset, the CRC came into being with 15 AU members (Sloth-Nielsen & Mezmur, 2007). Furthermore, all African countries except six (6) ratified the African Children's Charter as of 2020. The six countries are Morocco, Tunisia the Democratic Republic of the Congo, the Sahrawi Arab Democratic Republic, Somalia, and South Sudan (Mezmure, 2020). The African Committee is in charge of overseeing the implementation of the African Children's Charter (Article 32 of the Charter).

Furthermore, to tackle child rights breaches at the regional level, member states will need to work together more closely. This would necessitate deliberate, systematic, and targeted action. This development necessitates the participation of regional economic communities and other regional organizations in the protection of children's rights. It means they must develop protocols and/or policies to guarantee that member nations' responses to abuses of children's rights are consistent. In light of this, the Economic Community of West African States (ECOWAS) developed a Strategic Response and Mobilization Framework for Child Protection Systems, as well as an ECOWAS Child Policy in 2009, which complements the CRC and the African Children's Charter (Amusan, 2018).

The Middle Eastern and North African (MENA) countries including Algerian and Libya have rectified the Arab Charter on Human Rights (ACHR) which was espoused by the Council of the League of Arab States in 2004 (Arab Charter on Human Rights, 2004). This is also in line with the principles embedded in the UN Charter on human rights (Universal Declaration of Human Rights), International Covenants on Human Rights and the Cairo Declaration on Human Rights in Islam. Despite these conventions and charters, there is a high prevalence of violence against children (VAC) in MENA which is mainly associated with harmful socio-cultural practices such as child marriage, female genital mutilation (FGM) child corporal discipline, sexual violence, and gender-based violence (UNICEF, 2017a).

The East African Community (EAC) adopted a child rights policy in 2016, with the goal of "establishing and strengthening current inter-country cooperation on the promotion of child rights, child safety, and child well-being,". Also, in South Africa, Child rights civil society is lobbying the Southern African Development Community (SADC) to draft a SADC Protocol for Children, led by the Child Rights Network for Southern Africa (CRNSA) (Chibwana, 2021). The role of regional economic communities as duty-bearers for the protection and fulfillment of rights is becoming more apparent. For the protection of rights in various regions, it is critical that the child's rights sector deliberately engages with these responsibility bearers.

2.1 Children's Rights and Institutional Reforms in Africa

The extent to which the Charter's tenets have progressively been incorporated into national legal systems and frameworks in Africa has been determined by numerous factors. Be that as it may, the constitutions, comprehensive child rights legislation and thematic laws have all been used as instruments to achieve such inclusion and interweave the Charter with national laws. The constitutional adoption of children's rights throughout Africa, as well as the incorporation of the Charter's specific parts, is progressing well (Child Rights Now, 2019). A glance at some of the continent's most recent constitutions, for instance, countries that got their Constitutions approved in the year 2010 (the continent's fourth wave of constitution-making) could serve as a suitable case. In this regard, the constitutions of Angola (2010), Kenya (2010), Madagascar, Somalia, Zimbabwe (2013), and Tunisia (2014) are good examples of the aforementioned (Child Rights Now, 2019).

Nonetheless, due to the widespread economic poverty in Africa and the low level of generated tax revenue of States, achieving child's rights in the future is already challenged (Child Rights Now, 2019: 40). The integration of children's rights in the constitutions of African states, as the Charter envisioned, could help in impacting legislative reforms, as in the case of Ghana, Ethiopia, and South Africa; and policies, as in the case of The Gambia, Ghana, Nigeria, and Uganda as well (UNICEF, 2008). Consequently, those constitutional amendments in federal-state constitutions play a critical role in rectifying any ambiguities therein. In other cases, such as in Lesotho, Liberia, Rwanda, Sierra Leone, and South Africa, the Charter is cited as a source of inspiration for new legislation. Most legislations include provisions relating to the Charter's added-value categories (UNICEF, 2020).

3 Legislative Frameworks on Children and Young people's Rights in South Africa

South Africa's current population is projected to be about 60 million people with children constituting about 21 million (35%) (Statistics South Africa, 2022). The rights of these children who are the future leaders of the country cannot be ignored. Besides, social justice for young people is equally relevant. Indeed, it is essential to have an introspection into the child's rights in South Africa as this would enable the understanding of the contemporary issues of children's and young people's rights after the promulgation of the 1996 constitution.

3.1 Children's Rights in Apartheid South Africa

Prior to 1994, children and young people in South Africa almost have no rights (IDAF, 1988). They were disadvantaged socially, politically, and economically during the Apartheid era (Richard, 1989). Children were ill-treated, arrested, whipped, tortured, and kept behind bars for their involvement in protests against the cruel suppression that characterized the regime. Several children, especially the black majority, were victims of gross human rights abuses during this era; however, accurate data for this are scanty, (Richard, 1989) argued that:

the apartheid regime in South Africa... embarked on a deliberate campaign of repression directed at African township children... between 1984 and 1986 that 312 children were shot dead by the police, another 1,000 or so wounded, an additional 11,000 detained without trial and almost invariably tortured...

The regime deprived the majority of these children and young people of their needed social, political, and legal assistance (Richard, 1989),

...18,000 more arrested on charges arising from political activities, and 173,000 held in police cells supposedly awaiting trials. Although the notion of a child extends until the age of 18, many of the South African children targeted by the police were far younger, frequently as young as 11 and even younger on occasion.

Given the prevailing cruelty during the apartheid era, some community-based and Not-for-Profit Organizations (NGOs) took charge of programs to advocate and promote the right of vulnerable children in South Africa. Despite their efforts being met with enormous financial and material resources as well as other constraints, these NGOs and community-based organizations (CBOs) pressed on till the break of the 1990s (Mabusela, 2000). They contributed immensely to the crusade and advancement of children's and young people's rights in South Africa. The country's brutal repression of children was the catalyst for the entrenchment of several domestic and international organizations such as the National Committee on the Rights of the Child (NCRC) and UNICEF's call for the protection and promotion of children and young people just before South African transitioned to a constitutional democracy.

3.2 Post-Apartheid South Africa and Children's Rights

Post-apartheid South Africa has witnessed promulgations of legislation and policies to protect and promote children and young people including children of illegal migrants. Besides, several state institutions and advocacy groups have also sprung up since the 1990s to ensure the enforcement of policies and laws to the benefit of children and young people. Nevertheless, it remains contentious among government institutions, advocacy groups, and other NGOs with regard to how a better quality of

life could be achieved for children and young people in the face of other socio-economic challenges and inequality problems in the country.

South Africa is no exception in protecting and promoting children's and young people's rights, as is the case in every other country. And as such requires several social, political and economic legislations, policies and intervention programs in this regard. These policies and legislation equally demand a lot of financial resources and other support from the government, individuals, and civil society, yet, they are most difficult to come by and tend to render them impractical. However, the promulgation of the Convention of the Rights of the Child (CRC) in 1990, South Africa is a party to this convention (with other 194 member states) which enjoined member countries to enact laws, established institutions and agencies to ensure that the rights of children and young people are protected and promoted accordingly.

3.2.1 Overview of Policies, Legislation, and Institutions Dealing with Children's and Young People's Rights in SA

This research observed that the national children's and young people's rights are entrenched in regional and global conventions, as well as charters focusing on promoting and protecting children's and young people's rights. The conventions, legislation, and policies were categorized into three geographical levels (see Fig. 1). The reason is that the interest of this chapter is within the purview of policies, laws, and institutions protecting and promoting children's and young people's rights in Africa with special reference to South Africa. Policies and conventions induced by regional organizations such as the African Union were briefly contextualized and presented accordingly in the previous section. These regional policies and charters were included to better understand the broader issue of children's and young people's rights which national policy discourse in South Africa centers around. Consequently, all the conventions, policies, and legislations identified in Fig. 1 are either directly or indirectly associated with the promotion and protection of children's and young people's rights (e.g., the Children's Act 38 of 2005 and National Youth Policy 2015&2020), as well as the general social-economic advancement of children and young people.

3.2.2 Status and Policies of Children and Young People's Rights in South Africa, 1996

It is worth stating that several legislation and policies promote and protect children's and young people's rights in South Africa, as they are briefly discussed in the next sections. Nonetheless, they will be referred to in the synthesis sections in the later chapters as well. This includes but is not limited to the South African 1996 Constitution, Programme of Action for Children 1998, National Integrated Early Childhood Development Policy, Social Assistance Act 13 of 2004, the Refugees Act 1301998, Child Justice Act 75 of 2008, Social Assistance Act 13 of 2004,

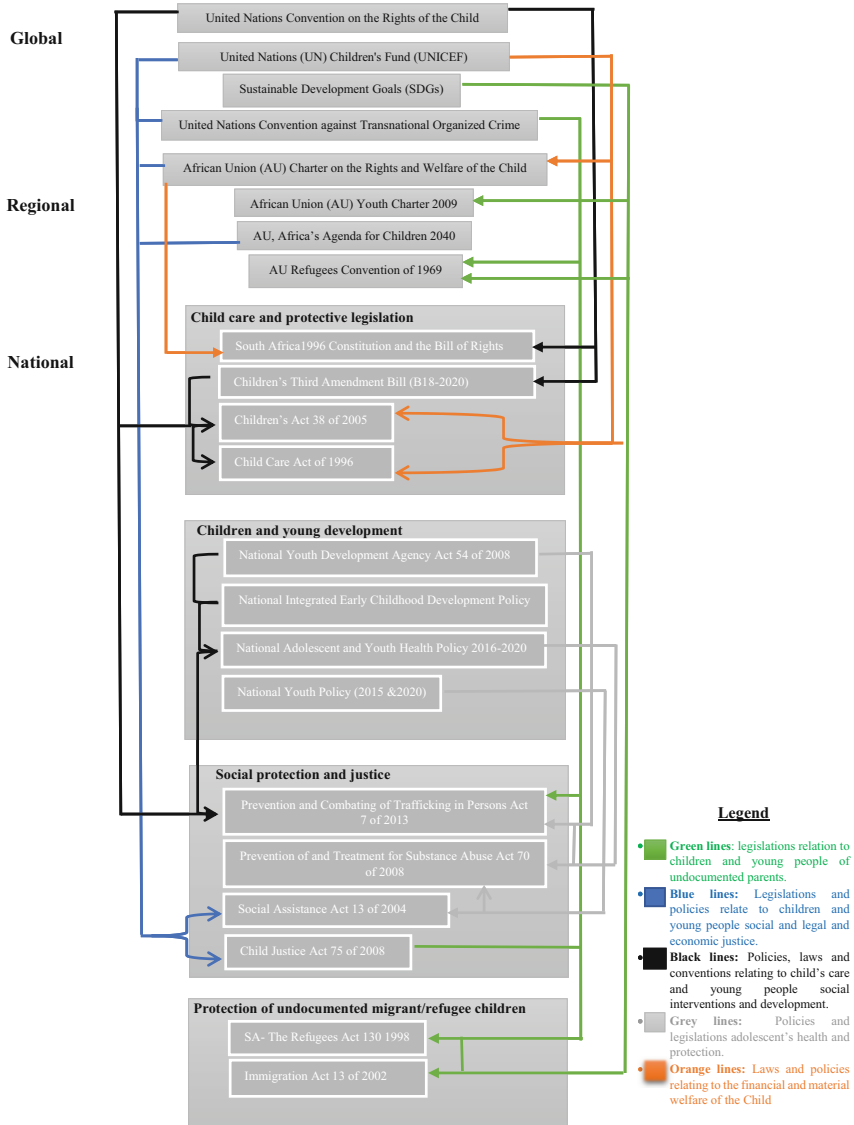


Fig. 1 Legislation with policies related to children and young people's rights in SA. Source: Constructed by the authors from several global, regional and national legislation and other policies protecting and promoting children's and young people's rights

Immigration Act 13 of 2002 among others (see Fig. 1). These policies and programs implemented by the government are some of the main strategies adduced to complement directly the laws protecting the rights of children and young people in South Africa. The statutes and policies with direct or indirect bearing on children and young people's rights are briefly discussed in this synthesis section of the chapter.

3.2.3 Childcare and Protective Legislation

The 1996 South African Constitution is the apex law, and all other legislation and policies are aligned and derived their authority from the constitution. Children's Act 38 of 2005, Child Care Act 1996, and the current amendment bill; Children's Third Amendment Bill (B18–2020) were enacted to care for and protect the rights of children in the country. Besides, young people and children have several constitutional rights as entrenched in Section 28 in the Bill of Rights in the Constitution of South Africa that are delineated in the 1996 Constitution including the right to education, parental care or alternative care, basic healthcare, basic nutrition, shelter, and other social services. Before the promulgation of the constitution, children were exposed to substandard education, inadequate healthcare, poor shelter, and uneven and racially biased social services (Robinson, 2017). Nevertheless, the constitution has created an enabling social system that encourages and harnesses the potential of children's and young people's rights. The Constitution states that 'everyone', children inclusive, has the right to basic education and other social services.

In addition, the right to upscale education is embedded in the subsequent implementation of other policies, although it is the state of South Africa's sole responsibility in terms of making available facilities, services, and support for the final actualization of these rights. Thus, the South African Human Rights Commission in partnership with international organizations such as UNICEF and government institutions like the Department of Basic Education is ensuring that through the Charter of Children's Basic Education Rights, the constitutional provisions on children's right to education are actualized in South Africa.

The promulgation of the 1996 Constitution ushered in a true process toward freedom and democracy (Tshepo et al., 1998) which includes the protection and promotion of children's rights. The post-apartheid arrangement set up systems and institutions to take the country on a different path where social, political, and legal rights are respected in the "new South Africa" including children and young people's rights. The Constitution carved out a new society based on human dignity, freedom, and equality of opportunity (RSA, 1996) and rightly outlined in Section 28 of the 1996 Constitution, clearly emphasizing the rights of children and young people. The idea of the transformative constitution coupled with the various indirect policies and programs specifically for children and young people is ground-breaking compared to the country's past hostile relationship between the state and children (especially, with most black children who were victimized during the apartheid era).

3.2.4 Social Protection and Legal Identity

Every child has the right to basic nutrition, shelter, and social services among others as expressed in Section 281 of the 1996 Constitution of South Africa. The constitution again prescribed other rights of the child including the socio-economic right, the right to be protected from all forms of maltreatment, neglect, abuse, or

degradation, economic rights, and the right of the child as it relates to the administration of justice. The Social Assistance Act 13 of 2004 was enacted to practically assist individuals through the State by providing social support where possible. The notion of social security which could also be induced from the 1996 Constitution is the premise upon which some of these acts were passed, for instance, the Prevention and Combating of Trafficking in Persons Act 7 of 2013, Child Support Grant, and Prevention of and Treatment for Substance Abuse Act 70 of 2008.

While there are several socio-economic rights in general, the right to basic nutrition, shelter, basic health care, and social services are specifically for children in South Africa as they are enshrined in various parliamentary acts. The aforementioned rights, coupled with others such as parental/alternative care rights, bring to the fore the importance of the family/parents and alternative care in meeting the various social rights need of children and young people in South Africa. However, addiction, illiteracy, poverty, and unemployment among others have led to the abuse of children even in their homes (Robinson, 2017). Thus, there is a need for both the State and citizenry to promote and protect children and young people from various social ills in societies.

The 1996 Constitution, coupled with other legislative frameworks, such as the Children's Act 38 of 2005, Child Care Act of 1996, and Child Justice Act 75 of 2008, professes some personal rights of the South African child which includes but is not limited to the regulation of the powers of the children's courts, medical treatment, nutrition, maintenance just to mention few. The legal rights establish a child's legal identity at birth which grants the child the opportunity to exercise their franchise at the appropriate age and enjoy healthcare, and education opportunities among others. Every child has the right to family or parental care or a suitable option when the child is not within his or her family and the Child Care Act of 1996 with its various amendments and subsequent acts such as the Children's Act 38 of 2005 recognized this basic right. The Constitution states that the right of the child to family care would be more valued if the means of livelihood is necessitated for the protection of these rights.

Again, the 1996 Constitution coupled with other legislative instruments and acts listed above in Fig. 1 is to correct some of the injustices emitted against children and young people in society at large. The question is, how many legislations, acts, policies and constitutional procedures are enough to correct the injustices committed against children and young people? Robinson (2017) indicates that "the right to family care or parental care requires the family or parents of a child, or the State, to provide care to that child. By using the word 'care', the Constitution radically deviates from the notion of parental 'authority' of the common law." The addition of the word 'care' automatically means the child is susceptible and needs protection (Robinson, 2017). Thus, the parent-child relationship should be clearly defined based on the indebtedness (not favor) of the parents to the child through the State to assist the child to overcome his or her vulnerability.

3.2.5 Child Justice Statutes and Protection of Children from Exploitative Practices

Children in South Africa have the rights in the administration of justice as enshrined in the Child Justice Act 75 of 2008 backed by the 1996 Constitution. Every child has the exclusive right not to be kept behind bars except for an extreme case and as the last option. However, sub-section 12 and 35 of the right of the child does not permit the child to be kept behind bars longer than the shortest possible time. It also allows the child to be kept separately from other detainees over 18 years and be handled and treated considering his or her age. All child's rights include that of having a legal practitioner, paid by the government, but attach to the child in case of a legal matter concerning the child as supported by the Child Justice Act 75 of 2008. This right eventually applies to both the children and adult populations. Furthermore, the Child Care Act (1996) also stressed the provision of legal practitioners, if it is in the best interest of the child in case of civil litigation.

Constitutionally, children are not required or permitted to perform work or provide services-related duties that are inappropriate for a person, and which place them at risk as stated in Section 28(1) of the 1996 Constitution. Indirectly, the Prevention and Combating of Trafficking in Persons Act 7 of 2013 are linked to the UN combat of trafficked persons with particular attention to children. Regrettably, child labor is on the rising in South Africa (Visser, 2021), thus, the duty of the State to enact laws, and put in place policies and institutions such as the Ministry for Women, Children, and People with Disabilities to protect children from abuse, exploitation, and other societal ills underscore. The question, therefore, is, to what extent has the state done these? Robinson (2017, p71) argues succinctly that;

It is clear that neither of these subsections imposes an absolute ban on child labor. It recognizes the fact that thousands of children are engaged in paid labor of some kind and that the lives of such children, and in many instances that of their families, depend on their ability to earn an income in this way. The duty to protect children against exploitative labor practices also does not require an absolute ban.

Despite this national legislation including the Social Assistance Act 13 of 2004, exploitation of children and young people through various labor practices in South Africa are patent. The section below explored some of the policies and programs linked to children and young people's rights.

3.2.6 Children and Youth Development

Children's and young people's development are crucial for every nation. Thus, following the previous APRM report, the government of South Africa established the National Integrated Early Childhood Development Policy under the auspices of the Department of Social Development. This is also in line with the government's quest to ensure that children and young people in the country have access to early childhood development services either in the national, provincial, or local sphere of

government. The aim is to anchor the national integrated system of early childhood development services through a legal, policy, and institutional framework that can identify, provide enablers, and compel relevant stakeholders to ensure that early childhood development programs are available and accessible to all infants and young children and their caregiver.

The government's commitment to the protection and promotion of children's and young people's rights is tied to the establishment of these institutional arrangements within the three tiers of government. The aim is to put in place the necessary ECD plans, implementation strategies, and monitoring and evaluation systems to ensure that there are early childhood development services and support systems nationwide. This would ensure the provision of adequate public funding and infrastructure for sustainable universal availability of, and equitable access to, quality comprehensive early childhood development services. And to further establish appropriate monitoring, quality assurance, and improvement systems to secure the provision of quality early childhood development services and outcomes for young children in South Africa (Department of Social Development)—The National Integrated Early Childhood Development Policy 2015 is such a robust social policy which encompass several socio-economic aspects for children and their parents. These include social protection programs, parent support programs, learning, national public early childhood development communications, food security, health care, and nutrition programs as well as sport and culture.

The above focus areas are under the Department of Social Development which subsequently proposed the amendments to the Children's Act (38 of 2005) to better align it with issues identified National Integrated Early Childhood Development Policy. The quest for an amendment led to the current Children's Third Amendment Bill (B18–2020), which further focuses on providing legal and institutional backing as well as policy and funds for early childhood development and matters relating to child's rights protection and promotion. Apart from these national legislations, the national and provincial governments partnered with non-governmental organizations (NGOs) such as the Nelson Mandela Foundation to access the current state of ECD centers to ensure that they are well registered and able to realize some of the provisions in the policy. We recommend a collaborative tracking of all ECD centers since this could grant the national government the opportunity to identify areas that need support either from the government or civil society to realize the goals of the National Integrated Early Childhood Development Policy.

4 Emerging Legislation, Policies, and Practices in the Previous SA-APRM Report

It is apt to state at this juncture that South Africa has signed and ratified several international and regional conventions/treaties which enjoin the government to enact policies and legislation domestically to protect and promote children's and young

people's rights. Accordingly, the previous APRM country report recommended several such legislation regarding early childhood development, child trafficking, substance abuse, youth unemployment, poverty, corporal punishment, and adolescent and youth health policy inter alia. The government of South Africa has since enacted policies and legislative acts such as the National Youth Policy (2015 & 2020); National Adolescent and Youth Health Policy 2016–2020, Prevention of and Treatment for Substance Abuse Act 70 of 2008, National Integrated Early Childhood Development Policy among others that have concentrated on these issues confronting children and young people in South Africa.

The last APRM country's report observed that several children and young people especially those born to teenagers and undocumented migrants in South Africa are largely susceptible and prone to abuse of their fundamental human rights despite the 1996 Constitution and other legislation that attempt to protect and promote such rights. The Constitution has entrenched sections for the protection of the rights of children. By extension, children and young people are not only covered by Section 28 of the Constitution alone but also the right to education, legal identity, good health, and others which, Scott and Alston (2000) argued to be "personal autonomy constructed from the rights to privacy, freedom of religion, freedom of expression and freedom of association read together, are the most important."

Consequently, children of refugee parents, asylum seekers and undocumented migrants are confronted with several fundamental human rights issues as professed in the previous APRM country's report. The rights of these children are not in doubt in the 1996 Constitution; however, the fate of many of these children is legally determined by the Children's Court when their parents are arrested by the security services. The government predicament has always centered on whether to grant asylum or not to these children when their parents are arrested. Despite these children being protected by international, regional and domestic conventions and legislation, the extent to which they are protected under the present Refugee Act 130 is vague. For instance, the Refugee Act 130 reads; "The Children's Court may order that a child contemplated in subsection (1) be assisted in applying for asylum in terms of this Act." Although the apex charter of the land was crafted with the history of the country in mind, that is, to protect, respect, and promote the rights and dignity of every South African irrespective of race, gender, among others including children and young people of undocumented migrants and asylum parents.

In addition to the foregoing, it was realized that young people are vulnerable to drugs and other lethal substances in South Africa. Linked to this, as stated in the previous report is human trafficking. Thus, it could be argued that the Prevention and Treatment for Substance Abuse Act 70 of 2008 and Prevention and Combating of Trafficking in Persons Act 7 of 2013 are well-suited legislation seeking to curb substance abuse and child trafficking among young people, respectively. The call for the incorporation of such issues into youth programs and policies was adhered to by the states judging from the enactment of the legislation above. The extent to which the issues have been integrated into the educational curriculum is, however, contentious.

While every child enjoys the same protection enshrined in the Bill of Rights as their adult counterpart (Robinson, 2017). However, it does not permit children to have singular self-determination and this tends to erupt in conflict among children, their parents, and the State (Robinson, 2017). Children are still abused by their parents in the name of discipline. The landmark judicial precedence which abolished corporal punishment has deterred parents from such acts to a very large extent in the country. We argued that a compromise must be reached whereby children could trace their claims to personal autonomy and self-fulfillment in law. Since the duties and responsibilities of the State and that of parents are tied to the age of the child, the constraint induces by the rights becomes more complicated as the child attains older age (Robinson, 2017).

5 Children and Young People's Rights and Abolishing of Corporal Punishment

Despite the revelation from the previous APRM report, there have been some improvements concerning the rights of children and young people. Between the period 2011–2020, there have been some court rulings on 'children-young people related' and other initiatives that have been implemented in an attempt to provide some remedies to the issues identified in the previous report which include but are not limited to corporal punishment, poor early childhood development, the abysmal state of children of refugees and undocumented persons as well as other socio-economic challenges confronting children and young people in South Africa.

Corporal punishment (CP) was rooted in the ways and other power relational patterns historically in South African society as revealed by a previous APRM report. The notion behind corporal punishment is embedded in authoritarian regimes that tend to argue that discipline and obedience in society emanate from punishment and fear. However, in a constitutional democracy such as South Africa, these authoritarian ways of disciplining children and young people are deemed to be an infringement on their rights. While the approach has largely been used in South Africa for years, it became apparent that there is a need to rethink it. CP was endorsed by law under the Apartheid regime and further enforced through the Dutch Reformed Church and other Christian National Education Schemes (Porteus et al., 2001). It was a medium through which the Apartheid regime was entrenched (Bower, 2002).

However, through a unanimous rule, the Constitutional Court in 2019 banned any form of corporal punishment emitted against children and young people by their parents or any higher authority. In reading the unanimous judgment, the Chief Justice reiterated that 'reasonable or moderate chastisement' including corporal punishment is not consistent with the 1996 Constitution of the republic. The Constitution states that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or

private sources. The section in conjunction with other subsections (d) and (e) further argued that nobody should be subjected to any form of torture or be treated in a cruel, inhuman, or degrading way.

Despite the earlier call to rethink the use of corporal punishment by parents and caregivers, the ruling by the constitutional court further triggered the outcry by child rights lawyers and activists. The judgment was a huge landmark in the country's efforts to promote and protect children and young people's rights. This is apart from, reviewing the Child Care Act, the South African Law Commission recommended the adoption of alternative approaches such as education and awareness-raising by parents and caregivers as opposed to corporal punishment. This is deemed to be positive parenting as expressed in the South African Law Commission Act, 1973 (Act 19 of 1973) report on the Review of the Child Care Act 2002.

Moreover, the Children's Third Amendment Bill (B18–2020) is currently under discussion in parliament to amend the Children's Act 2005 by taking a second look at various sections of the immediate action to establish a National Child Protection Register. These are all in line with the country's effort toward promoting and protecting children from any form of violence from family or the State. The ongoing amendment of the Children Act 2005 is timely for the government to further showcase its commitment to promoting and protecting children and young people's rights.

5.1 Undocumented Migrants/Refugees and Children's Rights

It is worthy of note that the Refugees Act 130 of 1998 is weaved into the recent Immigration Act 13 of 2002 concerning non-nationals who are in South Africa. In 1993, South Africa became a signatory to the memorandum of understanding between the government and the United Nations High Commissioner for Refugees (UNHCR), which permits refugees to enter the country. Despite these acts and conventions in which South Africa is a signatory, there are ambiguities surrounding some of the provisions governing the status of children of non-nationals and refugees. Under these acts, children of refugees and undocumented migrants are deemed to be aliens, and not entitled to permanent residency. The status of children traveled with or born to refugee parents in both acts is not explicitly stated as well as the right to access other basic services such as housing, school, health, and safety.

Nonetheless, the Refugee Act states that the child of an illegal foreigner or refugee can apply for asylum status as stated: "Any child who appears to qualify for refugee status in terms of section 3, and who is found under circumstances which indicate that he or she is a child in need of care as contemplated in the Child Care Act, 1983 (Act No. 74 of 1983), must forthwith be brought before the Children's Court for the district in which he or she was found. The Children's Court may order that a child contemplated in subsection (1) be assisted in applying for asylum in terms of this Act (Refugee Act 130 of 1998)". These children, consequently, do not

have the rights as their counterpart South African nationals to access basic socio-economic services including education.

There is a great limitation on access to education especially, for illegal foreigners and migrant children. Though South Africa is a signatory to the United Nations (UN) International Covenant on Economic, Social and Cultural Rights which emphasized that: “all children within a state, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care.” Unfortunately, South Africa has not lived up to the dictates of the Convention as expressed in Section 39 of the Immigration Act 13 of 2002 which states that; “No learning institution” shall knowingly provide “training or instruction” to an “illegal foreigner.”

5.2 Insights on Children’s and Young People’s Health, Drugs, Gangsterism

The United Nations Convention of the Right of the Child in 1989 coupled with Section 28 of the Bill of Rights in the 1996 Constitution of South Africa paved the way for the protection and promotion of the right of children and young persons. Besides, the success of the Africa Union Charter is dependent on how well each member country implements the charter by aligning it to their national policies and laws from the center to the grassroots level. Thus, there are some policies and acts that have been implemented and enacted respectively to ensure that the South African child and young people are cared for since the previous APRM report. These include the National Adolescent and Youth Health Policy 2016–2020, Prevention and Combating of Trafficking in Persons Act 7 of 2013, and National Youth Policy (2015 & 2020).

Thus, the well-being and health of children and young people in South Africa have become paramount issues for both the central and provincial governments judging from the numerous policies and acts and the rate of substance abuse in recent times. The exploitation of children and young people in the sales of drugs and gangsterism is on the rise in South Africa despite the recent policies and acts such as the Prevention of and Treatment for Substance Abuse Act 70 of 2008, Prevention of Organised Crime Act, No. 24 of 1999 inter alia are enacted to curb the abuse of drugs which is tied to gangsterism and other related organized crime and violence. It has become obvious that gangsterism in most communities, (townships) has become a matter of survival for children and young people.

While several factors have been alluded to such as organized crime, issues of unemployment, inequalities, and poverty are key factors in the rise of gangsterism. Gang-related murders are increasingly sharp in townships and the fight against it, either at the national or provincial level has not materialized judging from the continued rise of gang-related violence and murder in the country. This is contradictory to the above-mentioned acts which seek to mitigate the abuse of drugs and

gang-related crimes among young people in South Africa. Consequent to this, are other challenges confronting children and young people in South Africa, such as poor mental healthcare, alcohol abuse, violence, broken home, HIV/AIDS, and poverty, just to mention a few.

5.3 Social Intervention Policies and the Dilemma of Young People's Development

The young population in South Africa is one of the vulnerable groups as observed in the APMR Country Review Report, South Africa. They are also susceptible to the use of lethal drugs and other related commodities which are on the increase in the country, apart from the scourge of unemployment. Having implemented the previous five-year youth policy and with the revealing challenges pointed out by the above report, the government of South Africa put together another National Youth Policy (2020–2030) to further implement the programs set out in the 2015–2020 National Youth Policy. The vision of the NYP 2030 is: “an integrated, holistic and sustainable youth development, conscious of the diversities, historical imbalances, and current realities, in building capacities for young people, so that they can, in turn, contribute their full potential in building a better life for all.” The policy aims to provide the prerequisite training, tools, and enabling environment for young people's development so they to contribute their quota to the local, provincial and national development agenda in South Africa.

The aim is to provide pragmatic remedies to address the past injustices of the emerging socio-economic challenges of the country's teeming young population. The NYP policy is accompanied by other interventions and initiatives geared toward improving the health and well-being of children and young people, including legislation, policies, initiatives, and media campaigns such as Prevention of and Treatment for Substance Abuse Act 70 of 2008; National Adolescent and Youth Health Policy 2016–2020; Integrated School Health Policy; Child Support Grant; National Youth Service Framework inter alia. These legislations, policies, and acts are aimed at providing leadership and employment opportunities for both skilled and unskilled young people.

Nevertheless, the youth unemployment rate in South Africa increased to 66.5% in the last quarter of 2021 from 63.30% in the first quarter of 2021 (Statistics South Africa, 2022). The current unemployment rate among young people between the ages of 18–24 in South Africa is alarming and could be a security threat to the country's future. The abuse of young people through child labor, and physical and other forms of exploitation continues to be alarming and an obvious problem in the country. Consequently to this, some children and young people are trapped in the 'ghost children and young workers' conundrum in the informal sector of the economy.

6 Conclusion and Recommendations

This chapter gives the following summation before drawing its conclusion that, despite the gains in child rights protection in South Africa, there remain several aspects that need to be improved for the promotion of children's and young people's rights as observed by the previous South African APRM Country Reports (2011, 2014). The report recommended the need for some rethinking with regard to the forms of corporal punishment (physical beating of children and young people) in the name of discipline; early child development needs to be a priority not only for children in school but their fellow counterparts who are not attending school. The onus is on both the state and parents when it comes to children and young people's development. The synthesis observed that children of refugees, asylum seekers, and undocumented persons are not treated like their fellow counterparts who are citizens since they can be implicitly refused permanent residency status not to talk about citizenship. They are detained by the security forces with their parents in some cases.

Nonetheless, it can be acknowledged that under the constitutional democracy since 1994, South Africa has enacted progressive legislation, acts, and policies that dignify and value people including children and young people. There has been a drastic change in the social and political spheres in South Africa since the promulgation of the 1996 Constitution which houses the Bill of Rights (fundamental human rights and freedom). The rectification of the UNCRC ushered in several related children's and young people's acts and laws; however, these efforts are not closer to ratified UNCRC manual judging from the country's current situation. There are many socio-economic and inequalities challenges that continue to undermine the country's progress. The presence of street children, trafficking, and child labor is obvious in South Africa today. The total well-being of the child is a function of the presence of a protective and caring family, but several broken homes undermine the state's and community's efforts. The conclusion is drawn on the premise that an all-inclusive strategy that incorporates income generation, access to education, healthcare, shelter, and social services among others is an urgent need. This, it is hoped can positively impact the lives of thousands of children to ensure their survival and protection.

6.1 Recommendations

Given this synthesis, we proposed the following recommendations to enhance the promotion and protection of children's and young people's rights in South Africa.

- Establish a national commission on the rights of children and young people with a legislative mandate to constantly monitor and evaluate children and young people's rights violations and handle complaints.

- Promote local advocacy by establishing districts and provincial commissions to locally advocate and promote children and young people's rights including children of undocumented migrants/refugees.
- Set up a statutory agency that constantly reviews current national and provincial legislation, acts, and policies that infringe upon the rights of children and young people.
- Established multi-agency working groups and children and young people's advocacy groups to champion the rights and interests of children.
- Provide clarity on the role of each sphere of government in the implementation of the Immigration Act.
- Formulate intersectoral collaboration implementation guidelines and strategies for a holistic implementation of the NYP.
- Review the Immigration Act and any policies infringing on the rights of children of illegal foreigners to align with international conventions and protocols.
- Establish Anti-Drug/Gang Units within the national and provincial security forces will be a step in the right direction to curb the exploitation of children and young people in such undertakings.

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