

**An integrated childhood perspective:
Contextualising legal and non-legal approaches to
tackle child labour in Malawi**

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Supervisor's confirmation

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Declaration

I, Gift Gawanani Mauluka, declare that I have not previously submitted this dissertation at the University of Bayreuth or any other university for the award of the degree of *Dr. iuris* or any other similar award. I further declare that all sources used, referred to or quoted in this work, have been duly acknowledged.

Gift Gawanani Mauluka

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Dedication

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List of abbreviations and acronyms

Abbreviation	Definition
ACCEL	Accelerating Action for the Elimination of Child Labour in Supply Chains in Africa
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
ADC	Area Development Committee
AHRLJ	African Human Rights Law Journal
AIDS	Acquired Immuno Deficiency Syndrome
ARISE	Achieving Reduction of Child Labour in Support of Education
AU	African Union
BEYD	Basic Education and Youth Development Program
BIGSAS	Bayreuth International Graduate School of African Studies
CCAP	Church of Central Africa Presbyterian
CCJ	Community Court of Justice
CCLMC	Community Child Labour Monitoring Committee
CCPJA	Child Care, Protection and Justice Act
CLEAR	Child Labour Elimination in Action for Real Change
COMESA	Common Market for Eastern and Southern Africa
CPW	Child Protection Workers
CRC	United Nations Convention on the Rights of the Child
CRECOM	Creative Centre for Community Mobilisation
CSOs	Civil Society Organisations
DLO	District Labour Officer
DRA	Drama
DSWO	District Social Welfare Officer
EAC	East African Court
ECD	Early Childhood Development
ECEC	Early Childhood Education and Care

ECLT	Eliminating Child Labour in Tobacco Growing
EWHC	England and Wales High Court
FAO	Food and Agriculture Organisation
FGD	Focus Group Discussion
FISP	Farm Input Subsidy Program
GA	General Assembly
GAOR	General Assembly Official Record
GC	General Comment
HIV	Human Immuno Virus
HRC	Human Rights Commission
ICESCR	International Covenant on Economic, Social and Cultural Rights
IJLPF	International Journal of Law, Policy and the Family
ILO	International Labour Organisation
IPEC	International Program on the Elimination of Child Labour
KII	Key Informant Interview
MWHC	High Court of Malawi
MWK	Malawi Kwacha
NAP	National Action Plan
NAPCL	National Action Plan on Child Labour
NCLP	National Child Labour Policy
NCLS	National Child Labour Survey
NGO	Non-Governmental Organisation
OAU	Organisation of African Union
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIM	International Organization for Migration
PELJ/PER	Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad
PSLCE	Primary School Leaving Certificate Examination
PSS	Psychosocial Support

RUDN	Peoples' Friendship University of Russia
SADC	Southern African Development Community
SAP/FL	Special Action Programme to Combat Forced Labour
SDG	Sustainable Development Goals
TfD	Theatre for Development
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNFCCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations International Children's Fund
US	United States
USA	United States of America
USD	United States Dollar
UNTS	United Nations Treaty Series
VDC	Village Development Committee
VSL	Village Savings and Loans
VSU	Victim Support Unit
WOLREC	Women's Legal Resources Centre
YONECO	Youthnet and Counselling Organisation

Abstract

Child labour continues to be a global problem affecting children and families across the globe. It is work performed by a child that is likely to interfere with their education or harm their health, physical, mental, moral, or social development. To address the problem, the international community agreed to adopt different legal frameworks on child labour. Malawi ratified these international human rights instruments and has even enacted domestic legislation to overcome the problem. Furthermore, initiatives that include the legal ban on child labour, access to education initiatives, poverty alleviation programmes, and direct interventions by governments and the International Labour Organisation (ILO) on incentive-based schemes have been implemented to combat the problem. Despite these efforts, child labour is increasing, especially in the agricultural sector.

In this study, I argue that there is a gap between the promise the legal framework gives children of addressing child labour and the reality of the problem. Thus, the existing legal framework on child labour fails to operate to cure child labour, mainly as a result of contextual barriers outside and within the law. At its core, the thesis argues that children in Malawi experience their childhood in a context where they are expected to work for their households' survival strategies and as expected by the community. The thesis demonstrates that if the gap between the legal frameworks on child labour and the reality of child labour on the ground is to be addressed, there is a need to reimagine and restate the notion of childhood through the lens of integrated childhood. This new *integrated childhood perspective* acknowledges the reality that children's roles are incorporated into household survival strategies and community expectations, which sometimes diverges from the legally framed notion of childhood and child labour captured in international and Malawi's legal frameworks.

The study explores its research questions by employing socio-legal research methods that first involve desk research, followed by empirical field research that incorporates Theatre for Development (TfD) as a research approach. Through a performative analysis in the TfD process, the child labour legal framework is examined alongside the communities' lived realities to explore both analytical and practical solutions to the problem of child labour in Malawi.

Keywords: Child labour; Legal Frameworks; Children's Rights; Performative Analysis; Malawi

Chapter 1: Introduction

1.1. Overview

This thesis argues that there is a gap between what the child labour legislation promises and the realities of children and families involved in child labour on the ground. At its core, the thesis argues that children in Malawi experience their childhood in a context where they are expected to work for the households' survival strategies and as expected by the community. These claims are grounded in communities' perspectives of childhood, children's rights, and child labour. Therefore, the examination of the research questions is rooted in the analysis of these perspectives. The analyses look at socialisation and social constructivism, as well as culture and cultural relativism, as childhood perspectives on the one hand. On the other hand, the thesis examines the work-free, social-cultural, and political economy perspectives on child labour. The thesis combines analyses of childhood and child labour perspectives alongside the African Charter on the Rights and Welfare of the Child's (ACRWC) child rights principles, including non-discrimination, the child's best interest, life, survival, development, and participation.

Overall, the thesis examines these perspectives to provide a framework for analysing how communities in Malawi perceive childhood, child rights, as well as child labour. This examination provides an analysis of how a combination of such perspectives, or lack thereof, informs and influences the position of work in the lives of children in a given context. Through the analyses of these perspectives, the thesis suggests a reimagination of a childhood perspective that acknowledges that, in a Malawian context, children's roles are incorporated into household survival strategies and community expectations. This is sometimes a diversion from the legally framed notions of childhood and child labour. It is argued in this thesis that the probability of tackling child labour in Malawi is most likely to be successful if childhood and child labour are looked at from this perspective while acknowledging the child rights principles. This thesis has termed this nuanced lens as an *integrated childhood perspective*. Ultimately, this thesis proposes that if the gap between the legal framework and the reality of child labour is to be reconciled, closed, or narrowed, the laws must adopt this perspective in their normative, structural, and procedural arrangements.

Furthermore, the thesis argues that this reimagination of a nuanced integrated childhood perspective and its subsequent adoption into legal frameworks can be effectively achieved by deploying empirical research methodologies that are simple, participatory, and community-based. Consequently, the thesis has used a *performative analysis* in Theatre for Development as an empirical research approach to investigate the research question and test its hypothesis.

This chapter introduces the research problem, laying the foundation for the thesis by presenting the aim, research questions, and hypotheses. Furthermore, the chapter provides details on the research methodology, rationale, and scope of the study. It further describes the ethical issues that were considered. The chapter also provides conceptual clarification of fundamental key terms and definitions used in the thesis. It includes sections discussing the research design and methodology. Finally, it outlines the chapters with a brief description of their arrangement within this thesis.

1.2. Background of the problem

This thesis investigates why child labour persists in Malawi even though there is a vibrant legal framework meant to tackle the problem. It explores the extent to which the current legal framework on child labour in Malawi reflects the lived realities of affected children and their families, and how an integrated childhood perspective can inform more context-responsive legal reforms, ultimately narrowing the gap between the law and the reality on the ground.

As will be shown, the complexities of child labour are linked to multiple factors influencing it. The problem has been studied by economists, historians, social scientists, lawyers, anthropologists, and other experts. However, one of the key differences in this thesis is the use of socio-legal and participatory research methods to explore the research questions and seek possible solutions that are holistic and transcending the normative, institutional, and procedural arrangements of the legal frameworks.

This thesis contends that there is a gap between the promise the legal framework gives children of addressing child labour and the reality of the problem on the ground. It has been argued that the existing legal framework on child labour fails to operate to cure child labour, mainly as a result of contextual barriers within and outside the laws. It has been submitted that adequate human rights protection of children from child labour is plausible to be achieved by incorporating the lived contextual realities embedded within the communities of children affected by child labour. At its core, the thesis argues that children in Malawi experience their childhood in a context where every

household member is expected to contribute to the household's survival strategies and as expected by the community.

With insights from the participatory empirical research conducted in Mzimba, Ntchisi, Zomba and Nsanje districts in Malawi, the thesis has demonstrated that if the gap between the legal frameworks on child labour and the reality of child labour on the ground is to be addressed or reconciled, there is a need to reimagine and restate the notion of childhood from the lens of integrated childhood. This new perspective on integrated childhood acknowledges that children's roles are incorporated into household survival strategies and community expectations, which sometimes diverge from the legally framed notion of childhood and child labour captured in international and Malawi's legal frameworks. Thus, if the legal framework is to effectively address child labour, it must adopt an integrated childhood perspective in its arrangements.

It has been provided in international legal instruments that child labour is any form of work performed by a child that is likely to interfere with his or her education or to be harmful to their health or physical, mental, spiritual, moral, or social development.¹ It is a worldwide problem that is robbing children of their childhood as a result of the physical, emotional, and psychological harm it causes them.² Furthermore, child labour violates several rights and fundamental freedoms, disturbs the enjoyment of rights of children, and disrupts their transition into adulthood.³ In this thesis, these assertions, definitions, provisions, and claims are tested through a performative analysis process within the communities where the problem is manifest.

Specifically, the United Nations provides that child labour is work performed by a child that is likely to interfere with his or her education or to be harmful to their health or physical, mental, spiritual, moral, or social development.⁴ This definition looks at the effects of the phenomenon on the one hand. On the other hand, the International Labour Organisation (ILO) defines child labour in terms of age. According to Convention 138, children under the age of 15 are prohibited from

¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 32(1). Hereafter referred to as CRC (1989).

² ILO and UNICEF, *Child Labour: Global estimates 2020, Trends and the Road Forward* (ILO and UNICEF 2021) 8 < https://www.ilo.org/ipec/Informationresources/WCMS_797515/lang--en/index.htm > accessed 15 December 2024.

³ African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *AGENDA 2040, Africa's Agenda for children: Fostering an Africa Fit for Children*, 2016 < <https://www.refworld.org/docid/5836c7ee4.html> > accessed 14 February 2025.

⁴ CRC (1989), art 32 (1).

working.⁵ Thus, children under 15, also the age of compulsory schooling, are considered incapable and eligible for paid employment.⁶

The ILO's understanding of child labour is based on the kind of work, duration, and conditions in which the work is performed.⁷ Apart from this, the ILO describes child labour as work that deprives children of their childhood, their potential and their dignity.⁸ Besides, a child is identified as a labourer if they are engaged in the worst forms of child labour, which include slavery, forced labour, prostitution, trafficking or exposure to illicit drugs.⁹ Additionally, Article 3 of the Convention on the Worst Forms of Child Labour provides that child labour comprises work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Statistically, the problem is alarming at different levels. According to the ILO's global estimates on child labour in 2020, the number of children in child labour has risen to 160 million worldwide – an increase of 8.4 million children in the previous four years (between 2016 to 2020) – with millions more at risk. Furthermore, the ILO estimates indicate that 79 million children – nearly half of all those in child labour – were in hazardous work that directly endangered their health, safety and moral development.¹⁰

From this global picture, it is reported that there are more children in child labour in Africa than in the rest of the world combined, and that addressing it will call for a breakthrough innovation.¹¹ In its recent report, the ILO indicates that the number of children in Africa rose by 20.1 million between 2016 and 2020, while the prevalence of child labour increased by two percent over the

⁵ ILO, Minimum Age Convention, Convention 138, 26 June 1973 < <https://www.refworld.org/docid/421216a34.html> > accessed 25 November 2024, art 3. Hereafter referred to as Convention 138.

⁶ Line Eldring, Sabata Nakanyane, and Malehoko Tshoaedi, 'Child labour in the tobacco growing sector in Africa' (Conference Paper on Elimination of Child Labour, Nairobi, 2000) 61 < <https://www.eclt.org/filestore/faforeport> > accessed 23 January 2025.

⁷ ILO and UNICEF (n 2) 18.

⁸ ILO, 'What is Child Labour' <https://www.ilo.org/ipecc/facts/lang--en/index.htm> > accessed 30 November 2024.

⁹ ILO, Eliminating the Worst forms of Child Labour, C182, 17 June 1999, <https://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm> accessed 25 November 2024, art 3(c). Hereafter referred to as Convention 182.

¹⁰ ILO and UNICEF (n 2) 8. The updated estimates of 2024 show that the overall number of children in child labour declined by more than 20 million, and the number in hazardous work by even more – 25 million – from 2020 to 2024. Again, child labour prevalence fell by nearly 2 percentage points over the same period. This progress is widespread, despite earlier concerns that the COVID-19 pandemic would exacerbate the situation. See International Labour Organization and United Nations Children's Fund, *Child Labour: Global estimates 2024, trends and the road forward* (ILO and UNICEF, New York 2025) 15.

¹¹ ILO, *Child Labour Statistical Profile: Africa* (ILO 2020) < https://www.ilo.org/sites/default/files/2024-11/Statistical_Profile_01_Africa_ENGLISH_FINAL_20220114_NEW.pdf > accessed 12 February 2025.

same period. The chilling statistics indicate that about 92.2 million African children were in child labour, predating the outbreak of the COVID-19 crisis in 2020.¹² Similar projections and alarming figures reflect the Malawi situation, where 38 percent (over 2 million) of children aged 5 to 17 are involved in child labour, a majority of whom work in the agriculture sector.¹³

In 2025, the ILO produced another report where it was indicated that globally, there has been a drop in the number of children in child labour. Here it reports that nearly 138 million children – 59 million girls and 78 million boys – are in child labour, accounting for almost 8 per cent of all children globally. Fifty-four million children, or around 4 in 10 of those in child labour, are in hazardous work likely to harm their health, safety, or morals, which is still alarming.¹⁴ Nonetheless, the problem persists, and more innovative methods of addressing it remain to be explored.

To overcome the child labour problem, the international community agreed to protect children through the adoption of the ILO Convention 138 on Minimum Age,¹⁵ Convention 182 on the Worst Forms of Child Labour,¹⁶ and the United Nations Convention on the Rights of the Child (UNCRC 1989).¹⁷ For instance, the ILO Convention on Minimum Age of Employment (Convention 138) prohibits the employment of children below the age of 15, arguing that children should be in school rather than being employed at this age.¹⁸ Additionally, ILO Convention 182 on the Worst Forms of Child Labour (Convention 182) calls for the immediate eradication of the worst forms of child labour through the enactment of country-specific legislation.¹⁹

At the regional level, the African Union (AU) adopted the ACRWC, advocating for the elimination of child labour and calling upon state parties to take appropriate measures to curb this practice.²⁰

¹² Ibid; See also the updated statistics in the International Labour Organization and United Nations Children's Fund, *Child Labour: Global estimates 2024, trends and the road forward* (ILO and UNICEF, New York 2025) 15.

¹³ National Statistics Office of Malawi (NSO) and International Labour Office (ILO), *Malawi: 2015 National child labour survey report* (Fundamental Principles and Rights at Work Branch and ILO 2017) < https://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_29055/lang--en/index.htm > accessed 14 February 2025.

¹⁴ International Labour Organization and United Nations Children's Fund, *Child Labour: Global estimates 2024, trends and the road forward* (ILO and UNICEF, New York 2025).

¹⁵ Convention 138.

¹⁶ Convention 182.

¹⁷ CRC (1989) (n 1).

¹⁸ Convention 138 art 2.

¹⁹ Convention 182 Preamble; See Also Convention 182 art 1.

²⁰ Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, CAB/LEG/24.9/49 (1990), adopted 11 July 1990, entered into force 29 November 1999 < <https://au.int/en/treaties/african-charter-rights-and-welfare-child> > accessed 12 February 2025. Hereafter referred to as ACRWC.

It is envisioned that addressing child labour at the regional level can be enhanced through the monitoring mandate of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). Additionally, the ACERWC can use its mandate to interpret provisions of the African Children's Charter on child labour, investigate violations of children's rights, and handle complaints regarding child labour as is provided for in the Charter.²¹

At the domestic level, Malawi ratified Conventions 138 and 182 in 1999.²² The ratification and adoption of these international and regional human rights frameworks were Malawi's commitment to join the battle against child labour and combat it through legislation. In addition to the international obligations, Malawi enacted national provisions. These encompass the Malawi Constitution 1994 (amended 2017), the Trafficking in Persons Act 2015, the Employment Act 2000, and the Child Care, Protection and Justice Act 2010 (CCPJA 2010), among other key legislations that make several practical prescriptions for the elimination of child labour. For instance, the Malawi Constitution prohibits the economic exploitation of children in Article 23, the Employment Act 2000 prohibits the employment of children below the age of fourteen under Article 21, and the CCPJA 2010 prohibits the involvement of children in labour for income of parents, guardians or any other person through Article 82. These legislations, which are discussed further in Chapter Three, attest to the efforts that have been put in place at various levels to tackle child labour.

Furthermore, these bodies of law create a basis for several initiatives to eliminate and prohibit child labour. Such initiatives include the legal ban on children's engagement in child labour and direct interventions by governments and ILO on incentive-based schemes for combating child labour.²³ For instance, the ILO's international programmes on eliminating child labour displayed how introducing school feeding programmes and promoting technical education helped address child labour.²⁴ In other words, access to food through school feeding programmes makes schooling more attractive, helps lure more children to school, and reduces their time at home, where they are more susceptible to child labour.²⁵ Additionally, by providing out-of-school children with

²¹ ACRWC (n 20). The mandate of the Committee is spelt out in Articles 27-29.

²² ILO, *Ratification by country*, 2022 < <https://www.ilo.org/dyn/normlex/en/f?p=1000> > accessed 14 February 2024.

²³ Alberto Posso, *Child Labor in the Developing World* (Springer Singapore 2020) 16 < https://doi.org/10.1007/978-981-15-3106-4_1 > accessed 31 January 2025.

²⁴ ILO-IPEC, *IPEC action against child labour 2012-2013: Progress and future priorities* (ILO-IPEC, 2014).

²⁵ Martin Ravallion & Quentin Wodon, 'Does child labour displace schooling? Evidence on behavioural responses to an enrollment subsidy' (2000) 110(462) *The economic journal* 158, 159.

technical skills such as carpentry and bricklaying, the ILO programmes enhanced the prospects for income for the youth and their families, and reduced their likelihood of engaging in child labour due to unemployment and poverty.²⁶

On top of all these efforts, the ILO has implemented the Accelerating Action for the Elimination of Child Labour in Supply Chains in Africa (ACCEL AFRICA), as well as the Special Action Programme to Combat Forced Labour (SAP/FL), which established a significant new force in the fight against child labour, forced labour and human trafficking.²⁷ It is asserted that these programmes have been implemented in the African region with specific priorities considering country-specific contexts and the forms of child labour that manifest in African countries.²⁸ Despite these efforts, child labour is still a problem at the global level in general and Malawi in particular.²⁹

It is asserted that child labour is primarily influenced by economic and social factors that include poverty, failure of the education system, and lack of legislative enforcement agencies.³⁰ In the context of poverty and demand for cheap labour, it is claimed that employers are aware that if they employ children, they will give the children a wage that is below the minimum standard.³¹

Furthermore, it is stated that employers are aware that children, due to their vulnerability, will not complain about the employer's unfair labour practices, as they have nowhere to turn and lodge a complaint, a role that trade unions typically play.³² This vulnerability is exacerbated by the children's limited access to alternative sources of income.³³ It is evident that in situations of vulnerability, the employers have all the freedom to exploit the children in whichever way possible. Such exploitative conditions for vulnerable children have been reported in child labour-related cases in *R v Mponda* (2017)³⁴ as well as in *Josiya & Ors v British American Tobacco Plc*

²⁶ ILO, Combating Child labour through skills training for older children (ILO 2015) < <https://webapps.ilo.org/DevelopmentCooperationDashboard/#bthwufs> > accessed 12 February 2025.

²⁷ ILO, 'International Programme on the Elimination of Child Labour and Forced Labour (IPEC+)' < <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/flagships/ipec-plus/lang--en/index.htm> > accessed 02 February 2025.

²⁸ 'ILO, 'About the region' < <https://www.ilo.org/africa/about-us/lang--en/index.htm> > accessed 03 May 2024.

²⁹ ILO and UNICEF (n 2) 28; See also NSO and ILO (n 13).

³⁰ Eldring and others (n 6) 9.

³¹ Emma Charlene Lubaale, 'The recognition of the right of children to freedom from child labour in Africa: is it enough?' (2015) 28(1) *Afrika Focus* 23,37.

³² Eldring and others (n 6).

³³ Ibid 8.

³⁴ *R v Mponda* [2017] MWHC 114.

& Ors (2021).³⁵ In the *Mponda* case, it was found that children who were employed as waiters were forced to work in a pub under exploitative conditions by the employer.³⁶ Relatedly, in the *Josiya* case, it is claimed that tobacco companies have made profits through the widespread use of unlawful child labour, unlawful forced labour, and the systematic exposure of vulnerable and impoverished adults and children to extremely hazardous working conditions with minimal protection.³⁷

It is further alleged that parents from impoverished households are most likely to send their children into child labour as a coping mechanism.³⁸ Thus, parents with limited sources of income are anticipated to involve their children in helping with work on the farms where they are employed or in seeking alternative jobs that will support the family's achievement of a minimum standard of living.³⁹ In such contexts, poverty pushes the parents to engage children in child labour to complement what they are earning.

Furthermore, it has been found that a lack of quality education facilities also pushes children into child labour.⁴⁰ In situations where the schools are expensive, far away, and do not appear to offer competitive advantages over child labour, parents are less likely to see the need to send their children to school. Instead, they allow their children to engage in some work that will help support the household's livelihood.⁴¹

Additionally, cultural practices are reported to be a cause of child labour. These cultural practices and beliefs include practices that perceive the education of girls as a waste of resources;⁴² practices where the performance of work by children is considered as a fulfilment of their cultural obligation and beneficial to the family;⁴³ as well as part of human development and every member's responsibility towards the survival of a family unit.⁴⁴ Relatedly, some studies have found that

³⁵ *Josiya & Ors v British American Tobacco Plc & Ors* [2021] EWHC 1743 (QB).

³⁶ *Mponda* (n 34) para 4.

³⁷ *Josiya* (n 35) para. 5.

³⁸ Raymond Frempong, 'Child Labour in Sub-Saharan Africa: Empirical Evidence and New Perspectives' (Universität Bayreuth, 2019).

³⁹ Posso (n 23) 37.

⁴⁰ *Ibid* 18.

⁴¹ Anthony Nwazuke and Chinedu Igwe, 'Worst forms of child labour in Nigeria: An appraisal of international and local legal Regimes' (2016) 7 (6) Beijing Law Review 69.

⁴² *Ibid* 79.

⁴³ Michele D-Avolio, 'Child labor and cultural relativism: From 19th century America to 21st century Nepal' (2004) 16(5) PILR 109, 138.

⁴⁴ *Ibid* 138.

parents prefer their children to work because they believe that manual work teaches children to be hardworking adults.⁴⁵

Still on culture, the worst forms of child labour related to servitude, practised under the guise of tradition and sanctioned religious doctrines, have been observed in *Hadijatou Mani Koraou v. Niger*.⁴⁶ In this case, the Appellant, who was twelve years old in 1996, reported being exposed to all the worst forms of child labour, which include sexual exploitation and slavery. This occurred within the context of '*wahiya*', a practice prevalent in the Republic of Niger, which involves acquiring a young girl, typically under conditions of servitude, to serve as both a domestic servant and a concubine.⁴⁷

Similarly, exploitative and forced begging, which have been recognised as the worst forms of child labour, systematically coated under the wraps of religious teaching, have been reported in the *Senegalese Talibés* case.⁴⁸ In this Communication to the ACEWRC, it was found that over 100,000 Talibé children sent to religious schools ended up being forced to be street beggars in Senegal.⁴⁹ Even though it cannot directly be attributed to religion, it would not be far-fetched to attach culture as a factor that influenced this type of exploitation. This Communication demonstrates the depth of religion, the use of influence, and the position of privilege as some of the deep-rooted factors perpetuating the vulnerability of children to child labour.

On top of the factors briefly discussed above, it has been reported that climate change and its adverse effects, such as floods, drought, and landslides, enhance the involvement of children in child labour.⁵⁰ In its report, the Food and Agriculture Organisation (FAO) found a positive correlation between the adverse effects of climate change and child labour.⁵¹ The report indicates

⁴⁵ Michaëlle Tauson, 'Child Labor in Latin America: Poverty as Cause and Effect' (2009) Human Rights & Human Welfare 31.

⁴⁶ *Hadijatou Mani Koraou v. Niger*, ECW/CCJ/JUD/06/08.

⁴⁷ *Ibid* para. 9.

⁴⁸ *Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense des Droits de l'Homme v Senegal*, No 3/Com/001/2012 (15 April 2014); See case summary *Senegalese Talibés* <<https://www.chr.up.ac.za/news-archive/2014/1002-summary-of-the-proceedings-concerning-the-talibes-case>> accessed 04 March 2025.

⁴⁹ *Ibid*.

⁵⁰ Eze, Emmanuel Chukwuma, Amos Nnaemeka Amedu, Monday Sampson, Ifeanyichukwu Dumtochukwu Okoro, Chukwuma Patrick Nwabudike, and Sylvanus Innocent Ogar, 'Influence of Environmental Shocks and Child Labour on Children's Educational Outcomes: A Scoping Review' (2024) 17(3) *Child Indicators Research* 1071, 1072.

⁵¹ FAO, *The relations between climate change and child labour in agriculture – Evidence on children's work trends after climate-related events in Côte d'Ivoire, Ethiopia, Nepal and Peru*. (FAO, Rome, 2023) <<https://doi.org/10.4060/cc6244en.4060/cc6244en>> accessed 05 September 2023.

that in Côte d'Ivoire, while heavy rain associated with climate change reduced the amount of work and the involvement of boys in hazardous work, it increased the involvement of girls in hazardous work on the contrary.⁵² Furthermore, it is reported that dry spells related to climate change led to an increase in child labour for girls in Nepal.⁵³

Additionally, the ILO and United Nations International Children's Fund (UNICEF) indicate that on top of the existing factors proliferating the increased cases of child labour, COVID-19 pushed more children into child labour.⁵⁴ It is contended that the pandemic increased household vulnerability due to disruptions and job losses, resulting in heightened financial insecurity. Consequently, children are seen as an alternative source of income.⁵⁵ Consistent with the findings of the ILO and UNICEF above, Becker found that, due to COVID-19, more children resorted to taking on odd and hazardous jobs to support their families.⁵⁶ Similarly, it was reported that due to the closure of schools during the COVID-19 pandemic, children were immediately available at home for their parents to be involved in child labour.⁵⁷

In relation to normative frameworks, child labour is considered a gross human rights violation that robs children of their future.⁵⁸ It is also considered a human rights problem because it affects children's rights, including the right to education, play, and health.⁵⁹ Affirming this, it has also been argued that child labour affects a whole spectrum of children's rights, and this guarantees reinventing approaches to dealing with child labour through a rights-based approach that puts children at the centre.⁶⁰

⁵² Ibid.

⁵³ Ibid.

⁵⁴ International Labour Organization and United Nations Children's Fund, *'COVID-19 and Child Labour: A time of crisis, a time to act'* (ILO and UNICEF 2020) 8.

⁵⁵ Ibid 21.

⁵⁶ Jo Becker, *"I Must Work to Eat" Covid-19, Poverty, and Child Labor in Ghana, Nepal, and Uganda* (Human Rights Watch, 2021) < <https://www.hrw.org/report/2021/05/26/i-must-work-eat/covid-19-poverty-and-child-labor-ghana-nepal-and-uganda> > accessed 03 May 2022.

⁵⁷ ILO and UNICEF, *'COVID-19 and Child Labour'* (n 54) 17.

⁵⁸ ILO, *'2021: International Year for the Elimination of Child Labour'* ILO Newsroom (Geneva, 5 January 2021) <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_766351/lang--en/index.htm> accessed 04 January 2022.

⁵⁹ Emma Seyram Hamenoo, Emmanuel Aprakru Dwomoh, and Mavis Dako-Gyeke, 'Child labour in Ghana: Implications for children's education and health' (2018) 93 *Children and Youth Services Review* 248,249.

⁶⁰ Dinbabo, Mulugeta, 'Child rights in sub-Saharan Africa: A call for a rights-based global research agenda' (2013) 49 (3) *Social Work/Maatskaplike Werk*.

The global situation discussed above reflects the child labour situation in Malawi. The causes, compounding factors, and estimates are reflected in the different reports involving children. For instance, the National Child Labour Survey (NCLS) indicates that over 2 million children in Malawi are involved in hazardous work.⁶¹ This work exposes them to all sorts of risks, including respiratory problems, injuries, absenteeism, dropping out of school or poor performance⁶² and the risk of sex exploitation.⁶³

Therefore, it is most probable that the situation above influenced the enactment of various international legal instruments, such as the ILO Conventions 138 and 182, UNCRC 1989, and the African Children's Charter, which prohibits work that has the potential to disrupt the welfare and growth of children.⁶⁴ On its part, the UNCRC 1989 recognises that children, as a unique and vulnerable group in society, should have a set of fundamental rights and protections that ensure their safety from harm, exploitation and abuse.⁶⁵

This thesis recognises that there are other contributing factors to child labour, which have been thoroughly discussed in Chapter Four. For instance, poverty has been identified as one of the leading causes of the problem.⁶⁶ Other scholars have attributed the problem of child labour to the lack of accessible and quality education facilities,⁶⁷ the vulnerability of households that has come as a result of illness and death.⁶⁸ Furthermore, other attributable factors include market structures that do not allow for good working conditions and good wages for adults,⁶⁹ which eventually pushes parents and guardians to engage their children in child labour. Besides, it is argued that climate change and its adverse effects, such as floods, drought, and landslides, enhance the involvement of children in child labour.⁷⁰

⁶¹ NSO and ILO (n 13).

⁶² Chukwuma and Others (n 50) 1074.

⁶³ Nicholas Rees and David Anthony, *Unless we act now: The impact of climate change on children* (UNICEF 2015).

⁶⁴ Tinashe Madziwa, 'A critical analysis of child labour protective laws in Southern Africa: a case study of Malawi, South Africa and Zimbabwe' (MA Thesis, University of Kwazulu-Natal, 2014) 12.

⁶⁵ CRC (1989), art. 32.

⁶⁶ ILO and UNICEF (n 2) 8.

⁶⁷ Lubaale (n 31) 23.

⁶⁸ ILO and OECD, *Ending child labour, forced labour and human trafficking in global supply chains* (ILO, OECD, IOM, UNICEF, 2019) 19.

⁶⁹ Eric Edmonds and Nina Pavcnik, 'Child labour in the global economy' (2005) 19(1) *Journal of Economic Perspectives* 199, 205.

⁷⁰ Chukwuma and Others (n 50) 1072.

While the factors stated above influence child labour in Malawi, limited scholarly discourse explores the gaps between the realities of child labour on the ground and the solutions offered through the child labour legal frameworks in Malawi. Moreover, these studies are deficient in reimagining how a different perspective of child labour, offered through the lens of an integrated childhood perspective, potentially images as a novel solution for dealing with child labour, both through legal and non-legal solutions. For instance, while Gondwe explores the role of the church in addressing children's dignity violated in child labour, his study focuses on the theological concepts of human dignity.⁷¹ Additionally, Gondwe's study draws its conclusions from eight church ministers serving as research participants.⁷² Therefore, it is limited in its exploration of child labour factors within and outside the legal framework as perceived by other people and communities outside the church, including children and community-based structures.

Furthermore, Makwinja investigates the extent to which child labour on tea and tobacco estates constitutes a violation of child rights.⁷³ However, Makwinja's study relies heavily on secondary data, except for one key informant as a source of information.⁷⁴ This limits the comprehensiveness of the findings. Moreover, the study does not provide an analysis of child labour laws in Malawi beyond discussing the UNCRC 1989, which makes the study less relatable to the situation of children in Malawi.

In another study, Madziwa critically analyses child labour protective laws in Malawi, South Africa, and Zimbabwe.⁷⁵ This study highlights the weaknesses and gaps in legislation stemming from flawed legislation drafting approaches.⁷⁶ While Madziwa's study touches on some areas that resonate with the aspiration of this thesis, it predominantly employs a desk research method, which fails to provide candid lived experiences of people to whom the laws are directed.

1.2.1. Conceptual clarification

It may have been possible to distil the existing literature on child labour, child rights, and childhood as distinct fields of study to align with Rowley and Slack's definition of a literature review who proposed that a literature review is a state-of-the-art summary of a subject matter that reviews

⁷¹ John Gondwe, 'A theological investigation into Malawian child labour: a challenge to CCAP Livingstonia synod' (PhD Dissertation, Stellenbosch University, 2015).

⁷² Ibid

⁷³ Simon Matthias Makwinja, 'Child labour and the violation of child rights: A case of child workers on tea and tobacco plantations in Malawi' (MA Thesis, Universitetet i Tromsø, 2010).

⁷⁴ Ibid.

⁷⁵ Madziwa (n 64).

⁷⁶ Ibid.

earlier and recent work to identify possible areas for further research.⁷⁷ Furthermore, it is noted that by reviewing relevant literature, researchers can gain a deeper understanding of the existing body of work and identify gaps that warrant further exploration. Moreover, researchers can test a specific hypothesis and/or develop new theories by summarising, analysing, and synthesising related literature.⁷⁸ Consistent with these claims, this thesis has summarised the different angles of the research question through literature from various sources and fields, including sociology, history, economics, anthropology, religion, and law, and has synthesised them within the chapters and their related themes.

However, instead of compiling all relevant literature within a single section or chapter, the review is presented within each chapter alongside the arguments, analyses, and descriptions offered. Through this approach, the thesis has contextualised the existing literature, understood the concepts and terminologies related to the study, and suggested research methods that might help reimagine solutions to the research problem. According to Rowley, these are characteristics befitting the importance of conducting a literature review.⁷⁹

Within each chapter, a discussion of the critical arguments, theories, concepts, ideas, legislation, and perspectives is provided, which equally fits a literature review of that specific chapter but is connected to the whole. Nonetheless, in the following section, the thesis presents a synthesis of key concepts that guide the discussion in the study, drawing on a range of disciplines and sources to establish a foundation for analyzing the research questions.

1.2.1.1. Definition of a child

While the international community agrees that child labour is a worldwide problem that needs to be eliminated, some divergent views emerge on the definition of the term. Bhukuth argues that this is the case because the term combines different notions with contextual meaning and is linked to the socialisation process of a particular society.⁸⁰ Thus, the meanings of ‘child labour’ and ‘child’ differ from one society to another. For instance, while a child is considered an independent and autonomous being from a Eurocentric perspective in, say, Norway, the same child is regarded as

⁷⁷ Jennifer Rowley and Frances Slack, ‘Conducting a literature review’ (2004) 27(6) *Management research news* 31, 32.

⁷⁸ Yu Xiao and Maria Watson, ‘Guidance on conducting a systematic literature review’ (2019) 39(1) *Journal of Planning Education and Research* 93, 93.

⁷⁹ Rowley and Slack (n 77) 32.

⁸⁰ Augendra Bhukuth, ‘Defining child labour: A controversial debate’ (2008) 18(3) *Development in Practice* 385, 385.

a part of a society whose welfare and existence are dependent on the society as a whole among the Vatsonga people in Zimbabwe and Mozambique.⁸¹ Consequently, this understanding will also determine how a child is engaged in work, both inside and outside the household and society.

For its part, the UNCRC 1989 defines a child as every human being below the age of eighteen unless, under the law applicable to the child, the majority is attained earlier.⁸² On the one hand, Convention 138 provides a category of years in the definition of the child; it sets a minimum age of 15 years as an appropriate age for engaging children in light work.⁸³ On the other hand, unlike the UNCRC and Convention 138, Convention 182 does not provide room for defining a child and explicitly describes a child as all persons under 18.⁸⁴

However, despite the differences in contextual meaning, some consensus is restored in the understanding that children, regardless of their context, should be protected from cultural practices and work that threaten the enjoyment of their rights.⁸⁵ This notion has been established in the international legal frameworks on children's rights and affirmed at regional and domestic levels.

This thesis adopts the definition of a child as any person under the age of 18, as provided in the Malawi Constitution.⁸⁶ However, this age is different when discussed in light of child labour.⁸⁷

1.2.1.2. Definition of child labour

According to Edmonds, the labelling of any activity involving children as child labour is usually avoided by a lot of researchers because the official definition of the term varies according to the context and the purpose of such labelling.⁸⁸ He upholds that, although the definition of the term is avoided, some labelling and categorisation help clarify what child labour entails.⁸⁹

On its part, the UNCRC describes child labour as any work that is likely to be hazardous or interfere with the child's education or harmful to the child's health or physical, mental, spiritual,

⁸¹ Samuel Lisenga Simbine and Liana MP le Roux, 'Vatsonga people's Perceptions of Children's Rights' (2021) 57(4) Social Work 472,479 < <https://socialwork.journals.ac.za/pub/article/view/971> > accessed 31 March 2024.

⁸² CRC (1989) art 1.

⁸³ Convention 138 art 2(3).

⁸⁴ Convention 182 art 18.

⁸⁵ Simbine and Roux (n 81) 479.

⁸⁶ Constitution of the Republic of Malawi 1994 (as amended through 2017), s 23.

⁸⁷ The concept of a child based on age has been contested and is discussed later in Chapter 5 through the performative analyses with the communities.

⁸⁸ Eric Edmonds, 'Child Labor' in Paul Schultz and John A. Strauss (ed) *Handbook of Development Economics* (Elsevier 2007) < <https://www.sciencedirect.com/science/article/pii/S1573447107040570> > accessed 10 August 2024

⁸⁹ Ibid.

moral or social development.⁹⁰ This is a widely used and accepted definition adopted by States in their key child rights legislation and is also reflected in other international conventions. For instance, the ILO describes child labour as work that deprives children of their childhood, their potential and their dignity.⁹¹ Besides, a child is identified as a labourer if she/he is engaged in the worst forms of child labour, which include slavery, forced labour, prostitution, trafficking, or exposure to hazards.⁹² Furthermore, Convention 182 establishes that child labour comprises work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.⁹³ The three legal instruments above appear to align with the notion that any type of work that impacts a child's welfare and upbringing is detrimental to the child as a whole and should therefore be condemned.

However, considering cultural differences and changes in context that may occur over time, Convention 182 provides that national laws or regulations shall determine the type of work that constitutes the worst forms of child labour, after thorough consultations with relevant authorities.⁹⁴ Additionally, Article 4(3) of the Convention provides that the list of types of work shall be periodically examined and revised.

At the regional level, the AU argues that not all work performed by children is child labour unless it is hazardous and infringes on their right to education. In its Ten-Year Action Plan on the eradication of child labour, forced labour, human trafficking and modern slavery in Africa, the AU asserts that child labour is work by children that is prohibited or targeted for elimination because the child is below the minimum age for that type of activity, or because the nature of the work or the conditions under which it is performed makes it unsuitable for children.⁹⁵ This definition, in part, reaffirms what has been highlighted in the UNCRC and Convention 138 of the ILO.

All in all, the definitions above underscore the idea that children, wherever they may be, work within and outside the household. However, such work should not be detrimental to their health, moral, physical, and psychological well-being in any form, type, and duration. Nonetheless, this

⁹⁰ CRC (1989) art 32(1).

⁹¹ ILO, What is child labour < <https://www.ilo.org/topics/child-labour/what-child-labour> > accessed 03 July 2025.

⁹² Convention 182 art 3(c).

⁹³ Convention 182 art 3.

⁹⁴ Convention 182 art 4.

⁹⁵ ILO, *Ten Year Action Plan on the Eradication of Child Labour, Forced Labour, Human Trafficking and Modern Slavery In Africa (2020-2030): Agenda 2063-SDG Target 8.7* (AU, Revised Draft v.5, 2019) 3.

thesis's examination of the gap between the child labour legal frameworks and the lived realities on the ground is centred around the definition of child labour as provided in Malawi's legislation, which corresponds with the international instruments above. Here, the law prohibits employment of children below 14 years and further stipulates that no person between the ages of fourteen and eighteen shall work or be employed in any occupation or activity that is hazardous, likely to harm their health, safety, education, morals, or development.⁹⁶

1.2.1.3. Distinction between child labour and light work

According to the ILO, not all work performed by children is classified as child labour that is targeted for elimination.⁹⁷ Therefore, a distinction must be made between work that harms children and interferes with their schooling and work that does not impact their health and personal development.

In most of Sub-Saharan Africa, some children work as part of their socialisation, schooling, and development. It is common to see girls washing clothes, drawing water, and helping with household chores, while boys assist their parents in selling agricultural products at the market. The ILO considers this light work to be work that does not interfere with the child's health, development, or school attendance.⁹⁸ It can be regarded as light work when performed by children older than 11 who work only a few hours, not more than 14 hours per week.⁹⁹ However, when this type of work requires a significant amount of time and effort from the child over different intervals, it becomes difficult to distinguish between children's work and child labour.¹⁰⁰

Other scholars have argued that the dominant discourse on children working is primarily promoted by developed societies, which propose that children should not be involved in economic activities but rather be prepared for the future through formal education.¹⁰¹ This notion is also supported by the work-free perspective theorists on child labour, who argue that children should not be engaged

⁹⁶ Government of Malawi. Employment Act 2000. Enacted: May 14, 2000.

< <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/58791/65218/E00MWIo1.htm> > accessed 08 June 2023, s 21(1)(a).

⁹⁷ ILO (n 26).

⁹⁸ Convention 138 art 7(1).

⁹⁹ Heather Congdon Fors, 'Child labour: A review of recent theory and evidence with policy implications' (2012) 26 (4) *Journal of Economic Surveys* 570, 571.

¹⁰⁰ Dagim Dawit Gonsamo, Herman Hay Ming Lo, Ko Ling Chan, 'The Role of Stomach Infrastructures on Children's Work and Child Labour in Africa: Systematic Review,' (2021) 18 *Int. J. Environ. Res. Public Health* 4, 7.

¹⁰¹ Dena Aufseeser, Michael Bourdillon, Richard Carothers, and Olivia Lecoufle, 'Children's work and Children's well-being: Implications for policy' (2018) 36(2) *Development Policy Review* 241, 242.

in any work meant for economic gain (this will be discussed in greater detail in the next chapter). They further advance the view that childhood should be characterised by play and schooling for the future and suggest that anything that contravenes such idealised norms of childhood should be penalised by national laws and social policies.¹⁰²

Tatek and Bessell put forward the proposition that in most African societies, where valuable life skills and lessons are taught through informal life experiences outside formal education, it is challenging to separate children from work.¹⁰³ This point was echoed in a more recent study on the community perceptions of children's rights among the Vatsonga people of Zimbabwe and Mozambique. In this study, it is established that children learn the values of generosity, kindness, and humility through observing their siblings, myths and taboos, and men's social gatherings. The authors further opined that in these societies, children from wealthy families would even miss school to attend a traditional ceremony or herd cattle, thereby learning skills through work.¹⁰⁴ Inasmuch as the children learn from these forms of work, where cultural and societal lessons are well-intentioned, Lubaale observes that some of these tend to approve exploitation that borders on child labour and should, therefore, not be encouraged.¹⁰⁵ Here, the underlying conclusion remains that even if children are engaged in work, where they will learn valuable skills that they could not learn anywhere else, such engagement should not warrant or involve exploitation, as this will be a form of child labour.

Recognising the unique context of children in an African setting and their contribution to the household, Article 31 of the ACRWC provides that every child is responsible towards the family and society and has the duty to work for the family's cohesion and assist the family in case of need.¹⁰⁶ Nevertheless, even though this might be seen as a clawback clause delimiting the protective intentions of the Charter, the ACRWC provides for the protection of children from all forms of economic exploitation and child labour.¹⁰⁷ Furthermore, the Charter calls upon state parties to take appropriate measures to eliminate social and cultural practices that affect children's

¹⁰² Tatek Abebe and Sharon Bessell, 'Dominant discourses, debates and silences on child labour in Africa and Asia' (2011) 32(4) Third World Quarterly, 765, 779.

¹⁰³ Ibid 773.

¹⁰⁴ Simbine and Roux (n 81) 474.

¹⁰⁵ Lubaale (n 31) 26.

¹⁰⁶ ACRWC (n 20).

¹⁰⁷ ACRWC art 15(1).

welfare, dignity, normal growth, and development.¹⁰⁸ Thus, even though children are allowed to work, such work should not be detrimental to their health and physical well-being or distract them from their schoolwork, as this would be considered a form of child labour. In this regard, this thesis distinguishes between child labour and light work, understanding that light work is permitted and beneficial to the child, whereas child labour is not. This distinction supports an earlier claim proposing that child labour entails any work that a child does that prevents them from receiving full-time formal education and contravenes the existing minimum age and conditions for employment.¹⁰⁹

1.3. Research problem

The persistence of child labour in Malawi affects the welfare and enjoyment of the rights of children. This study argues that while the current legal framework promises protection to children from child labour, its effectiveness requires a lot to be desired in light of the lived contextual realities of the children and their families. What is also unique in this study, but previously limited in earlier scholarship, is the reimagination of child labour through an integrated childhood perspective. This thesis argues that an integrated childhood perspective recognises that, in Malawi, children's roles are incorporated into household survival strategies and community expectations, which sometimes conflict with the provisions of the law. Thus, child labour must be viewed through these lenses if the law is to achieve its purpose.

Firstly, the study argues that despite ratifying international instruments and setting up domestic legislation promoting children's rights, let alone treaties on child labour, a significant number of children are still involved in child labour. This is verified by the ILO-UNICEF, indicating that 92.2 million African children - 40.1 million girls and 52.1 million boys are engaged in child labour between 2016 and 2020.¹¹⁰ The recent 2025 ILO report indicates that Sub-Saharan Africa has by far the largest number of children in child labour – 87 million, or nearly two-thirds of the global total. Central and Southern Asia ranks second, at 17 million. Furthermore, Sub-Saharan Africa also continues to have the highest child labour prevalence at 22 per cent, followed by Northern

¹⁰⁸ ACRWC art 21(1).

¹⁰⁹ Rea and Concern (Organization), *Child Labour*. (Concern Worldwide, 2008) <<https://www.developmenteeducation.ie/media/documents/Concern%20Child%20Labour%20Resource.pdf>> accessed 25 November 2024, 9.

¹¹⁰ ILO, *Child Labour Statistical Profile: Africa* (ILO 2020) < https://www.ilo.org/sites/default/files/2024-11/Statistical_Profile_01_Africa_ENGLISH_FINAL_20220114_NEW.pdf> accessed 12 February 2025

Africa and Western Asia at a distant second with 8 per cent.¹¹¹ This means that alarming numbers of children are involved in work that jeopardises their health, education, welfare, and overall development.¹¹² However, these numbers are in a context where there are laws meant to safeguard the same. The discrepancy warrants an investigation into the effectiveness and applicability of the child labour laws, as it seems that they are limited in resonating with the lived realities that children and their families in Malawi navigate.

As will be demonstrated in the thesis, child labour perpetuates the cycle of poverty,¹¹³ the vulnerability of families, children's access to school, and healthy well-being. Meanwhile, the apparent mismatch between the laws and the realities is likely leading to ineffective enforcement of child labour laws, as communities fail to recognise the legal provisions as a reflection of their realities. As Heady has argued, children involved in child labour fail to acquire an education,¹¹⁴ which reduces their prospects of a better future. Therefore, ignoring the disconnection between child labour laws and the realities of children and their families on the ground is anticipated to aggravate the problem, reduce the protection of children from exploitation, and perpetuate the situation even further.

Secondly, if the contextual factors that compel child labour are poorly understood, the laws, policies, strategies, and action plans meant to address the problem will continue to fail. Additionally, if the gaps being investigated in this thesis remain unexplored, ineffective interventions that do not lead to sustainable changes will conceivably be implemented, to the detriment of the children and the community at large.

Therefore, this thesis brings a fresh perspective on understanding child labour in the context of a vibrant legal framework through the concept of integrated childhood. Through the integrated childhood lenses, it seeks to reconcile the legal frameworks surrounding child labour with the socio-economic realities children face in Mzimba, Ntchisi, Zomba, and Nsanje districts in Malawi. By employing a socio-legal research approach through Theatre for Development, the study aims to create a dialogue between communities and relevant stakeholders involved in children's rights,

¹¹¹ ILO and UNICEF (n 14) 20.

¹¹² Chukwuma and Others (n 50) 1090-1091.

¹¹³ Posso (n 23).

¹¹⁴ Christopher Heady, 'The effect of child labor on learning achievement' (2003) 31(2) World Development 385, 393.

particularly child labour. Such dialogue contributes to exploring the gap between legislation and reality to find a workable solution. The deployment of this approach aligns with earlier assertions that participatory methods enable a more nuanced approach to addressing social challenges, as they facilitate communities in moving beyond mere compliance with traditional ways of addressing challenges. Such an approach enables the development of strategies that take into account the complexities of communities.¹¹⁵ Ultimately, this study aims to inform policymakers about adopting a legal and policy framework that protects children's rights and acknowledges their expected roles within the family and the community, thereby contributing to effective strategies for combating child labour in Malawi. This is even more critical now that Malawi's National Child Labour Policy remains in draft form.¹¹⁶

1.4. Research aims and questions

The study interrogates the persistence of child labour in the context of a robust legal framework that is meant to address the problem in Malawi. This examination goes beyond legal frameworks into Malawi's socioeconomic, cultural, religious, and political realities.

1.4.1. Main hypothesis

This study argues that there is a gap between the legal framework on child labour and the reality on the ground. It contends that if this gap is to be reconciled, narrowed, or closed, the laws must adopt an *integrated childhood perspective* in their normative, structural, and procedural arrangements. The study empirically tests this assertion by conducting a performative analysis of child labour laws and the realities of child labour on the ground through Theatre for Development.

To ably do this, the following key research questions were explored to provide direction for this study:

1.4.2. Main research question

The following main research question drives the aspirations of this thesis: How does the current legal framework on child labour in Malawi reflect the lived realities of affected children and their

¹¹⁵ Drucilla Cornell, Michel Rosenfeld and David Gray Carlson, *Deconstruction and the Possibility of Justice* (Routledge 2016).

¹¹⁶ Ministry of Labour, Youth, Sports and Manpower Development, *National Action Plan on Child Labour 2020-2025* NAP II. (Ministry of Labour, Youth, Sports and Manpower Development, 2017) 3.

families, and in what ways can an integrated childhood perspective inform more context-responsive legal reforms?

1.4.3. Key research questions

1. How are Malawi's legal frameworks structured in addressing child labour?
2. How does the socioeconomic matrix of child labour inhibit the legal framework from achieving efficacy in addressing child labour?
3. In what ways can an *integrated childhood perspective* be operationalised within Malawi's legal and policy context to tackle child labour in Malawi?

1.5. Rationale of the problem

At the domestic level, the ratification of international instruments and the enactment of domestic legislation on child labour in Malawi seem to suggest the government's commitment to protecting children from child labour and promoting their rights. It is, therefore, warranted to investigate why, despite this promise of protection through legislation, child labour is still persistent in Malawi.

Furthermore, this thesis reimagines the notions of childhood, child rights, and child labour from the perspectives of the communities in Malawi. Such a reimagination provides a basis for devising solutions to tackle child labour through approaches relatable to the children and families affected by the problem. Such an understanding is instrumental to policy formulation, project and programme implementation, revision or reform of legislation, and the ultimate protection of children from exploitation and the protection of their rights.

Additionally, this study employs Theatre for Development as a participatory research method. Through this approach, the study aims to foster a dialogue between the communities and stakeholders involved in child labour, extending beyond the scope and lifespan of the research. This approach enables a deeper exploration and understanding of community dynamics, providing space for combating child labour within local contexts and community-driven solutions.

1.6. Scope of the study

This study examines the gap between the child labour legal framework and the lived experiences of children and families in selected areas of Mzimba, Ntchisi, Zomba, and Nsanje districts in Malawi. These communities provide a representative sample of children and families affected by child labour in Malawi. While the findings from examining the legislative framework through the

TfD approaches can be generalised and be applicable throughout Malawi, some contextual realities should not be, as they are more particular to the sampled communities and may not be applicable elsewhere.

While the thesis discusses international, regional, and domestic legislation related to child labour, the primary focus is on Malawi's Employment Act 2010, a critical law that addresses child labour, which is thoroughly examined in this thesis in Chapters 3 and 5. It does not fully explore the policy framework on child labour because the primary policy on child labour is reportedly in draft form. However, a brief discussion of the policy's aspirations has been made as outlined in the National Action Plan on Child Labour, 2020-2025.¹¹⁷

Additionally, the study acknowledges the other factors that influence child labour and how different strategies outside the laws have been and can be used as remedies to the child labour problem. However, this thesis focuses on how the legal framework, which has been suggested as a solution to the child labour problem, is limited in addressing the issue. Nonetheless, discussing the problem purely in terms of the laws was impossible. Besides, it would not appear to be reasonable and appropriate, given the nature of the study's aim and research questions, which are also geared towards finding solutions beyond the law. Subsequently, the discussion with the study population explored other factors and proposed solutions to the problem.

This thesis recognises that childhood experiences are influenced by socialisation and social constructionism perspectives. It also recognises child labour from a socio-cultural perspective, where children work in their childhood in response to their cultural and social contexts. By merging these different contexts and perspectives through the lens of the child rights principle, this thesis brings to light an integrated childhood perspective, where it is argued that children's roles are incorporated into household survival strategies and community expectations. It is, therefore, beyond this thesis to discuss child labour, childhood, and child rights beyond the perspective highlighted here and detailed in Chapter Two.

Furthermore, this thesis addresses the research questions using sociolegal research methods and the participatory elements of Theatre for Development. While some parts of this thesis's empirical research employed TfD from an ethnographic approach, I do not claim that this study is entirely

¹¹⁷ Ministry of Labour, Youth, Sports and Manpower Development, *National Action Plan on Child Labour 2020-2025* NAP II. (Ministry of Labour, Youth, Sports and Manpower Development, 2017) 3.

ethnographic, as it falls short of several critical elements of ethnographic research. Additionally, almost all the aspects and steps befitting a Theatre for Development approach have been considered in this thesis. As a process that takes time and leads to a change in consciousness, such an ultimate goal is beyond the scope of this study. Nonetheless, the TfD steps deployed in this study provided the communities with a platform to examine child labour and child labour laws from an analytical perspective, allowing for alternative reasoning beyond the immediate explanations offered in the literature. This aligns with earlier assertions that upheld that new insights and understanding of a phenomenon can be born from theatre's embodied and performative dimensions.¹¹⁸ Thus, instead of rigid explanations derived from already established causal connections, performance and embodiment practices provide a platform for careful guessing in search of a plausible explanation of events, ideas, or phenomena.¹¹⁹ Similarly, in this thesis, communities have shared their perspectives on childhood, child labour, and children's rights, providing insights from their lived experiences that are not typically explored in legislation. Furthermore, the TfD steps followed in this thesis also allowed the researcher and the communities to investigate different legal provisions and explore possible outcomes if these provisions had been implemented differently. In this way, the spectators, or the audience, became the political actors with the possibility of changing how things are done and how laws are crafted.¹²⁰ Consequently, this possibility of examining different alternatives and the flexibility to imagine various situations through performances has been termed performative analysis in this thesis. Thus, where TfD has been used in this thesis, it is not the entire process as recommended by other authorities such as Kerr (1991), Kamlongera (2005), Odhiambo (2008), Boal and McBride (2020).

Therefore, the TfD elements used in this thesis were purely for research purposes. With limited time and resources, the thesis did not include the advocacy, monitoring, and evaluation components of the TfD process, which involves communities formulating action plans to address their social problems and following up on these plans.

This study combines theoretical and empirical research in terms of structure and approach. The findings and discussion of the research problem are based on primary sources, including

¹¹⁸ Ernst Wolf-Dieter and Jan Simon Hutta, 'The Paradoxical Epistemology of Performance as Research' (2020) 202 *Culture & Theory* 167.

¹¹⁹ Ibid.

¹²⁰ See more on how the audience changes roles to become interlocutors of knowledge through theatre by Augusto Boal and Mary O'Loughlin McBride, 'Theatre of the Oppressed' in Tim Prentki and Nicola Abraham (eds), *The Applied Theatre Reader* (2nd edn, Routledge 2020) 134.

international, regional, and domestic legislation. This has been complemented with secondary data from other sources such as books, articles, commentaries, and court cases. On the other hand, the study has employed empirical research to substantiate its findings. Thus, the perspectives, claims, and arguments presented in the literature were put to the test in the communities where child labour is happening. The performative analysis tested the different provisions of the Employment Act 2010 and selected children's rights. In this regard, the discussion of findings and the analysis of the literature are conducted concurrently throughout the chapter. Thus, there are no specific chapters that would stand as a discussion of the findings, as would be traditionally done in other social sciences and humanities studies.

1.7. Positionality

All people have unique lived realities that inform their beliefs about the truth, methods of doing things, and interpretations of their realities.¹²¹ In other words, social identity, cultural background, personal experiences, and power relations influence how researchers collect, interpret, and transmit data.¹²² Accordingly, it is proposed that researchers acknowledge their cultural consciousness and recognize that they and their backgrounds are integral to the research process.¹²³ These views align with the notion that positionality and acknowledgement of one's experiences empower a researcher to capture the stories of individuals with diverse lived experiences authentically.¹²⁴ In agreement with these claims, I believe that my childhood, education, and work experiences shape how I perceive child labour and the arguments I present in this thesis. Through the positionality exposed below, there may be intentional or unintentional biases that colour my approach to conducting this research. However, I took the necessary, well-meaning steps to ensure that my interaction and position of power as a researcher were as objective as possible. Throughout my research, I intentionally recorded my thoughts and observations to reflect on the data from a reflexive perspective. Such reflection helped me step aside and absorb the information without forming confirmation biases, where I could have been selective in only considering information that confirmed my hypothesis. I am confident that this awareness brought latent power dynamics

¹²¹ Cynthia Hampton and David Reeping, *Positionality: The stories of self that impact others* (ASEE Annual Conference & Exposition, 2019), 5.

¹²² Jacobson Danielle and Nida Mustafa, 'Social Identity Map: A Reflexivity Tool for Practicing Explicit Positionality in Critical Qualitative Research' (2019) 18 International Journal of Qualitative Methods <<https://journals.sagepub.com/doi/10.1177/1609406919870075>> accessed 09 January 2025.

¹²³ Richard Milner, 'Race, culture, and researcher positionality: Working through dangers seen, unseen, and unforeseen' (2007) 36(7) Educational Researcher 388, 388.

¹²⁴ Hampton and Reeping (n 121) 5.

to the forefront of my engagement with the communities, allowing me to address biases and threats that compromise the validity and authenticity of the research process, as Danielle and Mustafa earlier argued.¹²⁵

1.7.1. My childhood experiences with child labour

This study is partly informed by my personal experiences and reflections that date back to my childhood. I grew up in different households. My mother died in 1992, and my father died in 1998 when I was eight and fourteen years old, respectively. When my father died, his friend welcomed me and one of my brothers into his house for close to six months. This was a household with people from different families and relatives of my father's friend. I do not recall working in this household, as it had a large number of people, including workers, who took care of everything. After sitting for my Primary School Leaving Certificate Examination (PSLCE), I left this family and lived with my grandparents in the village in Zomba district. Here, everyone was supposed to work. Apart from helping my grandfather irrigate, weed, transplant, and apply pesticides in the garden, I recall my uncle and grandfather apportioning me an independent piece of land to grow tomatoes. At home, I also assisted my grandmother with all household-related chores, including drawing water, fetching firewood, cooking, and sweeping. Every morning, I used to walk to a neighbouring village to help my friend milk cows, and later escort him to herd the livestock, which I was encouraged to do by my grandparents and uncle. They were assured of a bottle of milk with every visit I made to my friend.

After irrigating the tomatoes on my small piece of land and that of my grandfather's in the afternoon, I would also help him cut small pieces of newspaper into equal-sized pieces, which he gave to his customers as tobacco rolling papers in his loose tobacco business. Occasionally, he would leave me to sell his tobacco and attend to his customers, but this was rare.

When the PSLCE results were out, I left the village to live with another family in Lilongwe, the capital city of Malawi. My new mother, a primary school teacher, was a widow with three kids who were younger than me, and a housemaid. After living with this family for almost six months, the housemaid was let go, and I took over her responsibilities. Apart from this, I was responsible for caring for chickens that were being reared for eggs, and I also tended a small maize field located behind the house. After attending to all random and routine scheduled work in the household, I

¹²⁵ Danielle and Mustafa (n 122).

could attend a Community Day Secondary School, whose classes were held in the afternoon. I was about fourteen years old.

I was chased from this family after living there for about two years. After this, life was not so easy. I have worked as a tyre vulcaniser, a call boy for minibuses, an assistant to a taxi driver, and I have taken on a variety of odd jobs at night and in hazardous circumstances. After jumping from two more families, I wrote my Malawi Secondary School Leaving Examination while living with a family from my church who offered to take care of me.

1.7.2. My education and work experiences with child labour and research methods

While pursuing my Bachelor of Education at the University of Malawi, I attended a Drama course. This is where I had the opportunity to work with the Creative Centre for Community Mobilisation (CRECOM) on projects addressing violence against women and child labour.¹²⁶ My first experiences of dealing with child labour as a social problem grew from the time that I was part of a research team deployed to carry out research and perform plays dealing with child labour in Dowa district, which borders Ntchisi district, where I conducted research for this thesis. Furthermore, I had practical experience using TfD during this time. My Drama course was more theoretical, and TfD at CRECOM provided the practical side of it. I remained a TfD troupe member for CRECOM throughout my four years in college.

After graduating from university, I started working on women's and children's rights projects for the Women's Legal Resources Centre (WOLREC), a local organisation.¹²⁷ As I was responsible for supporting the organisation's resource mobilisation and capacity development, I contributed to developing projects that use TfD as a social mobilisation approach. Furthermore, I facilitated the development of training manuals on child protection, gender equality, and women's empowerment through community participatory approaches. Additionally, I helped build the capacity of communities in these approaches and helped communities deal with the root causes of child labour and violence against women, among other things. Additionally, I trained and actively worked with Child Protection Workers at the community level in tracking and repatriating children from child labour, building their capacity in child protection and case management. A general revelation and reflection from these encounters reveal that the communities are reasonably informed about the child labour issue and some laws protecting children.

¹²⁶ CRECOM < <https://www.crecommw.org/past-projects> > accessed 09 January 2024.

¹²⁷ WOLREC < <https://www.wolrec.org/s-projects-side-by-side> > accessed 09 January 2024.

Despite the narrative demonstrating that communities know child labour issues and some laws used to protect children from the same, they still engage the children in child labour practices. The situation is further exacerbated by the effects of climate change, including droughts and floods, as also reported by the ILO in its 2022 vulnerability report.¹²⁸ Such multifaceted revelation and reflection motivated and partly influenced my curiosity to scrutinise the problem from a socio-legal perspective, aiming to understand the disparities.

Engaging with communities through socio-legal research methods was also motivated by several training and mentoring opportunities that I received through the Chair of African Legal Studies at the University of Bayreuth.¹²⁹ Such training includes attending and presenting my thesis ideas at international conferences, seminars, Advanced Methods Labs, PhD clubs, summer schools, the BIGSAS Colloquium, and other platforms. Through these avenues, I presented and tested my ideas on understanding child labour, the law, and the methods of addressing legal questions.

In this thesis, I have applied my training in socio-legal research methods, combined with my experiences in child labour and participatory research methods that incorporate aspects of Theatre for Development. It has not only been fitting and relevant to deploy these approaches, but I have also had the experience to apply my background, lifetime reflection, and exposure to examine a legal question. This is a better fit for the claim that sociolegal research methods unveil different perspectives between legal reality and the everyday realities of people facing a social phenomenon.¹³⁰ Therefore, by examining the laws and their limitations, I aimed, through this thesis, to gain insights and explanations for the gap between the law and the realities of child labour on the ground, which are currently underrepresented and inadequately addressed in earlier studies.

1.8. Research design

Other than relying heavily on traditional doctrinal research methods, this study explores its research questions using socio-legal research methods. It begins with desk research, followed by empirical field research that informs Theatre for Development (TfD) as a research approach, culminating in an approach termed performative analysis. Firstly, the desk research explores how

¹²⁸ ILO, *Vulnerabilities to child labour*, International Labour Organization, 2022 < https://www.ilo.org/global/topics/child-labour/publications/WCMS_845129/lang--en/index.htm > accessed 08 June 2024.

¹²⁹ Chair of African Legal Studies < <https://www.africanlegalstudies.uni-bayreuth.de/en/research/IntractableProblems/index.html> > accessed 23 January 2025.

¹³⁰ Wendy Schrama, 'How to carry out interdisciplinary legal research: Some experiences with an interdisciplinary research method' (2011) 7(1) Utrecht Law Review 147, 161.

the existing human rights legal framework addresses child labour, a review of scholarship on the push and pull factors of child labour, and analyses theories or perspectives developed to understand the problem. The empirical research explores how these legal frameworks have been deployed, as discussed in Chapter Five. By infusing TfD and the performative analysis approach into the empirical research, the thesis examines the implicated factors and determinants of child labour in a Malawian community from the perspective of the affected communities. Such an exploration unveils how these factors inhibit the legal framework from achieving efficacy in protecting children from child labour in the context of their lived realities. Furthermore, the approach also helped to test whether, by adopting an integrated childhood perspective in the legal framework's normative, structural, and procedural arrangements, the gaps between the law and the reality of child labour on the ground can be reconciled, narrowed, or closed.

Besides examining child labour from a single perspective, this study extends the current discourse by exploring the problems from multiple perspectives within and outside the law. There is a strong probability that this is the first major scholarly study of child labour that utilises TfD as both an analytical tool for exploring child labour and a practical tool for finding solutions to the problem. Additionally, it is most likely the first academic study to deploy TfD to empirically investigate how an integrated childhood perspective can be adopted in Malawi's legal framework to inform more context-responsive legal reforms.

1.8.1. Research methodology

This study is primarily qualitative in nature. It employs socio-legal research methods that depart from desk-based approaches and are complemented by empirical field research involving TfD. TfD, conceived as a performative analysis and used in this thesis, has been deployed as an analytical and practical tool for engaging communities in finding solutions to the research questions. It has been posited that a combination of approaches in this manner effectively produces a more nuanced understanding of the legal framework embedded in any complex social context.¹³¹

1.8.1.1. Desk-based approaches

Through this method, I gathered and analysed information obtained from law review articles, books, book chapters, legal encyclopaedias, and other materials that analyse and interpret the law and are topical to the research questions. Additionally, court cases, judgments, commentaries, and

¹³¹ Jane Ezirigwe and Jan Glazewski, 'Conducting Socio-Legal Research in a Conflict Area during a Pandemic: Reflections and Lessons for Future Researchers' (2024) *Journal of African Law* 1, 2.

official statements on matters related to child labour and children's rights were reviewed. From this endeavour, I gathered information on legal and non-legal barriers preventing the adequate protection of children from child labour. I also examined existing normative frameworks to understand their contribution to the status of child labour in Malawi.

Furthermore, I obtained information from law reports to gain an understanding of the current legal interpretation and arguments surrounding child labour matters. The research also analysed official statements by United Nations agencies, government departments, civil society organisations, and newspaper articles to solicit information on current trends and debates in child labour issues worldwide and in Malawi.

Additionally, journal articles and books were consulted to gain a deeper understanding of the current theories and debates within the scholarly discourse surrounding child labour. Moreover, utilised these documents to facilitate an understanding of the different stakeholders' roles in addressing child labour at the international, national, district, community, and household levels. The analysis from the desk-based approach helped me shape the empirical methods that were deployed in the subsequent stages of my study. Given the complexity of child labour as a legal problem in this thesis, it was deemed necessary to deploy multiple research approaches. This follows a claim that examining legal research questions from various sources provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between regulations, explains areas of difficulty, and predicts future developments.¹³²

1.8.1.2. Field research approaches

Building on the findings from the desk research, I developed research tools and instruments that facilitated the empirical fieldwork in Malawi. Deploying empirical research enabled me to draw sound conclusions that are not only presented in the text but also revealed through the narrative reflections and discussions of people's lived realities in their natural settings, as Schrama contends.¹³³ Similar revelations are shared by Babo, whose personal experience and ethnographic research in the field of child labour revealed that the Western understanding of child labour described in texts differs from the lived realities and understanding of the community on the

¹³² Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 *Deakin LR* 83, 101.

¹³³ Schrama (n 130) 161.

same.¹³⁴ Therefore, various approaches, including TfD, which involves living among the people, were employed as research methods, as discussed below.

In this thesis, group discussions, Focus Group Discussions (FGDs), one-on-one interviews, and Key Informant Interviews (KII) were carried out. These interviews were conducted with traditional and religious leaders, parents, law enforcement agents, academia, government officials, and civil society organisations (CSOs). Pertinent to some of the research questions, specific interviews were conducted with Child Protection Workers (CPWs), District Social Welfare Officers (DSWOs), and Labour Inspectors from the district councils and the communities. These are key people who are directly mandated and involved in the repatriation, inspection, and monitoring of child labour at the community level.¹³⁵ Additionally, I observed children's discussions through the children's corners. Observation and discussion with children in their spaces allowed for the collection of data identifying the social, political, cultural, and economic barriers and factors contributing to child labour status as perceived by children. As opined earlier by other scholars, in the context of social problems, it is essential to put children, as part of a group affected by the problem, at the centre if rightful approaches to addressing the problem are to be found.¹³⁶

1.8.1.3. Focus group discussions

I conducted Focus Group Discussions with parents and guardians of children in my study community. These FGDs provide a platform for either building consensus on a matter under discussion or challenging dissenting ideas. A simple random sampling method was used to select participants for these discussions. In this selection, Child Protection Workers (CPWs) and representatives from Civil Society Organisations (CSOs) were involved in organising the Focus Group Discussions (FGDs) at the community level. To allow people to share their perspectives freely and consider the gender and power dynamics that prevail at the community level, separate FGDs for males and females were organised.

¹³⁴ Alfred Babo, 'Child Labor in Cocoa-Growing Communities in Cote d'Ivoire: Ways to Implement International Standards in Local Communities' (2014) 21 UC Davis J Intl L & Pol'y 23, 32.

¹³⁵ Ministry of Gender, Children, Disability and Social Welfare, *Reference Manual for Child Protection Workers* (Ministry of Gender, Children, Disability and Social Welfare, 2021), 63.

¹³⁶ Robert Doya Nanima, 'Evaluating the Role of the African Committee of Experts on the Rights and Welfare of the Child in the COVID-19 Era: Visualising the African Child in 2050' (2021) 21 AHRLJ 52, 72.

1.8.1.4. Group discussions

Apart from engaging the drama group members as performers, I conducted group discussions with them. These discussions were intended to gather information on their knowledge of child labour, childhood, and children's rights. These group discussions were part of the TfD training and orientation for the groups. Thus, the storylines, plots, and characters developed in the performances emanated from the insights gained through these group discussions. What is specific to the discussions with these drama groups is the personal stories that the members shared concerning their experiences with child labour. Such stories not only validated some of the earlier findings from other sources but were also used to devise storylines for the plays. As argued elsewhere, these stories shift from individual private matters to plural experiences shared by the rest of the members, where a collective worldview becomes the centre of attention and a benchmark for interrogation.¹³⁷

1.8.1.5. Interviews with key informants

These interviews were conducted with knowledgeable participants who have worked on child protection issues. These include District Social Welfare Officers, Labour Inspectors, magistrates, personnel from the police's victim support unit, and civil society representatives working on child protection projects at the district and community levels. Furthermore, the interviews were also carried out with CPWs and traditional and religious leaders because of their strategic position in repatriating children who are in exploitative situations and the enforcement of customary laws at the community level. Additionally, during my studies at the University of Bayreuth, the opportunity to interview guest researchers hosted by the Chair of African Legal Studies was unveiled. These include the Assistant Registrar of the High Court of Malawi (Civil Division) and a Member of the African Committee of Experts on the Rights and Welfare of the Child, who provided insights into the problem of child labour from their work and academic experiences.

1.8.1.6. Observation of children's corners

CSOs running child protection projects in my study communities are utilising the Children's Corner concepts to allow children to discuss matters that affect them. Children's Corners are community-owned safe spaces for children aged 6 to 18, providing psychosocial support (PSS),

¹³⁷ This assertion was made by Boal (2002, 324) and cited by Deanna Borland-Sentinella, 'Embodied futures: Weaving futures thinking, applied theatre and community development in creative and participatory embodied practice' (Queensland University of Technology, 2020) 53.

life skills education, and empowerment of children's rights.¹³⁸ These forums offer a safe space for children to express their concerns about all matters within the community. Therefore, with the support of the group's leadership, I obtained consent from the parents to observe the discussions in these community forums. Since the children typically discuss project-focused topics, I sought an entry meeting with the CSO representatives, who were briefed about the research objectives. They, in turn, use child-friendly approaches that they are already familiar with and let the children discuss the questions related to this thesis. In total, the research involved 412 participants as detailed in the table below:

District	KII	FGD	Children's Corner observations	Group discussions	TfD approach ¹³⁹
	Number of participants				
Mzimba	6	2 (13 participants)	1 (14 participants)	1 (10 participants)	0
Ntchisi	7	6 (46 participants)	3 (46 participants)	1 (10 participants)	120
Zomba	4	1 (8 participants)	0	0	0
Nsanje	7	3 (20 participants)	0	1 (10 participants)	80
National wide ¹⁴⁰	10	0	0	0	0
Total Participants	34	87	60	31	200
Total	412				

Table 1: Number of research participants

1.8.1.7. Theatre for Development as a research approach

TfD is described both as a process and an instrument in which people cease to be objects vulnerable to imposed ideas and ways of life and become subjects of their life trajectory.¹⁴¹ The approach is argued to have developed through Paulo Freire's literacy campaigns for adult education, which led to the development of liberation pedagogy. This was founded on the notion that all learning must be grounded in the learner's reality and that teaching must be participatory to develop critical

¹³⁸ Malawi Government, *Review Report 2017: Children's Corner Services in Malawi* <<https://www.unicef.org/malawi/media/1156/file/Children's%20Corner%20Review%20Report%202018.pdf>> accessed 12 February 2024.

¹³⁹ Two performances were carried out in Ntchisi district and one performance in Nsanje district. The figure approximates the number of people who attended the performances.

¹⁴⁰ These include individual interviews with different people whose work is not district specific such as Magistrates, Judges, artists, Commissioners, etc.

¹⁴¹ Tim Prentki, 'Must the show go on? The case for Theatre for Development' (1998) 8(4) *Development in Practice* 419, 418.

thinking.¹⁴² As a research tool, this approach is used to understand a community through dialogue involving different stakeholders who are affected by a similar problem.¹⁴³

Based on the information collected through desk research and my preliminary analyses of the literature, participatory theatre performances with the drama groups in my study communities were developed. These plays were used for research purposes. Existing drama groups in the sampled communities were engaged to perform these plays. As an approach for community participation and research, Tfd has the following steps that are supposed to be followed: i) conceptualisation of the problems, ii) community-embedded research, iii) recruitment of actors/performers/researchers, iv) field day performances, v) post-performance evaluation, vi) development of action plans and implementation, vii) data analysis, viii) post-performance monitoring and evaluation.¹⁴⁴

As this research is informed by this process and the claims resulting from this approach, it is worth explaining the justification and motivation that led to the choice of this approach to complement the approaches discussed above.

Much research on children's rights has been done through quantitative desk studies that have relied on legal analysis and/or literature review, comparative perspectives, and qualitative research strategies. Such studies have employed various methods, including interviews, attendance at training sessions, focus group discussions, participant observation, and qualitative surveys, to assess attitudes.¹⁴⁵ However, qualitative research and sustained ethnographic fieldwork are limited.¹⁴⁶ Additionally, the current research on child rights and child labour in Malawi concentrates on child labour in the tobacco and tea estates. Let alone their methods of enquiry are primarily desk research that involves interviews, analysis of documents, and case studies of children engaged in child labour.¹⁴⁷ In this study, a combination of the socio-legal methods

¹⁴² Ibid 422.

¹⁴³ Christopher Kamlongera, 'Theatre for development in Africa' in Oscar Hemer and Thomas Tufte, *Media and glocal change: Rethinking Communication for Development* (Buenos Aires: Clasco Books 2005) 435, 444.

¹⁴⁴ ECLT Foundation, *Good Practices in Eliminating Child Labour in Tobacco Growing 2010 – 2015* (ECLT, 2016 vol.1) Given the availability of time and resources, I only concentrated on the initial steps of this process. I did not carry out development of action plans and implementation, and viii) post-performance monitoring and evaluation. However, when I made several calls to the communities four months after my field research, I was told that at least six children have gone back to school and have been repatriated from child labour in Ntchisi.

¹⁴⁵ Refer to Makwinja (n 73); Madziwa (n 64) and Gondwe (n 71).

¹⁴⁶ Giselle Corradi and Ellen Desmet, 'A Review of Literature on Children's Rights and Legal Pluralism' (2015) 47 J Legal Pluralism & Unofficial L 226, 239.

¹⁴⁷ See the work of Makwinja (n 73) and Madziwa (n 64).

described above, along with Theatre for Development (TfD), has been employed as an analytical and practical approach to understanding the disparity between the legal framework on child labour and actual incidents of child labour.

In his work and experience in Zambia and Malawi, Kamlongera found that TfD has become a tool that developing countries use to improve their culture, education, and social, economic, and political change. Through its elements of songs, dance, mime, poetic recitations, ordinary narrative, and masquerades, TfD performances capture the people's imagination and greatly supplement and address the gaps that cannot be filled by other means of communication and inquiry. Furthermore, he took the position that the approach is also cherished as a tool that encourages participation, raises awareness, fosters discussion, and promotes collective action.¹⁴⁸

Besides, as an approach that was used to change people's attitudes towards primary health care in one of the rural communities in Malawi, Kamlongera argues that TfD has been enlisted as a good practice by many community development practitioners as a tool that could involve communities in making their own decisions and taking action aimed at improving their communities.¹⁴⁹

Furthermore, it is upheld that the approach has been used as a tool for social change to address pertinent societal issues such as HIV and AIDS and harmful cultural practices, among others.¹⁵⁰

Similarly, the ECLT Foundation enlisted TfD as a good practice to be replicated in projects dealing with attitudes and behaviour change and prevention, protection, and improvement of the lives of children involved in child labour in tobacco-growing areas in Malawi.¹⁵¹

Kamlongera further advanced the view that TfD can be used as a research tool to understand a community, a tool for creating community awareness and engaging communities in dialogue, a mobilisation strategy to rally communities behind a development activity, and a tool for evaluating how well a project has achieved its intended results.¹⁵² This view is shared by Odhiambo, who maintained that TfD is characterised by the active participation of the community, where they identify their problem, reflect on why and how the problem affects them, and, with insights gained through the engagement of the performers, explore solutions.¹⁵³ Odhiambo argues that a core

¹⁴⁸ Kamlongera (n 143) 444.

¹⁴⁹ Ibid.

¹⁵⁰ Christopher Odhiambo, *Theatre for development in Kenya: In search of an effective procedure and methodology* (Bayreuth African Studies 2008 (86) 14.

¹⁵¹ ECLT Foundation (n 144).

¹⁵² Kamlongera (n 143) 444.

¹⁵³ Odhiambo (n 150), 19.

principle for TfD is participatory research and investigation. Through this process, a continuous dialogue is established between me and the community, where they become co-investigators in identifying realistic solutions to a problem.¹⁵⁴ Furthermore, as a form of participatory action research, it is recognised as a framework for knowledge generation that recognises community urgency. It is tailor-made for the communities' own ways of doing things.¹⁵⁵ Additionally, it allows free space for learning, where shared learning among communities blossoms in a non-hierarchical manner.¹⁵⁶

It has been contended that TfD's beauty and innovation transcend theatrics and aesthetics.¹⁵⁷ This is the case because, as an art form, it utilizes fiction that provides structure. Employing it creates a safe space for commenting on a given society's daily realities. In this way, it offers possibilities for looking at knowledge and experimenting without fatal consequences. This is an opportunity to explore new approaches, develop fresh perspectives, and reinvent methods.¹⁵⁸ Similarly, Borland-Sentinella cited Etherton and Prentki (2006), who argue that theatre and art have the power to bring about positive social change, build relationships, and help develop sustainable communities, heal the psychological scars of conflict, serve as a powerful voice for change, and be used in the pursuit of social justice.¹⁵⁹ Furthermore, it is argued that through the TfD process, the research becomes a collaborative initiative rather than merely an information-gathering process. The informants become the active subjects rather than the objects of the research process. This approach enables the unique possibility to bring change to lived realities, sometimes immediately, while in the process of researching the lived reality, and not only years later through policy making or change. Additionally, the method enables researchers to understand a phenomenon differently. This is because the process allows for the phenomenon to be described, observed, and interpreted within its existing context, where its properties are revealed in relation to the field of study.¹⁶⁰ Thus, given these positive attributes, it was deemed more convenient and fitting to deploy TfD in examining

¹⁵⁴ Ibid 30.

¹⁵⁵ Robin Bourgeois, Geci Karuri-Sebina and Kwaou Eva Feukeu, 'The future as a public good: decolonising the future through anticipatory participatory action research' (2024) 26(4), *Foresight* 533, 540.

¹⁵⁶ Ibid.

¹⁵⁷ Prentki (n 141) 419.

¹⁵⁸ Ibid.

¹⁵⁹ Borland-Sentinella (n 137) 33.

¹⁶⁰ Kennedy Chinyowa, 'The ethnography of performance as a methodology in African theatre for development' (2006) 30(2) *NJ Drama Australia Journal* 83, 85.

child labour, child labour legislation, and potential solutions together with the affected communities in Malawi.

According to Kamlongera, the initial step in a TfD process involves conducting a comprehensive situation analysis. This is a synopsis of the sociocultural, economic, and informational makeup of the problem in question. Then, the site where the problem is pertinent and unique, and where the TfD performances are carried out, is selected.¹⁶¹ He recommends that the area be representative enough in terms of social and economic status, language, ethnicity, and other relevant factors to ensure that all pertinent aspects of the problem are covered.¹⁶²

The next stage emphasises participatory research, where TfD members/researchers immerse themselves in the community's everyday life. This immersive approach with the community affords researchers invaluable opportunities to thoroughly investigate the problem and gain hands-on experience through interaction with the people involved.¹⁶³ Kerr opines that extended stay with the communities allows researchers to build trust and forge closer relationships for a better understanding of the community's social dynamics,¹⁶⁴ which are key elements in comprehending the root causes of the respective problem.

Subsequently, field worker training and community-based sensitisation follow as the fourth and fifth stages, respectively. These stages involve training community-based facilitators who sensitise the entire community and facilitate the development of action plans to address the problem.¹⁶⁵

The last stage, village-based initiatives, involves consolidating plans developed through the previous two stages. This is done to avoid overlapping action plans and manage realistic expectations linked to the problem at hand.¹⁶⁶

Relatedly, in his work on TfD in Kenya in 2008, Odhiambo provides a strong justification for the claim that there have been paradigm shifts and transmutation in the practice of TfD from various parts of Africa.¹⁶⁷ Regardless of these shifts, and without being prescriptive, he presents core tenets designed to reflect a more appropriate and effective practice for TfD.¹⁶⁸ It is stipulated that research

¹⁶¹ Kamlongera (n 143) 449.

¹⁶² Ibid 450.

¹⁶³ Ibid.

¹⁶⁴ David Kerr, 'Participatory Popular Theater: The Highest Stage of Cultural Under-Development?' (1991) 22(3) *Research in African Literatures* 55,60.

¹⁶⁵ Kamlongera (n 143) 451.

¹⁶⁶ Ibid.

¹⁶⁷ Odhiambo (n 150) 41.

¹⁶⁸ Ibid 152.

must first be conducted on the problem at hand. He outrightly cautions that this is different from academic research, where one part is often regarded as more knowledgeable than the other. On the contrary, this research involved living among the communities and participating in their daily rituals and narratives, while engaging in both formal and informal interviews.¹⁶⁹ This echoes the first step that Kamlongera recommends in his work in Malawi.¹⁷⁰

Secondly, Odhiambo proposes a performance called codification. Together with the community, this involves developing a play that captures intricate messages encoded in forms, symbolic, allegorical, and analogical codes intertwined in riddles, parables, songs, and paradoxes, which convey culturally relevant and relatable meanings.¹⁷¹

Thirdly, in all TfD approaches, participation must extend beyond aesthetic engagement in song and dance. He opines that participation that evokes a critical consciousness forms the basis for bringing in more innovative and transformative ideas to address the problem at hand.¹⁷² This is one of the core tenets that makes TfD unique and differentiates it from other participatory forms of communication.¹⁷³ Similarly, it has been argued that through theatre, communities can enact breaking old ways of doing things and instead try inhabiting possible ways to realise their future aims,¹⁷⁴ potentially identifying actionable points for addressing their problems.

Lastly, there must be facilitation and intervention during the play, characterised by pauses and questions directed to the audience. As an intervention used to solicit reactions and solutions from audience members, this stage presents open-ended questions that prompt the audience to suggest solutions to the problems posed.¹⁷⁵

The stages discussed above were deployed to explore the hypotheses of this study in Ntchisi and Nsanje districts. It is worth restating here that my experience working with communities in Malawi on women empowerment and child protection was helpful in several ways. For instance, my past experiences provided pre-existing insights into the community's concerns regarding child protection issues. Moreover, previous knowledge and familiarity with these communities provided

¹⁶⁹ Ibid.

¹⁷⁰ Kamlongera (n 143) 449.

¹⁷¹ Odhiambo (n 150) 156-171.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Borland-Sentinella (n 137) 49.

¹⁷⁵ Odhiambo (n 150) 180.

me with an opportunity for a multi-layered positionality, both as an outsider and an insider. As Abdulla puts it, an outsider in this type of research is based on the idea that one is not living in the same community at the time of research, but one assumes the role of an insider because of their previous knowledge of the community characterised by familiarity with the language, ways of doing things and attachment with the subject matter.¹⁷⁶ This privilege allowed me to reflect on these problems as an advocate for human rights and as a researcher returning to the community with theories meant to understand them.

As a Tfd performer, the experience helped me become immersed in the process of interrogating the problem from the community's and fellow performers' perspectives. The embodiment experienced through the performances was crucial for deconstructing the theoretical understanding of the problem being investigated, providing an alternative perspective on the issue. As it has been argued, this embodiment and participation in performance enable the construction and deconstruction of meanings that transcend linear and binary understandings, allowing for the capture of multiple meanings beyond the prevailing perspective of the people in their current status.¹⁷⁷ The following section provides a detailed description of the process as applied in the research sites.

1.8.1.7.1. Conceptualisation of the problem

This has been termed a situation analysis by Kamlongera,¹⁷⁸ and as research on the problem by Odhiambo.¹⁷⁹ In this study, the problem was conceptualised in phases. Firstly, there was background reading about the problem of child labour and how the law is used to address the issue. This included analysing ILO, UNICEF, and other international reports on children's rights, cases on child abuse and protection, statutes, videos, webinars, conference reports, peer-reviewed journal articles, book chapters, and books on child labour. This was followed by my first field research, conducted from October to December 2022. During this visit, Key Informant Interviews were carried out. One-on-one interviews and focus group discussions were conducted with parents, guardians, and children from the research sites, as previously stated.

¹⁷⁶ Sharifa Abdulla, 'The Art of Inclusion: Contradictions Affecting Theatre for Development Interventions in Malawi' in Rosemary Papa (eds), *Handbook on Promoting Social Justice in Education*. (Springer, Cham 2020).

¹⁷⁷ Cornell and Others (n 115).

¹⁷⁸ Kamlongera (n 143) 449.

¹⁷⁹ Odhiambo (n 150) 152.

Following the initial data analysis after the first visit, it was discovered that some insights from the community confirmed the findings of previous studies on child labour. However, these were not enough to help me understand the gap between the law and the lived realities of children affected by child labour. On the one hand, the KII and FGD conducted during the first fieldwork provided insights and solutions to the child labour problem that seemed like a regurgitation of solutions from the participants' earlier exposure to NGO work on child protection.

I was convinced that the responses were not well thought out and critical due to the seemingly obvious and mirrored responses received from some FGD and CSO representatives' KII. On the other hand, there was limited interaction between the community members and the duty-bearers responsible for enforcing and implementing the relevant laws. This denied the communities and duty bearers a chance to jointly reflect on the problem, critique each other on why the laws seem limited, and explore solutions collaboratively.

The initial analysis led me to explore an approach that addresses all these challenges and allows for flexibility in investigating problems with multiple layers. I further sought an approach that allows for the analysis of the situation and the exploration of alternative understandings and solutions, but is wholly owned by the people, which in this case was the performative analysis done within the Theatre for Development processes.

The insights gained from the first fieldwork helped to substantiate the findings from the literature review conducted in this study. It also challenged me to rework this study's research methods. The initial design was to use doctrinal research methods and conduct only a few interviews with community members.¹⁸⁰ It was later realized that it was not enough to deploy just doctrinal research methods to effectively answer the research questions, which not only examine the theoretical aspects of child labour but also provide practical solutions to the problem. These are inherent characteristics of Tfd.

Secondly, I conducted empirical research by living with two host families in Ntchisi and Nsanje districts. As I lived with these families and participated in their daily activities, I observed and informally had discussions with people in the community. Furthermore, living with these families

¹⁸⁰ This doctrinal research method involves assembling relevant facts, identifying legal issues, analysing the issues to find the relevant laws, reading background materials, locating primary materials, synthesizing all issues in context and coming to a tentative conclusion. See, Hutchinson and Duncan (n 132) 106.

and in these communities not only provided me with an opportunity to understand the people's ways of life but also gave me access to institutions, places, events, and people who helped me gain insights related to the research questions. It also helped me to unpack some uncertainties that could not have been unveiled through other methods. As Chinyowa argues, this community-embedded research, and of course the whole process of TfD, not only allows me to achieve an understanding of the phenomenon, or 'the case' being studied, but it also enables the phenomenon to be observed, described, and interpreted in its existing context to reveal its properties in relation to the area or field being studied.¹⁸¹

Guided by the research hypotheses and continuous reflection on the insights gained from these interactions and discussions, I began developing themes and recording these insights in a research journal. As these were informal discussions, and I did not want the presence of paper and pen to distract from the conversations, my research journal entries and recordings were done at night or during my secluded reflection moments outside the community.¹⁸²

1.8.1.7.2. Recruitment of actors from communities and briefing on the TfD approach

When engaging with my study communities, I had prior knowledge based on my previous work that there are already community-based drama groups that utilise other forms of theatre as a mode of communication. CSOs are engaging these groups to disseminate messages on different problems such as climate change, violence against women, and the promotion of girls' education. Nevertheless, the drama groups were unfamiliar with TfD as a communication approach, let alone as a participatory research approach. Therefore, capacity-building sessions in TfD were conducted with these groups. Instead of bringing in external performers, who might be viewed as outsiders or community drama groups participating merely as representatives of donors or CSOs promoting donor-preferred projects, as cautioned by Chisiza,¹⁸³ I chose to involve these groups as research participants. Before the plays were developed, they actively participated in group discussions investigating the structural causes and determinants of the research problem.

¹⁸¹ Chinyowa (n 160) 285.

¹⁸² It was only in specific situations where I recorded the conversation on camera and took notes while I discussed the problem with the respondents. In such situations, consent was sought and granted as discussed under ethical consideration.

¹⁸³ Zindaba Chisiza, 'The problem with theatre for development in contemporary Malawi' (2016) 78 African Studies Bulletin 61, 70.

During the orientation and discussions with the groups, it was also found that those who had experience in TfD through CSOs working in the study areas needed to be reoriented to align with my thesis aspirations. For instance, it was discovered that the researchers, actors, and performers were more focused on theatre aesthetics and making the audience laugh. Although these valuable qualities proved helpful in this process, the primary focus was on the performative analysis, where the audience critically reflected on the questions posed during the plays.

Additionally, in Nsanje, it was found that the gender representation of the groups was not balanced. Therefore, involving a balanced number of males and females in such groups was necessary. This was deliberately insisted upon to make a case for gender equality and women's participation, and to avoid the complication of having males act as females when we could engage female performers. Additionally, following discussions with the Nsanje group regarding the composition of their groups and the research focus, it was also agreed that there was a need to include Child Protection Workers or individuals working with the social welfare office in the drama groups. Their involvement helped to provide informed views on what some government policies and laws stipulate on child protection and other matters related to children. These shortfalls warranted a reorientation of the groups.

Apart from these groups being engaged as TfD performers, I conducted group discussions with them on key questions of this study. These discussions provided valuable insights into the research and helped the performers and researchers frame the questions for the performances. It also allowed them to critique the factors that push children into child labour and how the law enforcers use the law to address the problem in their communities. By questioning and providing insights during the discussions, they shifted roles, moving between those of researchers, research participants, and performers, and ultimately became co-creators of knowledge in the process.¹⁸⁴

Additionally, the debates during the play's storyline development helped me to pause and reflect on the problem. It helped in the understanding of some of the intricate reasons for the inefficiencies of some institutions in addressing child labour. For instance, during the storyline development of a play in the Ntchisi district, the performers argued that the Child Protection Worker could not be female, as they do not have female CPWs in their area. “And even if there were one, such a female

¹⁸⁴ Lisa Vaughn and Farrah Jacquez, ‘Participatory research methods—Choice points in the research process’ (2020) 1(1) *Journal of Participatory Research Methods* 7.

CPW would not execute her duty effectively, as she might not carry the same authority as a male counterpart. Besides, the area for executing her job is too vast to be effectively managed by a female CPW.”¹⁸⁵ Such arguments revealed not only the gender issues and perceptions of the community towards the CPWs or any other government official, but also an indication of how recommendations for the deployment of officers need to consider the cultural dynamics surrounding gender.

Building on their existing knowledge and skills in performing arts, I conducted a training workshop with the drama groups. The capacity-building or orientation sessions primarily focused on TfD as an approach for research and storyline development, which is based mainly on improvisation using key messages to be delivered through plays in vernacular languages.¹⁸⁶ This was done in collaboration with a colleague who has practical knowledge of the TfD approach through his work experience at Theatre for a Change.¹⁸⁷ By the end of the week, each group had developed a storyline, rehearsed a play, and contacted all relevant stakeholders about a community performance.

1.8.1.7.3. Community-embedded research

Ideally, this process requires researchers and performers to be in the communities where the research takes place for at least two weeks.¹⁸⁸ Such a stay helps researchers become part of the village community as reasonably possible.¹⁸⁹ This is particularly true when performers are from outside the community and require more knowledge about the community in focus. Nevertheless, as community-based drama groups were used, the time was shortened, and this stage was combined with the other stages and processes above. However, before engaging the groups in the TfD processes, group discussions were held with these groups to gain a clear understanding of why and how children are involved in work, how laws are being used to address the issue, and how different community structures are collaborating to address the problem. Just as Chisiza opines, these discussions serve as community-wide group sessions where the problem at hand is discussed, and the findings are used to create a play whose storylines and characters are built

¹⁸⁵ Bengavula Drama Group. This was during a storyline creation for the first performance.

¹⁸⁶ Mufunanji Magalasi, ‘Malawian popular commercial stage drama: Origins, challenges and growth’ (2008) 34(1) *Journal of Southern African Studies* 161, 172.

¹⁸⁷ Theatre for a Change < <https://www.tfacafrica.com/our-approach> > accessed 09 January 2025.

¹⁸⁸ ECLT Foundation (n 144).

¹⁸⁹ Kamlongera (n 143) 450.

around actual situations in the community.¹⁹⁰ Likewise, storylines were developed with the drama groups based on the findings from the other data collection processes mentioned above, as well as insights gained from the drama group discussions. These plays were rehearsed and revised over time to incorporate more relatable aspects of the communities' realities. The focus was not on polishing the aesthetics of the plays, but on presenting ideas and opinions to be debated and deliberated upon during the performances.

1.8.1.7.4. Field day performances

In the TfD approach, the field day performance is considered the sum of all the steps carried out above, as it opens up a forum for discussion for all community members to rethink, deconstruct, and transform their ideas about a particular problem through the facilitation or interjection moments that the performers deliberately invoke.¹⁹¹ Through experience with the approach and the good practices shared by CSOs using it, all duty bearers and stakeholders involved in the problem are invited to participate during these performances. In this case, government officials working with children from various sectors and departments, CSO representatives, traditional and religious leaders, teachers, women's groups, and children were invited. As a forum initiated by the community to address their community problems,¹⁹² Such a cross-section of participants is representative enough to solicit information and generate knowledge.

Apart from triangulating the recommendations that may have been discussed through desk research, one-on-one interviews, focus group discussions, and key informant interviews (KIIs), the field day performances extend the research process, where the validity of some information and recommendations is tested and authenticated. It presents another opportunity to open up the play and allow the audience to share their opinions and perspectives through the facilitation of the performers.¹⁹³ Furthermore, during this stage in this study, more questions aimed at understanding the disparity between the legal framework and child labour were posed during the calculated interruptions of the performance, which act as catalysts for soliciting more information that might be missed through the other stages of the research.¹⁹⁴

¹⁹⁰ Chisiza (n 183) 63.

¹⁹¹ Odhiambo (n 150), 175.

¹⁹² Kees Epskamp *Theatre for development: An introduction to context, applications and training* (Zed Books 2006) 10.

¹⁹³ Magalasi (n 186) 174.

¹⁹⁴ Odhiambo (n 150), 180.

1.8.1.7.5. Development of action plans for implementation

When TfD performances are used to mobilize communities into action, primarily through CSO interventions, this stage becomes critical as different duty bearers are called upon to provide concrete steps they will take to address the problem, as suggested by the audience or community. In essence, they are called to take action on the community recommendations. However, the limitation of this study is that the approach was mainly used for research purposes. Although action plans are typically developed at the end of performances, it is recommended that they be consistently followed up and acted upon.¹⁹⁵ With limited capacity to follow up on these, my study's minimum achievement is to share the documented findings and recommendations drawn at its conclusion. The conclusions and recommendations of this thesis present the theoretical findings and practical recommendations on how the legal framework can be implemented differently to address the gap between the promise of child labour protection provided in the legal frameworks and the reality of the problem on the ground. It further recommends several non-legal responses that should be followed to address the problem.

1.8.2. Data analysis

This thesis primarily employs qualitative research, utilising Creswell's data analysis model. This model involves reading and familiarising oneself with the data, coding, generating themes, reviewing themes, defining and naming themes, and writing up the research results.¹⁹⁶ This process categorised recurring issues into themes that align with the research questions. Data triangulation from the various interview tools was also conducted to explain further and clarify the findings.¹⁹⁷ As previously stated, I worked with drama groups and a TfD practitioner who has experience working with communities through Theatre for a Change. Together, the group carried out post-performance analyses. These processes assessed the key themes that emerged from the performances, which relate directly to the research questions of this thesis.

In this study, the TfD approach employed integrates the core principles proposed above with a more recent approach used by CSOs addressing child labour issues in Malawi.¹⁹⁸ Through this adaptation, I focused more on research principles and less on intervention principles, including the

¹⁹⁵ Chisiza (n 183) 71.

¹⁹⁶ Jan Nieuwenhuis, 'Qualitative Research Designs and Data-Gathering Techniques' in Maree Kobus (ed), *First Steps in Research* (2nd edn, Van Schaik Publishers 2016).

¹⁹⁷ Colin Robson, *Real World Research, a Resource for Social Scientists and Practitioner Researchers* (Oxford, Blackwell Publishers Inc 2000).

¹⁹⁸ ECLT Foundation (n 144) 16.

development of action plans and implementation, as well as post-performance monitoring and evaluation.¹⁹⁹ This is primarily because my study is more skewed towards academic discourse, focusing on generating knowledge that might not lead to direct and immediate interventions within the communities where my study was conducted. This is always the case when CSOs use this approach for development projects. Secondly, I lacked the time and resources to carry out the remaining recommended steps effectively. By avoiding these steps, the risk of raising expectations for an intervention was minimised. This is easily managed when CSOs implement projects using the TfD approach in the community. However, beyond this thesis, the recommendations and conclusions drawn from it have been informally shared with the relevant duty bearers for possible and more immediate interventions. Furthermore, a video documentary showcasing the data collection approach and the problem of child labour in the areas where this research took place is being produced. This will later be disseminated to different stakeholders to share the conclusions and recommendations for action.

1.9.Ethical considerations

Ethical clearance to conduct this research was sought and granted by the Research Ethics Committee at the University of Bayreuth. Apart from obtaining this ethical clearance, I discussed all ethical requirements with the individuals who participated in this research, including chiefs in the communities, headteachers, patrons of children's clubs, Labour Officers, District Social Welfare Officers, and parents.

1.9.1. Access negotiation

It is worth noting that this study was conducted in communities where I worked for over eight years, particularly in Nsanje and Zomba districts. He is familiar with the places and the communities involved. Nevertheless, he entered these communities with a new perspective, armed with theories on how the problem of child labour could be addressed, fully aware that these theories might be contrary to the actual situation on the ground. Therefore, he renegotiated entry into these communities through the traditional leaders, who serve as the custodians of culture and

¹⁹⁹ Due to time constraints, I only concentrated on the initial steps of this process. I did not carry out vii) development of action plans and implementation, and viii) post-performance monitoring and evaluation. However, through phone calls to the communities four months after my field research, I was told that at least six children have gone back to school and have been repatriated from child labour in Ntchisi. This has been attributed to this research.

gatekeepers of the community.²⁰⁰ Even though his host families had already welcomed him into the community, he asked them to formally introduce me to the traditional leaders, as is customary in these communities.

1.9.2. Ethical issues

I ensured that participants took part in this research voluntarily. The nature of my study was explained to the participants. (Annex: Information Sheet KII). I also safeguarded the participants' confidentiality by describing the contents of the consent section in the research instruments. Additionally, I verbally discussed with the participants their right to withdraw. The participants were assured that their names and other personal information would be kept anonymous unless they consented to being mentioned.²⁰¹

1.9.3. Informed consent and working with children

In this study, observations and group discussions with children (under 18 years) were conducted to gain their insights into the problem of child labour. These observations and discussions were primarily conducted through the Children's Corners, which are supported by UNICEF and Civil Society Organisations working in my study communities. Children's Corners are community-owned safe spaces for children aged 6 to 18, providing psychosocial support (PSS), life skills education, and empowerment of children's rights.²⁰² Thus, through the Children's Corner discussions, oral and written consent was sought from the parents for the children's participation in this study, with guidance and support from the CSO representatives working with these groups.

1.9.4. Confidentiality, risks, and sensitivity to needs

The same confidentiality and use of pseudonyms applied in the other methods above were applied with particular consideration for children. No risks were anticipated in this study. This was assured because the CSOs carry out a risk assessment that includes ensuring that the places where these discussions are taking place are safe, that they have enough breaks between sessions, that the information that they are using is in a child-friendly manner, and that they have enough foods and

²⁰⁰ Christopher Appiah-Thompson, 'The concept of peace, conflict and conflict transformation in African religious philosophy' (2020) 17(2) *Journal of Peace Education* 161, 165.

²⁰¹ Following advice from Jack Fraenkel and Norman Wallen, *How to Design and Evaluate Research in Education*. (4th edn, MacGraw-Hill Companies, Inc. 2000). In specific areas, some participants requested that they be mentioned by name or that they should be seen on camera as agents of change.

²⁰² Malawi Government (n 138).

drinks for the sessions, which are among the key principles that these CSOs are using in the ethical participation and working with children guidelines.²⁰³ These protocols were followed in this study. Moreover, child protection issues that include child labour and other child rights-related issues are already part of the discussions in such groups. Thus, the involvement of children of all categories, including children who might be involved in child labour, was not regarded as a risk or making them more susceptible to any more risk and vulnerability, but rather a promotion of their resilience. Moreover, I was looking for practical solutions to child labour. It was, therefore, pertinent to include children directly involved with the problem to get their insights. This aligns with earlier studies that argue that, rather than excluding research participants who might be regarded as vulnerable out of fear of exposing their vulnerability, efforts should be made to provide them with space to share their stories in their ways as active citizens equally interested in the issues under investigation.²⁰⁴

Additionally, considering the children's short attention span, I ensured that the time allocated for their discussion was brief and that the observations did not introduce unfamiliar ways of working to them. I observed their discussions and joined in on conversations about subjects they were already familiar with. I only introduced child labour as a human rights issue to be addressed in response to the research questions. Apart from the children, I sought more information on the children's views on child labour and child rights from their group facilitators or patrons. From experience, the children's discussions in these groups usually involve drawings, painting, small role-plays, and sometimes songs. It is these experiences that were also of interest to observe and record.

1.9.5. Cultural sensitivity and incentives

Other than using external drama groups to carry out this research through plays, I engaged drama groups that are already based in these communities. The research accessed these groups through the community-based Child Protection Workers and CSO representatives in the area. Just as with the other methods, informed consent was obtained from these groups to participate in this study

²⁰³ Save the Children, The Nine Basic Requirements For Meaningful and Ethical Children's Participation < https://resourcecentre.savethechildren.net/pdf/basic_requirements-english-final.pdf> accessed 16 February 2024.

²⁰⁴ Jo Aldridge, 'Working with vulnerable groups in social research: dilemmas by default and design' (2014) 14(1) Qualitative Research 112,115.

through verbal discussion of the consent form. The individual members of the drama groups then signed the consent form (Annex: Consent Form for Drama Groups).

As I involved these groups for almost a week (4-5 hours per day), we discussed how the meals would be sorted. I provided 9 euros per person as a contribution to transport, lunch, and refreshments. Although this was not enough, it was all I could afford as a PhD student, given the research resources accessed through the Cluster project at the Chair of African Legal Studies. This was done before I engaged with the drama group members participating in the Theatre for Development process.

After agreeing with the groups about what needed to be done during the research, a schedule for carrying out the TfD process was created. It ensured that the plans were made consensually and that cultural and social etiquette was considered. Among other things, I ensured that he dressed like them, ate with them, and participated in social events that took place during the research period.

The communities in which I conducted my research are predominantly Christian. Furthermore, in Nsanje district, the area is prone to floods, and humanitarian support activities take place from time to time. I made sure that these situations were observed and that there was minimal or no interference with the people's schedules. For instance, through discussions with traditional authorities and drama groups, it was negotiated that the plays should not be carried out on Sundays or on days when people register or receive humanitarian support.

Furthermore, I ensured that the plays were conducted at a place and time that would not disrupt school activities and within a timeframe that allowed people to return home and attend to their household duties. These modalities were agreed upon. For instance, to ensure this is addressed, plays lasting between 90 minutes and 2 hours, including post-performance evaluations involving the audience, were developed.

1.10. Significance of the study

My study contributes to a body of knowledge that has not been thoroughly investigated, which is the gap between the promise of protection offered in the child labour legal frameworks and the realities of children and their families in Malawi. At its core, the thesis argues that there is a general notion and concept of childhood in Malawi that influences the effectiveness of child labour laws.

This study reimagines this notion to reflect the realities of children on the ground. Thus, apart from contributing the concept of *integrated childhood perspective* towards child rights, child labour, and childhood discourse in literature, this thesis proposes this as a possible lens for developing and revising laws, policies, programmes, and strategies for addressing social problems that benefit children, including child labour.

Furthermore, this thesis has demonstrated the need to apply and enforce laws that transcend formalistic approaches and promote community involvement through a *performative analysis approach*. This approach enables communities to experiment with options and scenarios that reflect their lived realities, assessing how a new or existing law addresses a specific problem. Through a performative approach, communities are given a platform to openly critique various legal provisions, the work of different institutions, and the procedures these institutions follow in implementing laws more openly and flexibly. Eventually, the gap between the legislation and reality is well understood, and effective ways of implementing or enforcing the laws are discovered.

In essence, understanding child labour and child labour laws from the perspective and methodological approaches offered in this thesis provides a basis for addressing the root causes of child labour beyond the solutions available in existing laws. It recognises the multiplicity of factors that influence the (in)effectiveness of the laws and conveniently offers recommendations on how child labour can be tackled. These practical contributions can be utilised by stakeholders working with communities on the ground, as well as policy and legal practitioners in their policy and legal interventions.

1.11. Structure of the thesis

Chapter 1: Introduction and background

This chapter introduces the research problem, laying the foundation for the thesis by presenting the aim, research questions, and hypothesis. Furthermore, the chapter provides details on the research methodology, rationale, and scope of the study. It further describes the ethical issues that were considered. The chapter also provides conceptual clarification of some key terms and definitions used in the thesis. It also outlines the chapters with a brief description of their arrangement within this thesis.

This thesis argues that there is a gap between the promise the legal framework gives children in addressing child labour and the reality of the problem on the ground. It argues that the existing legal framework on child labour fails to operate to cure child labour, mainly as a result of contextual barriers within and outside the laws. It has been submitted that adequate human rights protection of children from child labour is plausible to be achieved by incorporating the lived contextual realities embedded within the communities of children affected by child labour. At its core, the thesis argues that children in Malawi experience their childhood in a context where every household member is expected to contribute to the household's survival strategies and as expected by the community.

Besides, the chapter argues that previous studies of child labour have not investigated the problem in a participatory manner where the communities interact with the legal frameworks on child labour. To this effect, this research employs Theatre for Development (TfD) as a research approach to investigate the child labour problem with the community.

Chapter 2: Theoretical understanding of childhood, child rights and child labour

The problem of child labour is caught within the perspectives of childhood, child rights, and child labour theories. This chapter discusses various theories and perspectives on childhood, child rights, and child labour to provide a solid foundation for this study. These are perspectives or theories from which my central research question has been analysed. The chapter sets the tone and a springboard for the claim that the discrepancy between the legal framework and the reality of child labour can be addressed if child labour is perceived from a combination of socio-cultural perspectives and the principles of child rights, culminating in an *integrated childhood perspective*. This perspective acknowledges that in a Malawian context, children's roles are incorporated into household survival strategies and community expectations, which is sometimes a diversion from the legally framed notions of childhood and child labour. It is articulated that the current legal frameworks on child labour are limited in considering this perspective, hence the current gap between the law and the realities on the ground. It is argued that the legal framework on child labour can be more effective if the problem is understood and addressed from the proposed integrated childhood perspectives of the community. This proposed perspective is more participatory and non-formalistic, offering communities a platform for addressing child labour by considering their unique context.

Chapter 3: Legal framework on child labour and child rights

Considering that the study's hypothesis posits a discrepancy between what the law provides and the realities of child labour, the chapter provides an overview of the legal framework at various levels. Specifically, this chapter explores how child labour legal frameworks are implemented in Malawi and identifies their strengths and gaps. Unique to this study, the chapter lays the groundwork for analysing how communities in Malawi construe and interpret these legal frameworks, and whether such an interpretation or perception of the legal frameworks contributes to the disparity between the legal framework and the realities of child labour in the communities, as demonstrated in the following chapter.

Chapter 4: Situation of child labour in Malawi

This chapter explores the factors that are implicated as push and pull factors of child labour in Malawi. Current literature implicates a lot of factors and causes of child labour through different methods. This chapter examines whether these factors are relevant and applicable in Malawi. The study builds on previous research and draws insights from empirical studies conducted in sampled communities in Malawi to provide a synopsis of how the problem is understood and perceived in these communities. It extends the idea that some of the factors pushing children into child labour are a result of misalignment between what the communities regard as child labour and what the laws provide as child labour. While acknowledging the multiplicity of factors influencing child labour, the study focuses on why the promises for protection offered through the legal framework discussed in the next chapter seem limited.

Chapter 5: Lived realities and the efficacy of the law on child labour

This chapter would fit as a report of research findings in other social sciences or humanities studies. It gives an account of the lived realities of children and families involved in child labour practices in Malawi. It explores the communities' understanding and perspectives on child labour and the implications of such perspectives on the enjoyment and fulfilment of various rights, including the right to education, the right to health, and the right to play, as these rights are affected when children are involved in child labour. This has been demonstrated by examining what is provided for in the laws, how communities understand or perceive these rights, and the implications of such an understanding in the implementation of laws against child labour. The chapter provides a detailed explanation of how the community perceives various legal provisions, primarily in the Employment Act 2010. Through the TfD processes, the chapter tests the previous claims,

perspectives, and opinions on child labour, childhood, and children's rights. Primarily, the chapter employs performative analysis, derived from the Theatre for Development process, to examine the Employment Act's normative, institutional, and procedural frameworks, exploring how they align with the realities of child labour in the study communities. Eventually, this provides an alternative perspective of how child labour can be understood and, subsequently, how the legal frameworks on child labour in Malawi can be implemented to close the gap between the legal framework and the lived realities of children affected by child labour.

Chapter 6: Recommendations and conclusion

This chapter provides a conclusion of the study and recommendations on how the problem of child labour can be tackled both theoretically and practically, which is likely to narrow the gap between the comprehensive legal framework on child labour and the problem of child labour in Malawi.

Ultimately, this chapter serves as both a synthesis and a call to action. It encapsulates my story around child labour, from identifying its intricacies to weaving theoretical constructs and empirical findings into tangible solutions. By proposing targeted recommendations, the study aims to shed light on the issue of child labour and instigate transformative change that bridges the gap between legal ideals and the lived experiences of children in Malawi.

Chapter 2: Childhood, child labour and child rights perspectives

2.1. Introduction

The previous chapter sets the focus of the thesis by introducing the aim, specific research questions, and the hypothesis. It has highlighted the research problem and the rationale for studying child labour in Malawi. Specifically, this chapter lays the groundwork for addressing the research questions by examining the perspectives of childhood, child labour, and children's rights. It discusses socialisation and social constructionism, as well as cultural and cultural relativism perspectives of childhood. The chapter further analyses workfree, socio-cultural, and political economy perspectives of child labour before exploring child rights principles. The final part of the chapter brings together all these perspectives to reimagine an integrated childhood perspective. Ultimately, the analysis in the chapter provides the essential foundational frame of reference and crucial examination lenses from which the research is grounded.

2.2. Childhood perspectives

Childhood is a subject of study approached from various perspectives and disciplines. It has been studied by sociologists, historians, economists, anthropologists, legal and religious scholars, and other fields. Some of these scholars have described it as a multifaceted social phenomenon constructed, contested, and partially stabilised.¹ It is an experience linked to the contexts and structures children encounter throughout the different phases of their lives.² Likewise, the study of child labour is also characterised by similar complexity and interdisciplinarity as it is perceived as a social, economic, legal, and anthropological problem.³ While international, regional, and domestic human rights frameworks provide for the enjoyment of human rights for children, the realisation of these rights is not fully guaranteed in different societies due to various factors. These include conflicting understandings of these rights, cultural practices, and political powers.⁴ Subsequently, such perspectives influence the place of work in the lives of children and how it

¹ Roy Maconachie, Neil Howard and Rosilin Bock, 'Theorizing 'Harm' in Relation to Children's Work' in James Sumberg and Rachel Sabates-Wheeler (eds.), *Children's Work in African Agriculture* (Bristol University Press, 2023) 28.

² Ibid.

³ Assefa Admassie, 'Explaining the high incidence of child labour in Sub-Saharan Africa' (2002) 14(2) *African Development Review* 251, 271.

⁴ Colette Daiute, 'The rights of children, the rights of nations: Developmental theory and the politics of children's rights' in Kilkelly Ursula and Laura Lundy (eds), *Children's Rights* (Routledge 2017) 405.

eventually leads to child labour. Ultimately, the chapter argues that understanding childhood, child labour, and children's rights requires a multidisciplinary approach and encompasses multiple fields of study. Such an understanding views the child within their context, in relation to the entire community, while also paying attention to their rights and needs. In other words, the chapter introduces a reimagination of an integrated childhood perspective. This perspective posits that childhood for children in Malawi is situated in a context where children are expected to work for the survival of their families, and as expected by the community. However, in acknowledging this perspective and the situation, the principles of child rights must be recognised. The first part of the discussion below examines socialisation and social constructionism, as well as cultural and cultural relativism childhood perspectives.

2.2.1. Socialisation and social constructionism

The socialisation and social constructionism perspective examines the construction of knowledge through the interaction of people in different settings as opposed to the individual's mental construction of knowledge through their own mental experiences.⁵ Andrews argues that proponents of social constructionism propose that the interpretation of knowledge is better understood from the perspective of those who live it, rather than just from an outsider's perspective.⁶ Andrews' claim seems to suggest that the meaning of who a child is and what childhood involves is best defined by the specific societies in which the children live. Additionally, it has been proposed that children are in the best position to describe their childhood experiences and that their independent perspectives should be regarded as active contributions.⁷ It is further argued that knowledge is socially constructed through the various interactions of people within a given society.⁸ This interaction produces patterns and categories of adulthood and childhood, where the repeated practice of things or acts is normalised and becomes a body of knowledge for that given society.⁹

Furthermore, the socialisation process inculcates particular traits, attributes, and behaviours that are rewarded or punished by society's social structures and institutions. For instance, it is

⁵ Tom Andrews, 'What is social constructionism?' (2012) 11(1) Grounded Theory Review.

⁶ Ibid 40.

⁷ According to Prout & James(1990) as cited by Sultana Ali Norozi, Torill Moen, 'Childhood as a Social Construction' (2016) 6 Journal of Educational and Social Research 78.

⁸ Alexandra Galbin, 'An Introduction to Social Constructionism' (2014) 26 Social Research Reports 82.

⁹ Colin Radford, 'Must knowledge—or 'knowledge'—be socially constructed?' (1985) 15(1) Philosophy of the Social Sciences 15,16.

contended that in some communities in Ghana, children are socialised to learn that successful adult males are those who are capable of providing for their families through the provision of protection and food, while successful adult females are those who are capable of caring for their households through domestic tasks.¹⁰ In this respect, children displaying behaviours that conform to expected social dictates are praised, while those who behave contrary to these expectations are punished.¹¹ It is also established that in some societies in Nigeria, children have been inflicted with body pain and forced to carry heavy loads as punishment for some socially unacceptable behaviour.¹² Similarly, although this seems to decline among the Chewa of Malawi, children are punished by their parents or sent to particular initiation ceremonies as punishments for bad behaviour.¹³ This subscription to a specific type of behaviour and action is linked to a productive aspect of socialisation discourse that Burr and Penny term as disciplinary power.¹⁴ This is where individuals or societies establish certain traits and behaviours that are considered desirable or acceptable. Such traits and behaviours are extorted through policies and guidelines.¹⁵ Consequently, individuals within society start conforming to these standards and modelling their behaviour according to these set standards and regulations, which children learn from other members of society through socialisation.

It has also been argued that children are socialised into a society and family unit where they identify with their significant others, either parents or guardians.¹⁶ According to Berger and Luckmann, significant others shape the child's outlook on life and the ideologies they learn, based on what the significant other believes to be authentic and the prevailing societal norms.¹⁷ They further submitted that the child questions their self-identification during their primary socialisation or early stages of life. Eventually, the children become what they are identified as and called by their significant others in society.¹⁸ In other words, a child growing up in a particular society will

¹⁰ Enock Takyi, 'Child labour in Ghana: ecological perspective' (2014) 4 (10) *Developing Country Studies* 35, 38.

¹¹ *Ibid.*

¹² Eunice Uzodike, 'Child abuse and neglect in Nigeria—socio-legal aspects' (1990) 4(1) *International Journal of Law, Policy and the Family* 83, 87.

¹³ Kings Phiri, 'Some changes in the matrilineal family system among the Chewa of Malawi since the nineteenth century' (1983) 24(2) *The Journal of African History* 257, 264.

¹⁴ Viv Burr and Dick Penny, *Social constructionism* (Palgrave Macmillan UK 2017) 6.

¹⁵ *Ibid.*

¹⁶ Peter Berger and Thomas Luckmann, *The social construction of reality. A treatise in the sociology of knowledge* (Penguin Books 1966) 150.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

question their stage of development and start modelling it based on what society is calling them to be. In this case, their stages of being a child and childhood experiences will be determined by what that particular society believes to be legitimate and appropriate.¹⁹ That being the case, there is a good chance that the age appropriateness of specific tasks, their duration, and their permanence are determined by the significant others of the society in which the child is growing, and this makes part of their childhood.

James and James further argue about the influence of the significant other and age appropriateness. They argue that childhood is a universal developmental stage for all children, regardless of their cultural or social context. However, what they experience and how they are treated within a particular society differentiate the childhood of equally developed children.²⁰ Discerning meaning from what James and James argue above, it is most probable that a 14-year-old child in Malawi will likely have biologically similar developmental traits and characteristics to those of his age-mate in another part of the world. However, life experiences, socialisation, and the influences of adults in these societies will define how these children behave and experience their childhood.

Consistent with the observations above, Berger and Luckmann argue that social constructionism posits that reality can be interpreted from different perspectives. However, the version of those that societies have labelled as the most powerful prevails over the actual reality, which is bolstered by setting up rules and regulations that safeguard such realities.²¹

However, it is argued that children do not simply participate in this socialisation process as passive observers.²² On the contrary, they absorb the information, adopt the behaviours they are called upon to, and make meaning out of it to understand the world through their perspective.²³ This assertion considers children as active citizens in their own right, with the power and capacity to make informed judgments on how to act. Nevertheless, children are subjected to constant reprimand from their parents and guardians to act and behave in conformity with socially accepted values and expectations. Even if they make meaning out of what is happening around them, the

¹⁹ Ibid 156.

²⁰ Allison James and Adrian James, 'Childhood: Toward a theory of continuity and change,' (2001) 575(1) *The Annals of the American Academy of Political and Social Science* 25, 26.

²¹ Berger and Luckmann (n 16) 124.

²² Jeremy Carpendale and Charlie Lewis 'Constructing an understanding of mind: The development of children's social understanding within social interaction' (2004) 27(1) *Behavioral and Brain Sciences* 79, 82.

²³ Ibid.

sanctions, punishments, and even rewards for acceptable behaviour are almost always influenced by adults in their societies. Eventually, the children will most likely succumb to the social pressure imposed on them by the socialisation process of their immediate surroundings, including the pressure from parents.

Therefore, it is submitted that understanding socialisation and the creation of reality will likely justify the differing perspectives on childhood and child labour within various communities. These communities will likely prescribe the most dominant traits, behaviours, and practices that they consider child labour and childhood qualities, which are also linked to the notion of culture and cultural relativism discussed below.

2.2.2. Culture and cultural relativism

Africa takes pride in its diverse cultures and ethnic groups, which make the continent unique in many ways.²⁴ Notwithstanding this diversity and the continent's heterogeneous characteristics, Articles 1-3 of the Universal Declaration of Human Rights (UDHR) provide for the universality of human rights.²⁵ Furthermore, the African Charter on Human and Peoples Rights, as well as the African Charter on the Rights and Welfare of the Child, provides for culture, African values, traditions, and customs as options for inspiration in the protection and promotion of human rights.²⁶ This is one of the dilemmas in discussing cultural relativism and the universal application of human rights norms and standards.²⁷ White advanced the view that the tension between the universal application of human rights, on the one hand, and the consideration of local and diverse differences in the application of the same right, on the other hand, has been addressed in the context of human and children's rights, but not in the context of work.²⁸ While acknowledging that this debate is not susceptible to reaching an amicable resolution,²⁹ it is proposed that programmes

²⁴ John Mbiti, *African religions & philosophy* (Oxford, Heinemann 1990) 110.

²⁵ UDHR <https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf> accessed 12 June 2024

²⁶ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58, art 60; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49, art 46.

²⁷ Ben White, 'Defining the intolerable: Child work, global standards and cultural relativism' (1999) 6(1) *Childhood* 133, 135.

²⁸ Ibid.

²⁹ Philip Alston, 'The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights' (1994) 8 *IJLPF* 1, 2.

aimed at promoting children's rights need to learn to operate within this contested space and achieve the protection of children's rights.³⁰

White, therefore, asserts that instead of examining the contestation between cultural relativism and the universality of human rights, it is better to distinguish cultural relativism in three ways. First, he argues that cultural relativism is a philosophical perspective in social science, in which different cultures cannot be directly compared but must be understood in their own terms. Second, cultural relativism may be recognised as a moral and political doctrine that holds that culture is the sole source of moral right or rule validity.³¹ In this case, cultural relativism allows for the universality of certain human rights, but not all human rights.³² Lastly, cultural relativism emphasises the sensitivity to differences as a practical and analytical tool for learning and understanding that human ideologies and practices are diverse and multifaceted.³³ In other words, there must be an understanding and respect for the notion that different cultures have diverse beliefs and practices that are passed down from one generation to the next. Regardless of how challenging and exhaustive it may be to address cultural practices related to understanding children's rights, various approaches to working with children and promoting their rights must be explored.³⁴ Whites' final type of cultural relativism is relevant to this thesis because it enables us to discuss childhood and child labour as social phenomena that can be influenced by the cultural traits and values of a particular society. Such an understanding helps to situate and analyse the place of work in the lives of children in the context of Malawian communities.

Furthermore, Jonah and Abebe also believe that cultural differences and ideologies influence perceptions of child labour. They posit that the causes of child labour and perceptions surrounding it are linked to the sociocultural contexts of particular communities.³⁵ In their example of children's work in artisanal mining in Ghana, they found that children do not recognise themselves as children as defined by the dominant international standards and that children assume adult responsibilities before the age of 18, which is culturally accepted in these communities.³⁶

³⁰ White (n 27) 136.

³¹ Ibid.

³² Jack Donnelly, 'Cultural relativism and universal human rights' (1984) 6(4) Human Rights Quarterly 400, 401.

³³ White (n 27) 136.

³⁴ Daiute (n 4).

³⁵ Osei-Tutu Jonah and Tatek Abebe, 'Tensions and controversies regarding child labor in small-scale gold mining in Ghana' (2019) 38(4) African Geographical Review 361,368.

³⁶ Ibid.

Additionally, Makwinja contended that children's beliefs and their childhood experiences are shaped by the cultural and historical conditions in which they are formed. He opines that the essence and meaning of a 'child' and 'childhood' are derived from the environment in which the children are born and raised.³⁷ Therefore, it is unsurprising that a twelve-year-old girl in the southern region of Malawi is expected to care for her siblings. A girl of the same age is expected to help her parents in a tobacco field in Northern Malawi; her age mate in India might possibly be expected to be preparing for an arranged marriage. In contrast, it is also reasonable to assume that another girl of the same age will be in school in some parts of Europe. Notwithstanding other factors, these scenarios and children's exposure to diverse experiences will likely differ because the idea and the perception of childhood in these communities determine children's place in these societies and how they are treated.

According to this perspective, culture, customs, and practices form the fabric of a community, shaping how such communities raise their children and influence their ways of life.³⁸ One prominent cultural value that many African societies religiously pass on to their generation through cultural practices is the value of hard work and resilience.³⁹ According to Idang, hard work and cooperation are economic values among African society members that differentiate them from other societies.⁴⁰ He further suggests that these values are so intricately woven into the society's culture that its members start practising and living them knowingly and unknowingly, as they are passed on through everyday activities, including music, folklore, sculptures, food, language, and even dress.⁴¹ Additionally, he opines that the traditional economy, mainly based on farming and fishing, values the labour force provided by children and praises hard physical work.⁴² Therefore, through this understanding, children will plausibly grow up knowing that their society values hard work and cooperation. Likewise, society will involve children in work that is perceived as a platform to expose them to these values. Failure to adhere to such values will often result in repercussions controlled by the political structures of these societies, which vary from one society

³⁷ Simon Matthias Makwinja, 'Child labour and the violation of child rights: A case of child workers on tea and tobacco plantations in Malawi' (MA Thesis, Universitetet i Tromsø, 2010).

³⁸ Adriana Molitor and Hui-Chin Hsu 'Child development across cultures' (2019) *Cross-cultural psychology: Contemporary themes and perspectives* 153, 154.

³⁹ Phiri (n 13).

⁴⁰ Gabriel Idang, 'African culture and values' (2015) 16(2) *Phronimon* 97,105.

⁴¹ Ibid.

⁴² Ibid.

to another.⁴³ Consequently, the activities and work that the children are exposed to throughout their childhood will be characterised by lessons and acts that teach them the values and spirit of hard work and cooperation.

While Idang maintains that culture and community values are subject to change as a result of technology, exposure to other cultures, and discovery, he acknowledges that such changes come about when society relates to the changes being proposed and that the alternatives presented as a replacement for an existing culture, do not divert so much from the community's ways of life.⁴⁴ Consistent with this view, Kaime submits that culture has a way of responding to external ideas from different fields and is, therefore, capable of changing.⁴⁵ Kaime further opines that the traditions and values within these cultures are prone to challenge, reformulation, and replacement. Nevertheless, community members must accept these changes if they are to enjoy internal legitimacy. Otherwise, the changes are apt to be regarded as external, alien to society's values, and eventually be denied.⁴⁶ Thus, if it is culturally accepted in a particular society to consider people above the age of 15 as adults, it will need taking critical steps to change the perception of these communities, accepting that fifteen-year-olds are still children and international regulations do not permit them to be involved in hazardous work. If these critical steps in changing the community perception are not satisfied, there is a strong probability that the communities will accept the rules but will not be bound by such principles and laws.

Although there seem to be some differences between the socialisation and cultural relativism perspectives discussed above, one would argue that they are the same or closely intertwined and embedded in each other. It has been observed that when individual stories or experiences are shared with a group of people from the same background, others begin to see themselves in the stories of others and relate to the shared experiences.⁴⁷ Furthermore, through this interaction and by seeing oneself in the stories of others, social systems and concepts are formed and repeated, becoming

⁴³ Phiri (n 13).

⁴⁴ Idang (n 40) 107.

⁴⁵ Thoko Kaime, 'The Convention on the Rights of the Child and the cultural legitimacy of children's rights in Africa: Some reflections' (2005) 5(2) AHRLR 221, 234.

⁴⁶ Ibid.

⁴⁷ This assertion was made by Boal (2002, 324) and cited by Deanna Borland-Sentinella, 'Embodied futures: Weaving futures thinking, applied theatre and community development in creative and participatory embodied practice' (Queensland University of Technology, 2020) 53.

institutionalised.⁴⁸ Thus, our beliefs about the world are social inventions,⁴⁹ which are embedded in our cultural beliefs, customs, and traditions. Therefore, it would appear that socialisation and cultural relativism perspectives are all born out of the continuous interaction of people from the same context and will most likely influence childhood experiences in the same way.

In a nutshell, the perspectives above have discussed how the social and cultural values of different communities shape childhood. Often, children learn what is expected of them through the socialisation process linked to the cultural values of the communities. Consequently, children's experiences during their childhood differ across cultures due to varying values. In this respect, socialisation and cultural perspectives will influence the work that children in different societies are exposed to and expected to do.

2.3. Child labour perspectives and childhood

Just as the childhood perspectives discussed above provide insights on how children are socialised into work, the perspectives on child labour equally influence the type of work and the duration of children's involvement in contributing to their household survival and income. The following section discusses workfree, sociocultural, and political economy perspectives of child labour. The discussion further discusses how these perspectives are linked with childhood.

2.3.1. Workfree perspective of child labour and childhood

According to Fors' study on child labour, the problem is so complex and varied that a mixed approach is required to address its root causes and push factors.⁵⁰ The study emphasises the importance of understanding the diverse nature of child labour to effectively address it through policy-related interventions.⁵¹ In her study, subsistence poverty, market imperfections, and parental preferences are implicated factors that push children into child labour practices.⁵² Similarly, Abebe and Bessell share comparable sentiments, believing that the debate and controversies surrounding child labour are shaped by the construction of ideologies of childhood and the work that children are expected to do in their societies, which has been partly addressed in the section above. Furthermore, they identify work-free childhood, socio-cultural, and political

⁴⁸ Galbin (n 8) 84.

⁴⁹ Ibid.

⁵⁰ Heather Congdon Fors, 'Child labour: A review of recent theory and evidence with policy implications' (2012) 26 (4) *Journal of Economic Surveys* 570, 571.

⁵¹ Ibid.

⁵² Ibid 588.

economy perspectives as some of the analytical perspectives that can help discuss the controversies around child labour and childhood.⁵³

In the work-free perspective of child labour, Abebe and Bessell contend that childhood is characterised by schooling, where children are shaped for the future, and the responsibilities for care, protection, and provision of necessary basic needs are bestowed upon the parents.⁵⁴ Additionally, this perspective asserts that childhood is a time when children are free to play and live without any form of exploitation or paid labour out of necessity.⁵⁵ It does not entirely deny children the opportunity to work and develop skills. However, from this perspective, children can work in a family enterprise. Although Abebe and Bessell do not provide examples of these family enterprises, this might fall into the category of light work, where children are engaged within their households, but it is work that is not detrimental in any sense. Thus, any work done outside this understanding is considered a threat to the enjoyment of their childhood.⁵⁶ Additionally, the work-free perspective is said to have shaped international policies that suggest formal schooling as a remedy for keeping children away from child labour, which has been backed by provisions on the right to education provided in some international human rights instruments.⁵⁷ Such policy interventions emphasize that, from this perspective, childhood is associated with education, whereas adulthood is linked to work, suggesting that work and school are incompatible.⁵⁸ Ideally, it denies the combination of work and school for children.

However, while acknowledging that children need to be protected from all exploitative work, as is provided for in international human rights instruments such as the UNCRC, some economics and sociology scholars are against the abolitionist perspective advocated through the work-free perspective above.⁵⁹ For instance, scholars agree that there is a need for more urgent action to implement measures that protect children's rights and promote their education.⁶⁰ Additionally, they argue that a workless childhood leads to irresponsible adults who are unprepared to assume

⁵³ Tatek Abebe and Sharon Bessell, 'Dominant discourses, debates and silences on child labour in Africa and Asia' (2011) 32(4) Third World Quarterly, 765, 779.

⁵⁴ Ibid.

⁵⁵ Ibid 766.

⁵⁶ Ibid 768.

⁵⁷ Abebe and Bessell (n 53) 770.

⁵⁸ Ibid.

⁵⁹ Michael Bourdillon, Deborah Levison, William Myers, and Ben White, *Rights and Wrongs of Children's Work* (Rutgers University Press 2010) xv.

⁶⁰ Ibid.

the responsibilities that society expects of them.⁶¹ Subsequently, they propose that work is an essential part of children's livelihood and should, therefore, be encouraged with a total scrutiny of the context in which children live.⁶²

Similarly, and more recently, it has been argued that the global response to child labour, based on international standards and the age-based perception of abolishing child labour, is starting to lose its momentum and should, therefore, be replaced by more participatory initiatives that involve communities and families in finding solutions.⁶³ In this regard, Babo believes that addressing child labour can be most effectively done through sociocultural indigenisation perspectives that integrate schooling, traditional education, and child protection initiatives familiar within a particular society.⁶⁴ According to Babo, the linkage with provisions that seem to be detached from the social context of the communities seems not to be addressing the challenge of child labour.⁶⁵ In the same vein, it is opined that while an explicit ban on children's involvement in the worst forms of child labour is desirable, more meaningful policies that reduce households' pressure to rely on child labour need to be put in place.⁶⁶

2.3.2. Socio-cultural perspective of child labour and childhood

From a socio-cultural perspective, childhood is shaped by cultural and social contexts, which ultimately influence children's beliefs, behaviours, and values.⁶⁷ Thus, children will grow in a context where they must work to transition into adulthood. Contrary to the workfree perspective above, views discouraging children from working are considered insensitive to the realities in which children grow.⁶⁸ In this case, child work is considered part of the family contribution, where the child helps maintain the family's sustenance. This perspective is linked to Basu's luxury axiom theory of child labour. In this theory, Basu argues that families have a bare minimum income requirement for sustenance.⁶⁹ When this essential minimum is not attained, parents turn to children

⁶¹ Ibid.

⁶² Ibid

⁶³ Mahmudul Hoque, 'Reviewing child labour and its worst forms: Contemporary theoretical and policy agenda,' (2021) 6(4) *Journal of Modern Slavery* 32, 42.

⁶⁴ Alfred Babo, 'Child Labor in Cocoa-Growing Communities in Cote d'Ivoire: Ways to Implement International Standards in Local Communities' (2014) 21 *UC Davis J Intl L & Pol'y* 23, 32.

⁶⁵ Ibid.

⁶⁶ Fors (n 50) 574.

⁶⁷ Abebe and Bessell (n 53).

⁶⁸ Ibid.

⁶⁹ Kennedy Basu and Zafiris Tzannatos, 'The global child labor problem: what do we know and what can we do?' *The World Bank Economic Review*, 17(2), 147-173.

as a source of support or an extra pair of hands to help the family achieve its economic equilibrium, ensuring the family's sustenance. Thus, education for children is seen as a luxury when this bare minimum standard for the family's sustenance cannot be achieved.⁷⁰

From this perspective, childhood is a continuous phase into adulthood. Therefore, it is contended that children's involvement in work is essential for the transference of skills and knowledge critical in adulthood.⁷¹ In this perspective, it is further proposed that colonial history, cultural values, religious teachings and indoctrinations, gender, age, and other variables must be understood in the context of childhood for particular children and how these variables may influence children's involvement in work.⁷² Such a broad range of variables for consideration only underscores the idea that child labour and its influencing factors are vast and complex.

Relatedly, Hepburn and Jackson allude that in most African countries, childhood is not measured by the strict chronological parameter. It is recognised that certain locations and social structures are unique to specific contexts and societies.⁷³ In this case, initiation practices—often occurring at the onset of puberty, marriage, and parenthood—mark the transitions between different life phases.⁷⁴ Such transitional stages also represent the onset of the type and magnitude of work and responsibilities that people in a particular stage of life will be involved in, according to their culture and social lives.

Contrary to the work-free perspective, the socio-cultural perspective allows children to work and asserts that prohibiting or banning children from work harms them more than it protects them.⁷⁵ Abebe and Bessell further put forward the proposition that removing children from work not only denies them the opportunity to acquire essential life skills that are not offered through formal education systems but also deprives them of their source of livelihood, as some use the resources from their work to support their families and even finance their education.⁷⁶ In this regard, Bourdillon and others found that an intervention that saw children removed from a garment factory

⁷⁰ Ibid.

⁷¹ Abebe and Bessell (n 53) 770.

⁷² Ibid 772.

⁷³ Sacha Hepburn and April Jackson, 'Colonial Exceptions: The International Labour Organization and Child Labour in British Africa, c. 1919–40' (2022) 57 (2) *Journal of Contemporary History* 218.

⁷⁴ Ibid.

⁷⁵ Abebe and Bessell (n 53) 772.

⁷⁶ Ibid 772.

in Morocco was more detrimental to the girls.⁷⁷ While working in the industry was morally correct and financially beneficial to their welfare and that of their families, further analysis and inquiry were not conducted to understand what this work meant to the children in these garment factories. In the end, more harm was allegedly done to the children by their removal than any perceived harm that could have occurred to them while working in the factory.⁷⁸

Nevertheless, while understanding the contexts and conditions in which children are allowed to work under this perspective, it is further proposed that any form of child labour should not be romanticised as child work, apprenticeship, or training.⁷⁹ Instead, further analysis of the socio-cultural context in which children live and how they experience their childhood should be conducted. Such an analysis will provide grounds and direction for policies and strategies that enable children to grow as they should, acquiring the necessary skills for their livelihood and that of their families and community.

2.3.3. Political economy perspective of child labour and childhood

In this perspective, Abebe and Bessell argue that children are within the marginalised sectors of society most affected by the macro-level socio-political and economic conditions that include war, corruption, epidemics, unfair trade practices, and inappropriate policies.⁸⁰ In their discussion, they suggest that the structural adjustment plans imposed by the World Bank and the International Monetary Fund may seem detached from the lived experiences of children in the community. Still, the link is evident in how governments develop policies and action plans to meet the expectations set and imposed by the major economies.⁸¹ For instance, citing Jennings's work, they argue that some of these monetary policies imposed by the World Bank on developing countries increase unpaid work for women in the home and the community, shifting the burden of work to children.⁸² This assertion was also made in a study of child hawking in the streets of Nigeria, where structural adjustment plans implemented by governments are reported to be one factor influencing the influx of children on the streets.⁸³

⁷⁷ Bourdillon and others (n 59) 4.

⁷⁸ Ibid.

⁷⁹ Abebe and Bessell (n 53) 772.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid 773.

⁸³ Austin Isamah and Rasidi Okunola, *'Family life under economic adjustment: the rise of child breadwinners'* (Heinemann Portsmouth 2002) 64.

Other scholars similarly argue that child labour is connected to the global production network and cannot be understood purely as the result of household-level dynamics.⁸⁴ Instead, it is facilitated by the socially embedded commercial processes associated with contemporary global production.⁸⁵ Thus, the global changes that major players influence in the worldwide market will affect how children are perceived and eventually involved in the supply chains of various products. Consistently, the Farm Input Subsidy Programme (FISP) in Malawi, which receives a higher percentage of external aid support,⁸⁶ is found to have led to a statistically significant increase in child labour as workload increases and children spend more time on the farm.⁸⁷ This example demonstrates that global policies and actions taken by the government at a macro level are likely to influence child labour at the household level, even though the decision may seem far-fetched to have any immediate effect on the children.

Additionally, it is proposed that the social economy and political phenomena at the global level have transformative effects on the lives of young people in society, producing social reproduction that influences how young people behave.⁸⁸ Some of the changes include an increase in commercial crop production over subsistence crops and a reduction in public sector expenditure, eventually leading to a rise in high living costs.⁸⁹ All these factors have contributed to a shift in perception towards children and their attitudes towards work. Subsequently, the type of work they will be involved in also differs from the earlier situations when these global changes were limited or just nascent.

Furthermore, it is argued that globalisation, which facilitates increased global trade through trade policies, ultimately increases the demand for goods produced by child labour.⁹⁰ Remedies to this have included a ban on trading with countries that allegedly make goods with proceeds from child

⁸⁴ Nicola Phillips, Resmi Bhaskaran, Dev Nathan, and Upendranadh, 'The social foundations of global production networks: towards a global political economy of child labour' (2014) 35(3) *Third World Quarterly* 428, 429.

⁸⁵ Ibid.

⁸⁶ This is a high-cost, government and donor-funded programme. In the 2008/2009 national budget, it was costed at USD 265.4 million, of which 14% was from donor support. See Andrew Dorward and Ephraim Chirwa, *Evaluation of the 2010/11 farm input subsidy programme, Malawi: report on programme implementation* <https://eprints.soas.ac.uk/16737/1/FISP%20Evaluation%20-%202010_11%20Implementation%20Report%2030.pdf> accessed 25 November 2024; Raymond Boadi Frempong, 'Do subsidies on seed and fertilizer lead to child labour? Evidence from Malawi' (2023) 41(2) *Development Policy Review* e12646

⁸⁷ Ibid.

⁸⁸ Abebe and Bessell (n 53) 774.

⁸⁹ Ibid.

⁹⁰ Edmonds and Pavcnik (n 19), 212.

labour and boycotting the consumption of goods implicated in such a value chain. A typical example was when the USA suspended the importation of tobacco from Malawi on allegations that the green gold was produced through forced labour practices, including child labour.⁹¹ However, better compliance with good business and trading practices is proposed as a solution to this problem, as a complete ban or boycott would do more harm than good in addressing the issue.⁹²

Given the discussion of the perspectives above, it is submitted that child labour is a contextual issue influenced by the immediate factors surrounding the child and those that might be peripheral to the child. While the work-free perspective portrays an ideal childhood situation, it is more Eurocentric as it does not consider the lived reality of most children in Malawi. On the one hand, the socio-cultural perspective thoroughly considers the lived realities of children in Malawi. It examines childhood and child labour as informed by society's cultural values and situates childhood within these realities. On the other hand, the political economy perspective suggests that the global situation affects the perspectives of childhood and how the same influences the involvement of children in work. Thus, the last two perspectives hold for the discussion in this thesis as they both apply to the childhood of most children in Malawi and how they are involved in child labour, as will be demonstrated in the subsequent chapter.

Nonetheless, the perspectives discussed above are limited in their examination of how human rights frameworks can influence societal perceptions of children and their involvement in work. Additionally, the perspectives on how children's rights principles can influence children's involvement in work are unclear in these perspectives. Subsequently, the following section discusses childhood and child labour from the perspective of child rights principles.

2.4. Child rights-based approach and childhood

Malawi ratified the UNCRC and the ACRWC, demonstrating the government's commitment to protecting and safeguarding children's rights. Furthermore, domestic legislation, such as the Child Care Protection and Justice Act (2010), the Education Act (2013), the Employment Act (2000), and the Trafficking in Persons Act (2015), advances this commitment and promise to children for a society that best protects their rights. The four basic principles of child rights, non-discrimination,

⁹¹ Geneva Sands, 'US suspends tobacco imports from Malawi over forced child labor allegations' *CNN Politics* (Washington, 1 November 2019) <<https://edition.cnn.com/2019/11/01/politics/malawi-child-labor-allegations-tobacco/index.html>> accessed 16 May 2024.

⁹² Edmonds and Pavenik (n 19), 212.

the best interest of the child, life, survival, and development, and participation,⁹³ form part of this legislation. Therefore, it is appropriate that these principles inspire any discussion on the rights of children. As argued by some legal scholars, such a perspective not only ensures the meaningful participation of children but also guarantees that the best decisions concerning children are made from the children's perspectives.⁹⁴

It is upheld that understanding childhood from the perspective of the general principle of child rights provides a basis for diverse and local interpretations of childhood and development, as long as such interpretations are consistent with other articles in the UNCRC.⁹⁵ Woodhead further claims that the perspective on children and their childhoods stems from a legacy that views children as members of society who continuously require support and care, rather than as subjects of their rights.⁹⁶ He proposes a need for a shift in perspective that recognises children as subjects of their rights with the capacity to voice out their opinions and views, participate in policy formulation, and develop in an environment that is not exploitative.⁹⁷

While acknowledging that recognising and understanding childhood from this perspective might conflict with the hierarchical characteristics of African societies as well as cultural values that sometimes devalue the roles of children in society,⁹⁸ the ACRWC recognises the same child rights principle and balances this by providing the child with duties to society through Article 31.⁹⁹

While both the CRC and the ACRWC provide the four guiding principles of implementation, this thesis prioritises the principles as presented in the ACRWC. This is based on the notion that while the CRC provides that children are subjects of rights, the African Charter and the ACRWC provide an African cultural and contextual consideration in realising children's rights.¹⁰⁰ This assertion is also echoed in other discussions where it is contended that the ACRWC elaborates on the

⁹³ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007) < https://www.unicef.org/turkiye/media/791/file/TURreport_ConventionRightsChild.pdf > accessed 14 May 2024.

⁹⁴ Philip Alston and Bridget Walsh, *The best interest of the child. Towards a synthesis of children's rights and cultural values* (UNICEF Innocenti Studies 1996).

⁹⁵ Martin Woodhead, 'Changing perspectives on early childhood: theory, research and policy' (2006) 4(2) *International Journal of Equity and Innovation in Early Childhood* 1,25.

⁹⁶ *Ibid* 26.

⁹⁷ *Ibid*.

⁹⁸ *Ibid*.

⁹⁹ ACRWC art 31.

¹⁰⁰ Olowu, 'Dejo, 'Protecting children's rights in Africa: a critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 127, 128.

inequalities of the CRC in dealing with problems that African children face in the enjoyment of their rights.¹⁰¹ In a more practical sense, this thesis discusses the child labour legislation in Malawi. Therefore, it is more practical and logical for the discussion to align with the ACRWC as it is more closely aligned with the Malawian situation. Nonetheless, references to the CRC and other international instruments have been made where appropriate.

2.4.1. Non-discrimination and child labour

Firstly, Article 3 of the ACRWC entitles every child to the enjoyment of the rights and freedoms expressed in the Charter without discrimination of any kind. It further calls upon states to ensure that all appropriate measures are taken to protect children against all forms of discrimination.¹⁰² The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) provides that addressing non-discrimination requires special attention to the poorest and most marginalised African children.¹⁰³ The ACERWC further states that non-discrimination does not mean identical treatment; instead, it means taking extraordinary measures to eliminate or mitigate the underlying causes of discrimination.¹⁰⁴

Furthermore, the Committee on the Rights of the Child (the Committee) states that addressing discrimination may entail changes in legislation, administration, resource allocation, and education programs geared towards shifting attitudes.¹⁰⁵ The Committee further posits that an expansive interpretation of the principle entails that every child, regardless of their identity, should enjoy all the rights guaranteed in the Convention. Rightly so, this provision is reflected through section 20 of the Malawi Constitution and the CCPJA 2010, which provides parents and guardians with the responsibility of protecting children from neglect, discrimination, violence, abuse, exploitation, oppression, and exposure to physical, mental, social, and moral hazards.¹⁰⁶

¹⁰¹ Samuel Lisenga Simbine and Liana MP le Roux, 'Vatsonga people's Perceptions of Children's Rights' (2021) 57(4) Social Work 472,479 < <https://socialwork.journals.ac.za/pub/article/view/971> > accessed 31 March 2024.

¹⁰² ACRWC art 1.

¹⁰³ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No. 5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection" (2018) 10

¹⁰⁴ Ibid.

¹⁰⁵ Committee on the Rights of the Child, 'General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child' (27 November 2003) CRC/GC/2003/5, para. 12.

¹⁰⁶ CCPJA 2010, s 3(1)(b).

It has been maintained that while recognising that children need special care and protection than adults, fundamentally, there should not be any discrimination between adults and children, children and young people, and children and children.¹⁰⁷ Regarding this, children living in rural areas should not receive fewer privileges and attention from their governments. Girls should not be treated differently from boys based on gender. Consistently, Besson and Kleber propose that, while upholding the principle of non-discrimination, caution must be taken to avoid destructive discrimination that negatively affects children. Instead, they advocate for special measures and interpretations that protect children against discrimination of any kind.¹⁰⁸ Therefore, it would not be in the view of the principle of non-discrimination to leave street children in urban areas and concentrate on children in rural areas during child protection programmes, based on the unavailability of funds as the only reason for their discrimination. In any case, discrimination should be interpreted to facilitate their involvement in empowerment programmes such as safety nets, including cash transfers. This is consistent with Kaime's argument, which posits that the principle of non-discrimination is paramount when resources are scarce and in situations where programs aimed at rebuilding disrupted communities might discriminate against children due to their geographical and socioeconomic status.¹⁰⁹ Likewise, interventions meant to protect children from child labour practices should not discriminate against children based on their gender, place of origin, or economic status. It is proposed in this thesis that while recognising the unique position of children in society, perspectives on how they experience their childhood and their involvement in work that empowers them should not be discriminatory to the detriment of their development and survival. The obligation, which has been imposed on states through international human rights instruments and domestic legislation, should inform the development of practical programmes that empower children to experience their childhood in a non-discriminatory environment.

2.4.2. Child's best interest and child labour

Secondly, the ACRWC provides that the best interest of the child shall be the primary consideration in all actions concerning children, as stated in Article 4(1). The ACERWC states that the best interest standard applies across cultural, political, and geographical settings. In its

¹⁰⁷ Samantha Besson and Eleonor Kleber, 'Article 2: The Right to Non-Discrimination' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (OUP 2019).

¹⁰⁸ Ibid 71.

¹⁰⁹ Thoko Kaime, 'Children's Rights and the Environment' in Ursula Kilkelly and Ton Liefwaard (eds), *International Human Rights of Children* (Springer 2018) 13.

interpretation, the ACERWC further provides that the application of this principle can extend to every conceivable domain of public and private life, including family and home settings, education, healthcare, and community settings.¹¹⁰

Likewise, the Committee to the CRC calls upon states to undertake all appropriate legislative and administrative measures to ensure that a child is protected and cared for.¹¹¹ The Committee provides that the principle is explicitly linked to divorcing parents, adoption, children in conflict with the laws, and parental responsibility toward their children.¹¹² However, it is submitted that the best interest of the child was couched around the characteristics of a Western child who is ideologically innocent and in need of protection according to Western culture.¹¹³ Regardless, the principle is also provided for in the ACRWC, as discussed above,¹¹⁴ and continues to be reflected in domestic legislation. This substantiates and validates the principle's paramount importance for protecting all children worldwide, regardless of their location.

Additionally, it has been argued by Alston and Walsh that this principle needs to be interpreted more expansively and that it does not only apply to matters of divorcing and separating parents, adoption, and children in conflict with the laws.¹¹⁵ Likewise, Kaime believes that the best interest of the child principle is broad and should be key in discussing all matters related to the child's welfare.¹¹⁶

Given such an expansive interpretation, it is highly likely that the involvement of children in any work should be in their best interest. It follows, therefore, that work given to children in their best interest cannot harm their health, moral, and physical development. In this context, it has been expressed that in an African setting, providing work for children—sometimes as a form of reprimand for undesirable behaviour and often to help them develop valuable skills—serves their best interests. This approach aims to prepare them to become skilled adults as they grow.¹¹⁷

¹¹⁰ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No. 5 (n 103).

¹¹¹ CRC (1989), art 3(2).

¹¹² Committee on the Rights of the Child, 'General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)' (29 May 2013) CRC/C/GC/14.

¹¹³ Claire Breen, *The Standard of the Best Interests of the Child: A Western Tradition in International and Comparative Law* (Brill Nijhoff 2021).

¹¹⁴ ACRWC art 4(1).

¹¹⁵ Alston and Walsh (n 94).

¹¹⁶ Kaime (n 45).

¹¹⁷ Alston and Walsh (n 94).

Therefore, if child labour is to be seen from a perspective that recognises the child's best interest, especially from an expansive interpretation as suggested above, the likelihood of dealing with hazardous work for children is minimised. There is also a good chance that the involvement of children in work done in their best interest may not attract reprimand from institutions and structures that work towards safeguarding and promoting children's rights.

2.4.3. Life, survival and development, and child labour

The ACRWC further provides that every child has an inherent right to life.¹¹⁸ By extension, the provision obliges states to ensure, to the maximum extent possible, the survival and development of the child.¹¹⁹ The ACEWRC notes that achieving this standard cannot be done in isolation, but rather through complementary efforts stipulated in the African Charter and utilising the Sustainable Development Goals as a tool to achieve social and economic rights.¹²⁰ The ACEWRC further recognises the importance of a comprehensive and holistic approach to children's proper growth and development, and envisages that this can be achieved by providing children with appropriate tools and opportunities to maximise their potential from childhood to adulthood.¹²¹

The Committee on the Rights of the Child reminds state parties to the Convention that this article is comprehensive and encompasses a broad spectrum of rights, including the right to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education, and play.¹²² Additionally, Article 24(3) of the CRC requires states to abolish cultural and traditional practices that threaten this right. Furthermore, this principle is recognised as a fundamental and ultimate entitlement that cannot be violated, even in exceptional circumstances, particularly in cases involving children.¹²³ It is also argued that this principle is interrelated, and due to this interconnectedness, states must ensure the progressive enjoyment of this right, because once one is alive, one needs to survive and develop progressively within the same timeframe.¹²⁴

¹¹⁸ ACRWC art 5(1).

¹¹⁹ ACRWC art 5(2).

¹²⁰ ACERWC 'General Comment no. 5' (n 110)13.

¹²¹ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child on "The Responsibilities of the Child"' (2017), para 18. (hereafter referred to as ACERWC 'General Comment on Article 31')

¹²² Committee on the Rights of the Child, 'General Comment No. 7: Implementing Child Rights in Early Childhood' (20 September 2006) CRC/C/GC/7/Rev.1, para 10

¹²³ Elaine E Sutherland, 'The Child's Right to Life, Survival and Development: Evolution and Progress' (2015) 26(2) Stellenbosch L Rev 272, 280.

¹²⁴ Leona Temwa Mkandawire, 'The Balance Between Child Autonomy and Parental Autonomy in Malawi; An Analysis of the Child Care, Protection and Justice Act' (University of Cape Town 2018) 27.

In the spirit of this interconnectedness, it is reasonably justifiable to conclude that the provisions set out in Article 22(1) of the Employment Act 2000, as well as Article 23 of the Malawi Constitution, are ideally intended to protect children's lives in Malawi. The former provides for the protection of children from work and activities that are harmful to their health, safety, education, morals, or development, while the latter protects children from economic exploitation or any treatment, work, or punishment that is, or is likely to be, hazardous; interfere with their education; or be harmful to their health or their physical, mental or spiritual or social development.¹²⁵

Thus, it is most probable that if childhood is perceived with such provisions or this principle in mind, consideration will presumably be more expansive. It is also foreseeable that States that recognise children from this perspective will protect and safeguard their lives, survival, and development. The States will undoubtedly prevent the exposure of their children and their childhood experiences to work, conditions, and situations that threaten the children's physical, psychological, and mental development. Most importantly, these States will conceivably ensure that children are not economically exploited to continue pursuing their education and that their well-being is adequately catered to. In the same vein, such a society will likely allow children to voice their concerns, opinions, and views on matters that concern them, which is the last principle of child rights outlined in Article 4(2) of the ACRWC.

2.4.4. Participation and child labour

According to Article 4(2) of the ACRWC, state parties are called upon to ensure that children have the right to express their views in all matters that affect them and that these views are taken into consideration.¹²⁶ Additionally, states are obligated to allow children to be heard in any judicial or administrative proceedings affecting them, either directly or through a representative or an appropriate body, in consideration of the provisions of appropriate law.¹²⁷

The ACERWC recognises the challenge of conceptualising the principle in practice in different contexts. Nonetheless, it recommends implementing and conceptualising the principle through processes that are transparent and informative, voluntary, respectful, relevant, child-friendly,

¹²⁵ Constitution of the Republic of Malawi 1994 (as amended through 2017), Employment Act 2000, art 23.

¹²⁶ ACRWC art 4(2).

¹²⁷ Ibid.

inclusive, supported by adult training, safe and sensitive to risk, and accountable.¹²⁸ Furthermore, the ACERWC recognises that child participation enables and equips even the youngest members of society to contribute to shaping their own lives, families, communities, and the wider society.¹²⁹ Therefore, states are required to adopt legislation and other measures to protect these rights at the national level.¹³⁰ Specifically on child labour, states are discouraged from obligating children to undertake work that would amount to child labour in the name of child responsibility.¹³¹

The Committee to the CRC also recognises the problem of conceptualising participation in practice. It advances the view that widespread practices have allowed the meaning of participation to expand, even though Article 12 of the CRC does not define what participation entails.¹³² These include information sharing, dialogue, and processes where children can voice their views.

However, while commending the strides states have taken to ensure this principle is upheld, the CRC Committee is concerned that such strides are mainly concentrated in family, society, and judicial proceedings. It attributes such slow progress to traditional, cultural, and societal attitudes.¹³³ This concern aligns with the prevailing notion that children are meant to be seen but not heard, a sentiment widely held in many African societies.¹³⁴ Nevertheless, it is argued that a deeper and more analytical insight into an African society reveals that most societies' institutional setup and relationships provide an environment where children participate in matters that affect them.¹³⁵ Kaime shares this view in his findings on the social interaction of children who use their grandparents as intermediaries in the decision-making processes among the Lomwe tribe in Malawi.¹³⁶ Therefore, it is justifiable to conclude that this principle provides further ground for perceiving a child as an active member of society. The principle of child participation affords children the opportunity to view work from their perspective and provide input on matters that affect them or their peers.

¹²⁸ ACERWC 'General Comment no. 5' (n 110)14.

¹²⁹ ACERWC 'General Comment on Article 31' (n 121) para 19.

¹³⁰ Ibid para 24.

¹³¹ Ibid para 26.

¹³² Committee on the Rights of the Child, 'General Comment No. 12 (2009): The Right of the Child to be Heard' (20 July 2009) CRC/C/GC/12, para 5.

¹³³ UNICEF (n 93).

¹³⁴ Karmen Toros, 'A systematic review of children's participation in child protection decision-making: Tokenistic presence or not?' (2021) 35(3) Children & Society 395, 401.

¹³⁵ Ibid.

¹³⁶ Kaime (n 45) 231.

Thus, while considering that global changes affect the experiences of childhood and child labour through the political economy perspective and that immediate contextual changes affect the experience of childhood and child labour from the social-cultural perspectives, it is also imperative to perceive child labour through the lens of the child participation principle and the other principles discussed above. In essence, the limitations in each of the childhood perspectives, as well as the child labour perspectives, render each of them deficient if applied and considered in isolation. Furthermore, the rights-based approach offered through child rights principles falls short in providing a lens of understanding and tackling child labour in a Malawian context. Thus, a more plausible and nuanced perspective would be one that considers these shortcomings. This is the focus of the integrated childhood perspective discussed in the following section.

2.5. Conclusion: Reimagination of an *integrated childhood perspective* and child labour

This chapter has examined the perspectives of childhood and child labour, as well as the debates surrounding them. It has analysed the understanding of childhood from the social and social constructivism perspective and the justifications that childhood is shaped by the child's exposure to things happening around them. In this vein, it means that a child growing up in a society that exposes children to child labour practices will foreseeably be socialised to admit that child labour is the accepted norm and practice of children in such a society.

Secondly, the culture and cultural relativism perspective of childhood asserts that society's most dominant and guarded values are protected through traditional practices that ensure their continuous existence. These values are passed on through reward, punishment, and sanctions imposed on children. This perspective suggests that different societies value different attributes, behaviours, and traits and will, therefore, find it challenging to adopt new values if they seem alien.

The chapter also discusses child labour from the perspectives of workfree, socio-cultural, and political economy. The work-free perspective suggests that a child should not work for economic gain meant to support the family and that their childhood should be characterised by play and living as children. This perspective appears to be contrary to the socio-cultural and political economy perspectives. It is considered Eurocentric and unrealistic in the context of a Malawian society, where children are regarded as integral to society. These two perspectives are well aligned with the discussion in this thesis, as they acknowledge the lived realities and context of the child as crucial in understanding the place of work in children's lives. However, these perspectives do

not explicitly recognise child rights principles in understanding childhood and child labour. The political economy perspectives seem to be far-fetched or alienated and have limited applicability to the immediate context of the communities in this study.

In respect of this, it is argued that on top of the socio-cultural perspectives, childhood and child labour have to be understood in consideration of these child rights principles. Through these principles, children are guaranteed the enjoyment of their rights and experience a childhood free from all forms of exploitation and abuse, including child labour, while recognising the lived realities of their societies. As established earlier by others, referring to these principles assures the promotion, protection, and safeguarding of children's rights.¹³⁷

Thus, this thesis aligns with the socio-cultural perspective of child labour due to its focus on the lived realities of Malawi society. It also subscribes to the principles of child rights, as they ensure the protection and promotion of children's rights across the board. A combination of the sociocultural perspective and child rights-based principles culminates in a perspective that has been termed an *integrated childhood perspective*. This perspective recognises that childhood in Malawi is shaped by unique local contexts where the expectation of children contributing economically is both a norm and a necessity. The perspective further suggests that children's roles and rights should be viewed through the community's needs and values, which may differ from Eurocentric notions of childhood and child labour captured in Malawi's legal framework. As a result of these seemingly contesting perspectives, there is a gap in the legal frameworks on child labour and the realities of children and their families in Mzimba, Ntchisi, Zomba, and Nsanje districts.

Furthermore, this thesis posits that an integrated childhood perspective offers a novel way of exploring the gap between child labour legislation and the realities of children and their families on the ground, which remains unknown through the earlier approaches and perspectives discussed above. In essence, an integrated childhood perspective offers new lenses for understanding how children in Malawi experience their childhood within the context of the work expected of them by their families and community.

¹³⁷ UNICEF (n 93) 172.

Additionally, the perspective suggests that this context must be understood from the community's viewpoint. It considers the four principles of children's rights. Furthermore, it offers and informs more context-responsive legal reforms. Thereby, it narrows the gap between the law and reality on the ground. This analysis has been demonstrated in Figure 1:

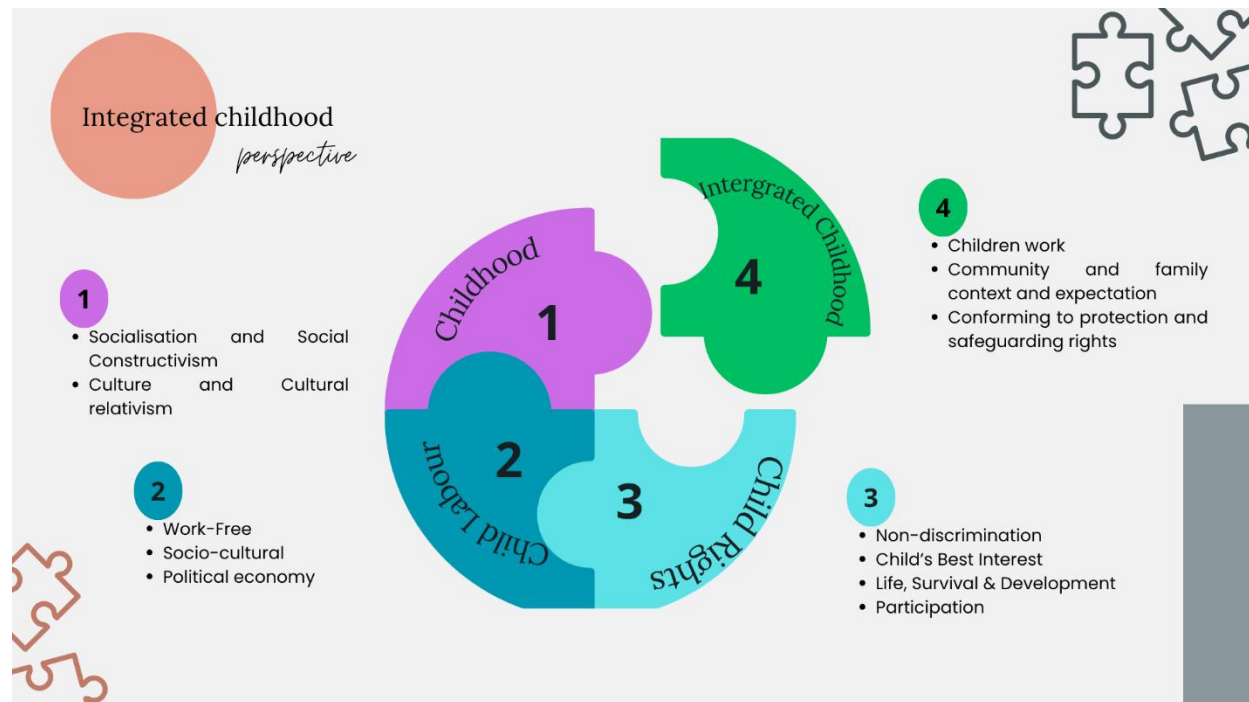


Figure 1: Integrated childhood perspective

In summary, the discussion of perspectives on childhood, child labour, and children's rights principles in this chapter has demonstrated the lenses through which the research questions will be addressed in the subsequent chapters. The chapter has discussed socialisation and social constructionism, as well as cultural and cultural relativism perspectives of childhood. It has also analysed the work-free, socio-cultural, and political economy perspectives of child labour, as well as the child rights principles, as additional perspectives for examining child labour. The final part of the chapter has synthesised the different perspectives to reimagine an *integrated childhood perspective* as a nuanced framework for contextualising and understanding the problem of child labour in Malawi.

The next chapter examines the legal framework governing child labour in Malawi. It explores how Malawi's legislation aligns with international and regional frameworks on child labour, considering the specific context in Malawi.

Chapter 3: Legal framework on child labour and rights

3.1. Introduction

This chapter explores how Malawi's legal framework reflects the obligations set in the international frameworks on child labour. It briefly spotlights the limitations of the legal frameworks in addressing child labour in Malawian communities. It argues that these limitations stem from the misalignment between communities' perspectives on childhood and the place of work in the lives of children in different contexts in Malawi. The chapter lays the groundwork for proving that the integrated childhood perspective discussed in the previous chapter could be the rightful approach to addressing the gap between child labour legislation and the realities of the problem on the ground, as later demonstrated in the thesis. This chapter addresses Research Question 1 of this thesis: How are Malawi's legal frameworks structured in addressing child labour?

3.2. ILO Convention 138

ILO Convention 138 on Minimum Age was adopted in 1973 and sets the minimum age for children's employment at 15 years. This is also considered the minimum age for completing compulsory schooling.¹ Additionally, the Convention obliges member states to implement national policies to combat child labour in Article 1. Furthermore, the Convention provides states with some flexibility to set their context-based minimum age for employment while ensuring that it is not below the legal school-leaving age.²

It has been argued that the Convention does not provide a specific definition for child labour, which means that countries may define it according to their own cultural or societal norms.³ The ILO has posited that when it comes to details of what exactly constitutes child labour in terms of children's age as well as forms, types, and conditions of work, this needs to be clearly defined in the national laws.⁴ In other words, there appears to be some flexibility in the actual definition and conditions for children's work. Subsequently, some scholars believe that this lack of a universal

¹ Convention 138 art 2; Malawi ratified Convention 138 in 1999, See ILO, *Ratification by country*, 2022 < <https://www.ilo.org/dyn/normlex/en/f?p=1000>> accessed 14 February 2025.

² Convention 138 art 2(3).

³ Rufaro Audrey Mavunga, 'A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999' (2013) 16 PELJ 121, 125.

⁴ ILO, 2018, An introduction to legally prohibiting hazardous work for children < <https://www.ilo.org/ipeinfo/product/download.do?type=document&id=30296>> accessed 04 April 2024.

definition is most likely to cause challenges and differences in how child labour is addressed worldwide.⁵

However, Article 3(1) provides that where it is considered that the work will jeopardise the health, safety, and morals of the children, the minimum age of employment shall be not less than 18 years.⁶

While the Convention does not provide an exhaustive list of work that might be considered detrimental to the health, safety, and morals of the young persons employed, Article 5(3) provides the following as the minimum: mining and quarrying; manufacturing; construction; electricity, gas, and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes. However, it excludes family and small-scale holdings producing for local consumption and not regularly employing hired workers.⁷ The exclusion of family work and subsistence production from the minimum standards provided in this article is one of the weaknesses and a loophole for eradicating child labour practices, especially through legislation. This omission is considered problematic, given that children are often involved in domestic work to support their parents at the expense of their educational, physical, emotional, and health development.⁸ In other words, if the exclusion could be considered deliberate, one would conclude that such an exclusion recognised the reality where children are allowed to contribute towards the welfare of their families. However, excluding family work and subsistence production undermines the effectiveness of the provision, as children are exploited at home. This omission represents a critical blind spot in this legislation.

The Convention further provides that, in accordance with national laws or regulations, children between the ages of 13 and 15 may be employed in light work that is unlikely to harm their health or development or hinder their education.⁹ It is held that the inclusion of provisions allowing flexibility in the age of employment for children in light work, in accordance with national laws and regulations, likely took into account the different cultural differences and economic circumstances of the various states.¹⁰ In light of the child rights principles discussed above, it would seem that the Convention considers the best interest of the child, as well as the principles

⁵ Mavunga (n 3) 125.

⁶ Convention 138 art 3(1).

⁷ Convention 138 art 5(3).

⁸ US Department of Labour, *Child Labor and Forced Labor Reports: Malawi*

< <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/malawi> > accessed on 05 April 2024.

⁹ Convention 138 art 7.

¹⁰ Michele D-Avolio, 'Child labor and cultural relativism: From 19th century America to 21st century Nepal' (2004) 16(5) PILR 109, 134.

of life, survival, and development. For instance, light work, which is not detrimental to the child's well-being, is unlikely to pose a threat to the child's life, survival, and development. Additionally, such work will promote the children's best interests by engaging them in work that advances their educational needs.

One could also assert that this flexibility on the age of employment is based on the understanding that childhood experiences differ depending on the culture and context in which children grow. As discussed in the previous chapter, the sociocultural perspective allows for considering the context of communities when determining the appropriate work for children.¹¹ For instance, children as young as eight years old in Malawi are involved in helping their parents carry out household chores such as fetching water and firewood, cleaning and sweeping the compound, and selling farm produce. This work is done before and after school, depending on the situation. According to Mavunga, these forms of work are difficult to monitor as they are mostly invisible and conducted on private premises.¹² Regardless, in different situations, such as recovery from disasters and shocks, light work is considered relevant for the development of the children's capacities as future members of the labour force and the proper functioning of the household,¹³ and they are part of childhood experiences. It is, therefore, justifiable that children in these situations are allowed to engage in light work to enhance their experiences and contribute to tackling their families' social or economic needs. However, the same flexibility on age is not provided when it comes to Convention 182 on the Worst Forms of Child Labour, which will be discussed later in the chapter. Unlike all other Conventions adopted before it, Convention 138 extended the scope to domestic works to improve the instruments available for combating child labour.¹⁴ Augendra maintains that previous Conventions, such as Conventions 115 and 136 on exposure to radiation and hazardous chemical substances, were related to industries considered hazardous, but not to work within the family. He argues that the ILO felt it imperative to have a Convention that extends the provisions to consider work within a domestic setting, including work carried out by children.¹⁵

¹¹ Osei-Tutu Jonah and Tatek Abebe, 'Tensions and controversies regarding child labor in small-scale gold mining in Ghana' (2019) 38(4) *African Geographical Review* 361,368.

¹² Mavunga (n 3) 134.

¹³ Virginia Morrow, 'Should the world really be free of 'child labour?'' Some reflections' (2010) 17(4) *Childhood* 435, 437.

¹⁴ Augendra Bhukuth, 'Defining child labour: A controversial debate,' (2008) 18(3) *Development in Practice* 385, 387.

¹⁵ *Ibid.*

Additionally, D-Avolio asserts that after the ILO adopted the Minimum Age Convention and established the International Program on the Elimination of Child Labour (IPEC) in 1992, which was meant to mobilise global action to support domestic child labour programs,¹⁶ more effort was still needed to address specific forms of child labour.¹⁷ He argues that this realisation came after observing that there are complex causes of child labour deep-rooted in poverty and that not all types of child labour harm children. Therefore, it was argued that an outright total ban on child labour might devastate children and their families.¹⁸

Consistent with this assertion, other studies have posited that blanket minimum age laws do not effectively address child labour and may even cause more harm to the children involved. Therefore, laws that provide for such bracket age parameters need to be reconsidered.¹⁹ Subsequently, the ILO adopted Convention 182 on the Elimination of Worst Forms of Child Labour in 1999, which does not provide flexibility or categorisation of age for acceptance but calls for a total eradication of these worst forms of child labour.²⁰

3.3. ILO Convention 182

After being adopted in 1999, Convention 182 came into force in 2000 and is regarded as the only universally ratified instrument focusing on the worst forms of child labour.²¹ Through Article 3, Convention 182 provides that the worst forms of child labour comprise:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances;

¹⁶ ILO-IPEC, Action against child labour < <https://www.ilo.org/ipec/Action/lang--en/index.htm> > accessed 08 April 2024.

¹⁷ D-Avolio (n 10) 134.

¹⁸ Ibid.

¹⁹ Michael FC Bourdillon, Ben White and William E. Myers, 'Re-assessing minimum-age standards for children's work' (2009) 29(3/4) International Journal of Sociology and Social Policy 106, 109.

²⁰ ILO, Eliminating the Worst Forms of Child Labour, C182, 17 June 1999, <https://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm> accessed 25 November 2024.

²¹ Nelien Haspels and Michele Jankanish *Action against child labour* (International Labour Organization 2000) 74. Malawi ratified Convention 182 in 1999, See ILO, *Ratification by country*, (n 1) 2022 < <https://www.ilo.org/dyn/normlex/en/f?p=1000> > accessed 14 February 2025; See also International Labour Organization and United Nations Children's Fund, *Child Labour: Global estimates 2024, trends and the road forward* (ILO and UNICEF, New York 2025) 12.

- (c) the use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm children's health, safety, or morals.²²

According to Apgar and Burns, the definition of the unconditional worst forms of child labour provided in the article above from a-c is largely uncontested.²³ This is because the exploitation of children through involvement in armed conflict, prostitution, and illicit drug activities would remain illegal and unacceptable even if the work conditions in these activities and instances were improved.²⁴ While there appears to be consensus on the first part of the article, divergent views exist on the meaning of 'harmful' and 'safe' work, as outlined in Article 3(d). Following these divergent views, Article 4 of this Convention permits member states to establish their definitions and categories of hazardous work and other worst forms of child labour, taking into account the context and circumstances in their respective countries.²⁵ Furthermore, it has been opined that it is challenging at the international level to identify specific work that is inherently hazardous for children. Therefore, it is convenient that the Convention grants this prerogative to the government and its stakeholders to establish these standards in accordance with their local contexts.²⁶

Additionally, the determination of the type of work considered harmful to the health and morals of children is left to member states of the Convention, probably after considering that the work children are exposed to through their childhood experiences depends on circumstances that vary significantly across different countries. This assertion resonates with the earlier childhood perspective that childhood is an evolving concept, encompassing social and cultural contexts where children's experiences differ significantly across various settings and societies.²⁷ Likewise, Humphries argues that what children are doing currently and what they were doing during the Industrial Revolution in the UK testifies to the contextual nature of childhood and how it evolves

²² Convention 182 art 3.

²³ Marina Apgar and Danny Burns, 'Reframing, Refining, and Reconceptualising the Worst Forms of Child Labour Through Participatory Adaptive Programming' (2021) 6 *Journal of Modern Slavery: A Multidisciplinary Exploration of Human Trafficking Solutions* 12, 13.

²⁴ Mavunga (n 3) 145.

²⁵ Convention 182 art 4.

²⁶ Haspels and Jankanish (n 21) 75.

²⁷ Tatek Abebe and Sharon Bessell, 'Dominant discourses, debates and silences on child labour in Africa and Asia' (2011) 32(4) *Third World Quarterly* 765, 779.

over time.²⁸ Given this, providing a holistic definition that facilitates a ban on all types of work or categorises all forms of work as harmful and hazardous for all children would be unrealistic.

Realising the need to protect children from the worst forms of child labour described above, Convention 182 requires ratifying States to take immediate and effective measures to prohibit and eliminate the worst forms of child labour as a matter of urgency.²⁹ Unlike the Convention on Minimum Age, which provides for categories and applies to different age brackets for various types of work, the worst forms of child labour in this Convention apply to all persons under 18.³⁰ Furthermore, the Convention realises that, unlike other forms of child labour, compulsory recruitment of children in armed conflict, sale and trafficking of children, prostitution, and dealing with drugs can have devastating lifetime effects on children; the Convention, therefore, obliges member states to take immediate steps for their eradication.³¹

The peculiarity of the worst force of child labour is well pronounced, more especially when it is linked to the armed conflict situation in Africa, where children are reportedly working as labourers for armed groups.³² According to UNICEF, over 14.7 million children are involved in child labour as a result of displacement, violence, and conflict situations.³³ It is no wonder, therefore, that child labour is also prohibited through the African Children's Charter.³⁴

Additionally, Convention 182 recognises the role of education in dealing with the worst forms of child labour and the need to continuously support children who have been repatriated from different harsh and abusive environments. Bearing this in mind, it calls upon members to take effective and time-bound measures to provide direct assistance for removing children from the forms of child labour and for their rehabilitation and social integration.³⁵ Furthermore, the Convention calls upon members to take necessary measures to ensure that children are protected from the worst forms of child labour through different measures that shall include provisions of

²⁸ Jane Humphries, 'Childhood and child labour in the British industrial revolution 1' (2013) 66(2) *The Economic History Review* 395-418.

²⁹ Convention 182 art 1.

³⁰ Convention 182 art 2.

³¹ Convention 182 Preamble; See Also Convention 182 art 1.

³² ILO, *Ending child labour by 2025* <https://webapps.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_653987.pdf> accessed 12 February 2024.

³³ UNICEF Data (2020) *Uncertain pathways*; UNICEF (2020) <available https://data.unicef.org/wp-content/uploads/2021/09/Uncertain-Pathways_Sep-7th_final.pdf> accessed 12 February 2025.

³⁴ Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, CAB/LEG/24.9/49 (1990), adopted 11 July 1990, entered into force 29 November 1999 <https://au.int/en/treaties/african-charter-rights-and-welfare-child> accessed 12 February 2025.

³⁵ Convention 182 art 7(2)(b).

direct assistance for children repatriated from the worst forms of child labour, ensuring free basic education as well as vocational training.³⁶

While the Convention is praised for considering education as one strategy for overcoming the problem, it is argued that education alone is insufficient and should be complemented with other social strategies that address the root cause of child labour. Such strategies include poverty alleviation programmes, improvements in teaching conditions, and making education more attractive.³⁷

Moreover, considering the already vulnerable situation in which girls already find themselves in society, the Convention urges members to consider the special status of girls.³⁸ However, it is claimed that the Convention does not specify which exceptional condition the girls have, and the emphasis on the girls provides the risk of subjecting the boys to more harm or even forgetting them in the fight against child labour.³⁹ Evidently, flagging girls as a unique group that needs attention from exploitative conditions is contrary to the child labour estimates, which indicate that more boys than girls are involved in child labour globally,⁴⁰ and in Malawi, specifically.⁴¹

The Convention emphasises the need for consultation and collaboration among members, organisations of employers, workers, and the government.⁴² This is considered necessary for determining the type, nature, and circumstances of work, as well as for the periodic review of work and the implementation of the monitoring mechanism, as outlined in Article 5.⁴³ It has been submitted that this coordinated and inclusive formulation of regulation ensures that there are no loopholes permitting conflicts of laws within the same region.⁴⁴

As alluded to in the previous section, this Convention also aligns with the principles of life, survival, and development of the child as well as the best interests of the child. Considering the

³⁶ Convention 182 art 7(2)(c).

³⁷ Mavunga (n 3) 153.

³⁸ Convention 182 art 7(e).

³⁹ Mavunga (n 3) 155.

⁴⁰ ILO and UNICEF, *Child Labour: Global estimates 2020, Trends and the Road Forward* (ILO and UNICEF 2021) 8 <https://www.ilo.org/ipecc/informationresources/WCMS_797515/lang--en/index.htm> accessed 15 December 2024, 9. See also International Labour Organization and United Nations Children's Fund, *Child Labour: Global estimates 2024, trends and the road forward* (ILO and UNICEF, New York 2025) 8.

⁴¹ ILO, *Understanding child labour and youth employment in Malawi* (International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), 2018) 14.

⁴² Convention 182 art 5.

⁴³ Convention 182 art 5.

⁴⁴ Rowena Bernard B, 'The regional regulation of child labour laws through harmonisation within COMESA, the EAC and SADC' (2023) 23(1) AHRLJ 48,63.

detrimental and life-threatening effects associated with illicit drugs, trafficking, and prostitution, more especially on children,⁴⁵ there is no doubt that this Convention is instrumental in promoting child rights principles.

3.4. The UN Convention on the Rights of the Child (UNCRC 1989)

Another key document critical in addressing children's rights is the Convention on the Rights of the Child (UNCRC). The UNCRC, which has almost universal acceptance,⁴⁶ applies to all persons under the age of 18 unless the age of maturity is reached earlier.⁴⁷ It is the longest and most comprehensive treaty, covering nearly every aspect of a child's life.⁴⁸

The Convention aims to protect the diverse range of rights of children. Specifically, Article 32 of the UNCRC addresses the issues of child labour and “recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”⁴⁹ This provision clearly demonstrates the alignment between the child rights principles and the aspirations for addressing child labour. For example, the involvement of children in hazardous work is prohibited, as it may not be in the child's best interest, let alone pose a threat to their life, survival, and development. Furthermore, encouraging children to participate in activities that are detrimental to their educational, mental, spiritual, moral, or social development cannot be considered meaningful participation or in the child's best interest. This is stipulated by the Committee on the Rights of the Child. This Committee clearly interpreted this by providing that States Parties cannot construe the best interest principle in an overly culturally relativist way to deny children the rights guaranteed in the Convention.⁵⁰

The Convention further reiterates the need for States to establish a minimum age for employment and regulate the period and conditions of work, as also provided for in the Convention on the Minimum Age.⁵¹ Specifically, the CRC encourages State parties to ratify the ILO Conventions

⁴⁵ UNICEF Data (2020) Uncertain pathways (n 33) 39.

⁴⁶ As of 06 August 2025, the CRC had 196 state parties. See <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en> accessed 06 August 2025. Here after in the footnotes referred to as CRC (1989).

⁴⁷ UN Committee on the Rights of the Child, 'General comment No. 12 (2009): The right of the child to be heard' (20 July 2009) UN Doc CRC/C/GC/12, <https://www.refworld.org/docid/4ae562c52.html> accessed 4 March 2025.

⁴⁸ Thoko Kaime, *The Convention on the Rights of the Child: A cultural Legitimacy Critique* (Europa Law Publishing 2011) 17.

⁴⁹ CRC (1989) art 32(1).

⁵⁰ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 38.

⁵¹ CRC (1989) art 32(2)(a).

138 and 182 discussed above.⁵² Furthermore, it is stipulated that this minimum age of employment is not cast in stone and that State parties must progressively review the standards to promote sustained action in achieving the objectives of eradicating child labour.⁵³ It is probable that the review of employment standards will consider the contextual changes taking place within a society. In other words, this allows for the reassessment and review of contextual issues within a community, enabling State Parties to adjust the employment standards for children. Essentially, this is in tandem with the sociocultural perspectives of child labour discussed in the previous chapter.

Furthermore, the UNCRC requires State parties to take measures to prevent children's use in illicit drug production and trafficking,⁵⁴ and protects children against sexual exploitation.⁵⁵ Apart from these provisions directly linked to the worst forms of child labour, as directly noted in the ILO Convention 182,⁵⁶ the UNCRC provides other relevant provisions to tackle the issue. For instance, Articles 28 and 29 guarantee the right to education for children, and Article 31 provides for the right to rest and leisure. To ensure children enjoy these rights, the UNCRC calls upon State parties to take appropriate legislative, administrative, social, and educational measures to protect children from exploitative and hazardous work.⁵⁷

When a child has suffered neglect, exploitation, abuse, torture, or cruel, inhuman, or degrading treatment or punishment, the UNCRC obligates State parties to ensure their social protection and integration.⁵⁸ Article 39 of the UNCRC mandates special protection measures for all abused children, including victims of armed conflict and child labour.⁵⁹ This integration process is linked to other articles that aim to foster the child's social recovery. For instance, children have the right to play, recreation, rest, and leisure, which are essential for their critical thinking, creativity, and socialisation during their early stages of life.⁶⁰ As such, it's vital to address child labour or any work that disrupts these rights and crucial elements of childhood. Moreover, the Committee on the

⁵² UNICEF, *Implementation Handbook* (n 50) 479.

⁵³ Ibid 482.

⁵⁴ CRC (1989) art 33.

⁵⁵ CRC (1989) art 34.

⁵⁶ Convention 182 art 3.

⁵⁷ CRC (1989) art 32(2).

⁵⁸ CRC (1989) art 19.

⁵⁹ CRC (1989) art 39.

⁶⁰ Committee on the Rights of the Child, 'General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (1 July 2003) CRC/GC/2003/4 para2.

Rights of the Child recommends that it is necessary to provide a wide range of services to repatriated children in accordance with the UNCRC integration standards.⁶¹

To effectively implement the entire Convention, the Committee on the Rights of the Child (the Committee) has identified several general principles outlined within the Convention, as previously discussed in Chapter Two. These include non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival, and development (Article 6), and the right to participation (Article 12).⁶²

From the above principles, upon which the Convention is anchored, one would confidently conclude that all manner of exploitation of children has been contained. Illustratively, the following sections briefly outline how these general principles of implementation can be applied to safeguard a childhood free from child labour, which is also linked to the child rights-based principles discussed in the previous chapter.

Firstly, the UNCRC requires state parties to respect and ensure that children's rights are enjoyed, protected, promoted, and fulfilled without any discrimination.⁶³ Thus, even though different social and geographical settings might result in different experiences of childhood and its interpretation, this principle entails that such differences should not lead to discrimination against children. The Committee's interpretation of this principle suggests that addressing discrimination may involve modifying the legal framework and allocating resources and education aimed at changing attitudes.⁶⁴ In light of child labour, an investment in early childhood education and community sensitisation campaigns on the effects of child labour on development would suffice to address the problem while ensuring that the principle of non-discrimination is protected and promoted. Furthermore, it is posited that discrimination may also entail restricting opportunities for play, learning, and education as well as harsh treatment, which may be exploitative and abusive.⁶⁵ Therefore, all types of socialisation and children's exposure to work that borders on such forms of discrimination must be avoided or eliminated.

⁶¹ Vaghri Ziba, Katherine Covell and Gerison Lansdown, 'Article 39: The Right to Physical and Psychological Recovery of Child Victims' in Ziba Vaghri and others (eds) *Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research* (Springer, Cham. 2022) 25.

⁶² Committee on the Rights of the Child, 'General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child' (27 November 2003) CRC/GC/2003/5, para 12.

⁶³ CRC (1989), art 2.

⁶⁴ Committee on the Rights of the Child, 'General Comment No. 5' (n 62) para. 12.

⁶⁵ Committee on the Rights of the Child, 'General Comment No. 7: Implementing Child Rights in Early Childhood' (20 September 2006) UN Doc CRC/C/GC/7/Rev.1, para 11.

Secondly, the UNCRC provides that the child's best interest shall be a primary consideration in all actions concerning children. To realise this, the Convention requires states to undertake all appropriate measures to ensure that children are protected and cared for.⁶⁶ It has been upheld that the provision is mainly used with particular emphasis on matters related to child adoption and the separation of parents and children in conflict with the law.⁶⁷ However, it is posited that an expansive interpretation and reading of the article or this principle allows for an application encompassing all manner of issues promoting the welfare of all children.⁶⁸ Bearing this in mind, there is a good chance that involving children in work that keeps them away from play and school or denies them a chance to sleep is not in the spirit of this provision and poses a significant threat to their childhood experiences wherever they may be.

Thirdly, Article 6 of the Convention provides the principle of life, survival, and development underpinning the implementation of the UNCRC. Like the other principles above, states are obligated to take all necessary measures to ensure that children develop to their full potential.⁶⁹ Additionally, this principle is described as a supreme right, where no derogation is permitted under any circumstances, particularly for children.⁷⁰ Furthermore, the Committee provides that the principle has multiple layers intertwined with other rights, such as the right to health, adequate nutrition, security, education, and play.⁷¹ Given this, the Committee recognises the vulnerability of children's lives, survival, and development when subjected to exploitative work in their childhood under the pretext of traditions and socialisation.⁷² Subsequently, the UNCRC calls upon States parties to ensure that all exploitative work for children is prohibited through legislation and appropriate policies in the spirit of ILO Conventions.⁷³ In this regard, it would be prudent for states, parents, guardians, and all stakeholders involved with children to ensure that the children's childhood experiences are not disrupted while promoting this principle. This is likely to be achieved if this principle is mainstreamed through interventions that promote the welfare of children across all stages of life, from birth and throughout infancy, during the preschool years,

⁶⁶ CRC (1989), art 3(1-2).

⁶⁷ CRC (1989) art 40.

⁶⁸ Kaime (n 48).

⁶⁹ CRC (1989) art 6(2).

⁷⁰ Elaine E Sutherland, 'The Child's Right to Life, Survival and Development: Evolution and Progress' (2015) 26(2) Stellenbosch L Rev 272, 280.

⁷¹ Committee on the Rights of the Child, 'General Comment No. 7' (n 65), para 10.

⁷² Committee on the Rights of the Child, 'General Comment No. 5' (n 62) para 5.

⁷³ Committee on the Rights of the Child, 'General Comment No. 7' (n 65) para 36(e).

and during the transition to school, which is considered a critical period for all childhood experiences.⁷⁴

Lastly, the UNCRC provides for child participation as a principle that should guide the implementation of the Convention, as outlined in Article 12.⁷⁵ However, it is argued that in most African countries, children's participation in decision-making processes remains tokenistic and lacks genuine intent.⁷⁶ Often, children are considered too young to make significant decisions or too immature to be involved in matters affecting their lives or families.⁷⁷ Consistent with these observations, the Committee noted that despite states' progress in enhancing child participation, such participation remains limited due to cultural, social, and traditional practices.⁷⁸ These social and cultural practices reinforce the notion that children are meant to be seen but not heard.⁷⁹ Children are, therefore, socialised as vulnerable members of society who are at the mercy and guardianship of adults. Subsequently, they are occasionally subject to exploitative work on multiple fronts. However, such subjection of children to exploitative practice and disregard for their opinions, views, and thoughts are against Article 12 of the UNCRC. The article urges states to ensure that children can express their views in all matters that affect them.⁸⁰ Furthermore, states are obligated to ensure that the views expressed by these children are given due weight, taking into account the child's age and maturity.⁸¹ It is, therefore, the duty of adults and an obligation of the states to interpret and make meaning out of what might be considered noise, mumbling, and gibberish that children convey, ensuring that the aspirations of this provision are fulfilled. These provisions and the aspirations from the UNCRC and ILO Conventions may be considered far-fetched or alien to an African context. This warranted the adoption of conventions that reflect the realities and context of African countries, such as the African Charter and, specifically, the

⁷⁴ Ibid para 6.

⁷⁵ CRC (1989) art 12.

⁷⁶ Karmen Toros, 'A systematic review of children's participation in child protection decision-making: Tokenistic presence or not?' (2021) 35(3) *Children & Society* 395, 401.

⁷⁷ Ibid.

⁷⁸ UNICEF, *Implementation Handbook* (n 50).

⁷⁹ Abdullah Alhassan, Ebenezer Cudjoe and Margarita Frederico, 'Barriers to children's participation in child protection practice: The views and experiences of practitioners in Ghana' (2018) 34 *Children Australia* 273.

⁸⁰ CRC (1989) art 12.

⁸¹ CRC (1989) art 12(1).

African Charter on the Rights and Welfare of the Child, which has addressed the critical situation of African children.⁸²

3.5. The African Charter on the Rights and Welfare of the Child

It is asserted that while independent nations were in constant conflict over their sovereignty after the Second World War, colonised nations were fighting for their independence.⁸³ As briefly stated in the section above, other scholars have argued that while African countries ratified international human rights instruments, it was considered necessary for Africa to develop its domestic tools. Such domestic legislation was meant to address local conditions, traditions, and concerns that were not addressed in the other international instruments.⁸⁴

In view of the above, Ghana set the ball rolling by becoming the first country to ratify the UNCRC, which triggered a bandwagon effect among other African countries that followed suit and quickly ratified the Convention.⁸⁵ However, it is held that the ratification of the ACRWC did not occur as quickly as that of the UNCRC. It took almost a decade for the African Charter on the Rights and Welfare of the Child (ACRWC) to enter into force.⁸⁶

The ACRWC addresses the peculiar situation of most African children. As explicitly provided in the Convention's Preamble, such unique situations are characterised by socio-economic, cultural, traditional, and developmental circumstances, which include natural disasters, armed conflicts, exploitation, and hunger.⁸⁷ It is the first regional treaty to promote and protect children's rights.⁸⁸ It is divided into substantive parts, providing a catalogue of rights and duties in Part One of the Conventions.⁸⁹ The Second Part of the Convention establishes the monitoring mechanism of the

⁸² Oliver C Ruppel, 'The protection of children's rights under international law from a Namibian perspective' in Oliver C Ruppel (ed), *Children's Rights in Namibia* (Macmillan Education Namibia 2009).

⁸³ Kiwinda Mbondenyi, *International human rights and their enforcement in Africa* (African Books Collective 2011) 2.

⁸⁴ Victor Oluwasina Ayeni, 'The African Human Rights Architecture: Reflections on the Instruments and Mechanisms within the African Human Rights System' (2019) 10 Beijing L Rev 302, 303.

⁸⁵ African Commission on Human and Peoples' Rights, *Ghana: 2nd Periodic report, 1993-2000* <https://www.achpr.org/public/Document/file/English/achpr29_staterep_ghana_2001_eng.pdf> accessed 27 April 2022.

⁸⁶ Amana Talala Mbise, 'The diffusion of the United Nations Convention on the Rights of the Child (UNCRC) more than the African Charter on the Rights and Welfare of the Child (ACRWC) in Africa: The influence of coercion and emulation' (2017) 60(5) International Social Work 1233, 1234.

⁸⁷ ACRWC Preamble para 4.

⁸⁸ Mbondenyi (n 83) 227.

⁸⁹ ACRWC Part I.

treaty through the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).⁹⁰

In arguing whether the ACRWC is just a replica of the UNCRC, Mbise asserts that the ACRWC generally guarantees all the rights provided by the UNCRC. However, limited diversions in the ACRWC make it special as they address the unique situation of an African child, such as harmful cultural practices, armed conflict, and apartheid.⁹¹ Just as the UNCRC, the ACRWC defines a child as any human being under the age of 18. It further provides for the four principles of non-discrimination,⁹² the best interest of the child,⁹³ survival and development, and child participation, as expounded further in Article 4(2).

The treaty accords children's protection from all forms of child labour in Article 15, where it is provided that every child shall be protected from all forms of economic exploitation and performing any work that is likely to be hazardous or interfere with their physical, mental, spiritual, moral, or social development.⁹⁴ Although the term is not explicitly stated in the provision's text, Mbondenyei argues that this is not a challenge. A constructive interpretation of the article could clearly lead to the conclusion that what was meant by “economic exploitation... and work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, or social development,” as provided for in this Article, means child labour.⁹⁵

The ACRWC, like the other international conventions on child labour, imposes obligations on the ratifying states to take appropriate legislative and administrative measures to protect children in both formal and informal employment sectors.⁹⁶ Specifically, it calls on states to regulate the minimum age and duration of work, provide sanctions for effective enforcement, and disseminate information on child labour hazards to all community sectors.⁹⁷ Unique to the African context, the ACRWC offers additional protection against apartheid,⁹⁸ armed conflict, and harmful social and traditional practices that curtail the enjoyment of rights and the welfare of children.⁹⁹

⁹⁰ ACRWC Part II, See Article 32.

⁹¹ Mbise (n 86) 1234. The Charter has specific provisions on harmful cultural practices such as early marriage (art.21), armed conflict (art. 22), and apartheid (art. 26).

⁹² ACRWC art 3.

⁹³ ACRWC art 4.

⁹⁴ ACRWC art 15.

⁹⁵ Mbondenyei (n 83) 239.

⁹⁶ ACRWC art 15(2).

⁹⁷ ACRWC art 15 (2)(a-d).

⁹⁸ ACRWC art 26.

⁹⁹ ACRWC art 21.

Additionally, it is argued that the ACRWC takes into account the African context, which is reportedly absent from other international human rights instruments.¹⁰⁰ Apart from other African-specific contexts, as stated above, the Charter articulates the responsibility of the African child to their family and society. These duties of a child, as outlined in Article 31 of the ACRWC, are subject to age and ability limitations.¹⁰¹ This means that children are allowed to learn and be exposed to responsibilities that help them become productive members of society. However, it is cautioned that these responsibilities should be reasonable and within their age and capacity.¹⁰² Therefore, it seems probable that when this provision is interpreted in conjunction with other child rights principles, children are less likely to be subjected to child labour due to a misinterpretation of their duties. Additionally, expansive interpretation will prevent delinquent behaviour and ensure that children receive care, protection, and security from their society. It has been opined that a purposive interpretation of this provision and all other parts of the Convention will produce an African child who is conscious of their environment and reciprocally carries out civic duties and responsibilities that bind them to their community.¹⁰³

Within its institutional framework, the ACRWC has the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee/ACERWC), established in 1990 and entered into force in 1999.¹⁰⁴ The African Children's Committee has primary functions outlined in Part Two of the ACRWC, including promoting and protecting children's rights, monitoring the implementation of the Charter, interpreting its provisions, and receiving individual communications from parties who believe that children's rights have been violated in their respective countries.¹⁰⁵

Even though the Charter prohibits child labour through Article 15,¹⁰⁶ it is maintained that the issue of child labour in Africa cannot escape the contestation between cultural practices, the economic necessities associated with child labour, as well as international human rights standards.¹⁰⁷ This

¹⁰⁰ Mbise (n 86) 1234.

¹⁰¹ ACRWC art 31.

¹⁰² Julia Sloth-Nielsen and Benyam Dawit Mezmur, 'A dutiful child: the implications of Article 31 of the African Children's Charter (2008) 52(2) JAL 159, 172.

¹⁰³ Ibid 188.

¹⁰⁴ Ayeni (n 84) 303.

¹⁰⁵ See Chapter Three of the ACRWC on the Mandate and Procedure of the Committee (n 34).

¹⁰⁶ ACRWC art 15.

¹⁰⁷ Nkatha Murungi and Nqobani Nyathi, 'Child labour' in Julia Sloth-Nielsen, Elvis Fokala and Godfrey Odongo (eds), *The African Charter on the Rights and Welfare of the Child: A Commentary* (Pretoria University Law Press 2025) 221.

assertion agrees with the sociocultural and child rights perspectives in this thesis. However, this contestation will most likely be fully cleared once the ACERWC issues its General Comment on Article 15 to clarify its content and facilitate the reporting process regarding child labour.¹⁰⁸ Meanwhile, the ACERWC's Working Group on Children's Rights and Business notes that eliminating child labour in Africa aligns with Aspiration 7 of Africa's Agenda for Children 2040 and Goal 8 of the Sustainable Development Goals (SDGs).¹⁰⁹ Besides, the ACERWC opines that dealing with child labour, more especially sexual exploitation, one of the worst forms of child labour, has to be done through the use of the general child rights principles.¹¹⁰ This perspective is adopted in this thesis and has been discussed in the previous chapter.

These normative, institutional, and procedural arrangements of the ACERWC only underscore the need to address child labour in Africa from different perspectives. This aspiration is further indicated in the Draft Action Plan for eradicating child labour in Africa of the AU.¹¹¹ For example, the Action Plan advocates for regional integration, collaboration between employers' and workers' organisations, enforcement of legislation on child protection, and the involvement of civil society.¹¹² Additionally, the Action Plan is grounded in the principles of non-discrimination, the child's best interest, and participation, serving as guiding principles for its implementation.¹¹³ It is held that the AU's multi-layered approach combines human rights treaties and the broader development agenda, which can be used to comprehensively address child labour on the continent.¹¹⁴ Other than being guided by the child rights principles in addressing child labour, the ACERWC further proposes the systems-strengthening approach to child protection, which entails

¹⁰⁸ African Children's Committee 'Thirtieth ordinary session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)' <<https://www.acerwc.africa/sites/default/files/2022-07/30th-Session-Report-Eng.pdf>> accessed 03 February 2024. However, there is no General Comment that has been developed specifically on child labour, See Murungi and Nyathi (n 107) 230.

¹⁰⁹ African Committee of Experts on the Rights and Welfare of the Child's Working Group on Children's Rights and Business, 'Statement on the World Day Against Child Labour' (ACERWC, 12 June 2023) <<https://www.acerwc.africa/en/article/statements/statement-On-the-World-Day-Against-Child-Labour-2023>> accessed 3 March 2025.

¹¹⁰ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No 7 on Article 27 of the ACRWC: Sexual Exploitation' (ACERWC, July 2021).

¹¹¹ African Union, 'Draft Ten Year Action Plan on Eradication of Child Labour, Forced Labour, Human Trafficking and Modern Slavery in Africa (2020-2030): Agenda 2063-SDG Target 8.7' (African Union 2019).

¹¹² Ibid 14.

¹¹³ Ibid 15.

¹¹⁴ Murungi and Nyathi (n 107) 224.

identifying, establishing, and strengthening the (coordinated) response to violations relating to abuse, neglect, maltreatment, and exploitation.¹¹⁵

The context above illustrates the robust legal protection afforded to children through international and regional legal frameworks. In respect of the provisions on the elimination of child labour and the safety of children's rights discussed above, the Malawi government not only adopted and ratified the Conventions but also domesticated these instruments. The government developed specific laws that mirror the international standards aimed at addressing child labour and protecting children's rights. The following section discusses these laws and highlights the need to establish a framework for examining and understanding child labour through an integrated childhood perspective in the context of Malawian communities.

3.6. Child labour protection in Malawi

Child labour in Malawi is primarily associated with the agricultural industry, particularly tobacco and tea farming.¹¹⁶ As a sector that ranks high on the list of industries where child labour cases dominate, it is unsurprising that most domestic and international projects dealing with child labour problems are implemented in regions and districts where tobacco and tea are mostly grown. Some of the prominent programmes include Accelerating Action for the Elimination of child labour in supply chains in Africa (ACCEL AFRICA) by ILO and local partners;¹¹⁷ Eliminating Child Labour in Tobacco (ECLT) Foundation projects;¹¹⁸ as well as the Child Labour Elimination in Action for Real Change (CLEAR), and Achieving Reduction of Child Labour in Support of Education (ARISE).¹¹⁹ Even though there have been such programmes, over 38 per cent of children, representing over 1.9 million children between the ages of 5 and 17, are engaged in child labour.¹²⁰

¹¹⁵ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No. 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection' (2018) para 30- 32.

¹¹⁶ ILO, *Vulnerabilities to child labour*, International Labour Organization, 2022 <https://www.ilo.org/global/topics/child-labour/publications/WCMS_845129/lang--en/index.htm > accessed 08 June 2024.

¹¹⁷ ILO, 'ACCEL Africa-Malawi' <<https://www.ilo.org/projects-and-partnerships/projects/accelerating-action-elimination-child-labour-supply-chains-africa-accel> > accessed 10 June 2025.

¹¹⁸ Otañez Marty, Monique Muggli, Richard Hurt and Stanton Glantz, 'Eliminating child labour in Malawi: a British American Tobacco corporate responsibility project to sidestep tobacco labour exploitation' (2006)15 (3) Tobacco Control 224.

¹¹⁹ Government of Malawi, *Malawi: 2nd - 3rd Periodic Report, 2015-2019* <<https://www.achpr.org/states/statereport?id=132>> accessed 10 June 2024.

¹²⁰ National Statistics Office of Malawi (NSO) and International Labour Office (ILO), *Malawi: 2015 National child labour survey report* (Fundamental Principles and Rights at Work Branch and ILO 2017).

Such reported cases also occur in the context where the African Commission applauds the country for a vibrant legal and institutional framework that supports the promotion of children's rights.¹²¹

Like other African countries, Malawi recognises the importance of children and their unique place in society. This realisation is recognised in the ratification of different international treaties such as the UNCRC in 1991, the ILO's Conventions 138 and 182 in 1999,¹²² and the ratification of the African Charter on the Rights and Welfare of the Child in 1999.¹²³ Furthermore, Malawi buttressed its commitment to the protection and promotion of children's rights by signing and ratifying the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, as well as the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2009 and 2010 respectively.¹²⁴ However, Malawi has not signed the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, which enables individual communications regarding the protection of children's rights.¹²⁵

According to the 2015-2019 periodic report submitted to the African Commission, the Malawi government has made strides in promoting children's rights and addressing child labour issues through several initiatives. Such strides include the Constitutional amendment by increasing the marriage age from 16 to 18; developing the List of Hazardous Work for Children Order; the adoption of the National Code of Conduct and National Action Plan on child labour; and the implementation of various programmes including; Child Labour Elimination in Action for Real Change (CLEAR), and Achieving Reduction of Child Labour in Support of Education (ARISE).¹²⁶

For this thesis, it will be convenient to examine how the legal framework in Malawi reflects the promise of protection from child labour for children, as provided for in the other Convention

¹²¹ African Commission on Human and Peoples Rights, *Concluding Observations and Recommendations on the 2nd and 3rd Combined Periodic Report of the Republic of Malawi, 2015-2019* (African Commission on Human & Peoples' Rights, 2022) < <https://www.achpr.org/states/statereport?id=132> > accessed 10 June 2024.

¹²² ILO, *Ratification by country*, (n 1).

¹²³ ACERWC, Ratifications table < <https://www.acerwc.africa/ratifications-table/> > accessed 01 June 2025.

¹²⁴ OHCHR, 'View the ratification status by country or by treaty' < https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=e > accessed 03 June 2025.

¹²⁵ OHCHR, 'Ratification Status for CRC-OP-IC - Optional Protocol to the Convention on the Rights of the Child' < https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=e > accessed 26 December 2024. The implication of this is yet to be researched.

¹²⁶ Government of Malawi (n 119).

discussed above. It has undoubtedly also guided some of the projects aimed at eliminating child labour. This examination also sets the ground for assessing how the current legal framework addresses the realities of child labour, which will be explored further in Chapter 5.

3.6.1. The Constitution of the Republic of Malawi 1994 (amended 2017)

At the domestic level, the Malawi Constitution recognises children's rights in two ways: firstly, as a matter of national policy, and secondly, as a matter of enforceable and binding rights.¹²⁷ For instance, the Constitution, in Section 13 (h), obliges the State to promote the welfare and development of Malawians by progressively adopting and implementing policies and legislation aimed at encouraging and promoting conditions conducive to the full development of healthy, productive, and responsible members of society.¹²⁸ As can be discerned from this provision, promoting conditions that will result in the full development of Malawian citizens (including children) is broad and widespread. It is most likely that these conditions are present in all manner of life, such as the children's health, social, educational, economic, and spiritual development. Besides, the article calls for the progressive development of such policies and legislation.¹²⁹ This suggests that there must be continuous learning and development of frameworks that respond to the developmental and contextual needs of children. Thus, such policies shall cover all childhood stages from birth to the most recognised child age of eighteen, which covers the age bracket for childhood as interpreted by the UNCRC's Committee.¹³⁰

Furthermore, the Constitution's Bill of Rights explicitly guarantees that all children are entitled to safety and security, and are protected from economic exploitation or any treatment, work, or punishment that is likely to interfere with their education, physical, mental, spiritual, or social development.¹³¹ This provision protects children from child labour, which is similar to the provisions provided in the ILO Conventions and the ACRWC. It is most likely and convenient that the drafters intended that the provisions prohibiting child labour apply to persons under eighteen. This claim is being made by considering how conveniently the provisions prohibiting child labour

¹²⁷ World Vision International and The Child Rights Network for Southern Africa, *Child Rights Barometer: Measuring Government Efforts to Protect Girls' and Boys'* (WVI and CRNSA, 2018) < <https://www.wvi.org/publications/report/malawi/child-rights-barometer-measuring-government-efforts-protect-girls-and> > accessed 03 June 2024.

¹²⁸ Constitution of the Republic of Malawi 1994 (as amended through 2017) s 13(h).

¹²⁹ Ibid s 13.

¹³⁰ Committee on the Rights of the Child, 'General Comment No. 7' (n 65) para 4.

¹³¹ Constitution of the Republic of Malawi 1994 (n 128) s 23(5).

and the definition of a child as a person under eighteen years are placed near each other in the Malawi Constitution.¹³²

The Malawi Constitution also recognises the role of education in addressing child labour and guarantees this through the right to education in Section 25.¹³³ Education practitioners and child rights advocates have argued and promoted the link between child labour and education. For instance, the ILO's IPEC program on combating child labour through education was conceptualised around education outputs. It was submitted that a reasonable and affordable education system contributes to keeping children away from child labour practices and is considered a central component in eliminating child labour.¹³⁴ Similarly, programmes that promote access to quality education have been opined to have helped reduce child labour cases among cocoa-growing families in Ghana and Côte d'Ivoire.¹³⁵

In Malawi, a commitment to children's education has been made through promoting a life cycle approach to quality learning and advocating for Early Childhood Development (ECD). In this approach, it is believed that intervention in Early Childhood Development (ECD) yields a high rate of return, as it lays the foundation for lifelong learning through healthy brain development that begins from conception and fosters cognitive and non-cognitive skills.¹³⁶ It is not surprising, therefore, that the government of Malawi promotes the right to education by making primary education compulsory and free for all citizens of Malawi through a constitutional provision.¹³⁷

As indicated above, the role of education in addressing child labour, as is also provided for in the Malawi Constitution, has been appraised and commended by the ILO IPEC programme and other scholars. Justifying this claim in their study on household and context determinants of child labour in 16 low-income countries in Africa and Asia, Webbink and Smits found that education helps

¹³² Constitution of the Republic of Malawi 1994 (n 128) s 23(5) and s 23(6).

¹³³ Ibid s 25.

¹³⁴ ILO, *Combating Child Labour through Education, International Programme on the Elimination of Child Labour* (IPEC, 2004) < <https://www.ilo.org/ipecinfo/product/download.do?type=document&id=7850> > accessed 30 June 2022.

¹³⁵ International Cocoa Initiative, *Can Cash Transfers Reduce Child Labour in Cocoa?* (International Cocoa Initiative 2022) < <https://www.cocoainitiative.org/knowledge-hub/resources/cash-transfers-resilience-and-child-labour-ghana> > accessed 14 June 2024.

¹³⁶ UNICEF, *Basic Education and Youth Development, Early Childhood Development Sectoral and OR+(Thematic) Report* (UNICEF Malawi, 2018) < <https://open.unicef.org/sites/transparency/files/2020-06/Malawi-TP4-2018.pdf> > accessed 19 September 2024.

¹³⁷ Constitution of the Republic of Malawi 1994 (n 128) s 13(f)(ii).

children avoid situations that can induce child labour.¹³⁸ They further found that educated mothers play a critical role in influencing their children's education and often act to keep them away from work, which is detrimental to the children's education and health.¹³⁹ Similarly, Basu took the position that social and policy interventions such as education can potentially break the poverty dynastic trap that leads children to be involved in child labour.¹⁴⁰ Subsequently, legislation, programmes, and national action plans on child labour have highlighted education as a viable solution. In this regard, the Malawi Education Act echoes the Constitution. It provides free and compulsory primary education for every child under 18,¹⁴¹ which may contribute to keeping children in school and potentially address social problems, including child labour.

3.6.2. Employment Act 2000

Another legislative effort to address child labour problems in Malawi is the Employment Act 2000. The Act supplements the provisions of the Constitution by stipulating that no person under the age of fourteen shall work or be employed in any occupation or activity that is likely to harm their health, safety, education, morals, or development.¹⁴²

By prohibiting work for children under fourteen, the Act aligns with the childhood age bracket that the Committee on the Rights of the Child designates as a critical period for development. At the same time, it recognises that Malawian children's context is unique, and a total ban on children might not be realistic but might cause even more harm, as has been argued elsewhere.¹⁴³ Furthermore, even though the ACRWC only obligates the State Parties to set a minimum age for admission to employment without specifying the age,¹⁴⁴ the minimum age of fourteen, as provided in the Employment Act 2000, falls within the age range for accepted light work if the work is not

¹³⁸ Ellen Webbink, Jeroen Smits, and Eelke de Jong, 'Child labour in Africa and Asia: Household and context determinants of hours worked in paid labor by young children in 16 low-income countries (2015) 27 The European Journal of Development Research 84, 87.

¹³⁹ Ibid.

¹⁴⁰ Kennedy Basu and Zafiris Tzannatos, 'The global child labor problem: what do we know and what can we do?' The World Bank Economic Review, 17(2), 147-173

¹⁴¹ Education Act 2013 s 13.

¹⁴² Employment Act 2000 s 21(1)(a).

¹⁴³ Patrick M Emerson, Vladimir Ponczek, and André Portela Souza, 'Child labor and learning' (2017) 65(2) Economic Development and Cultural Change, 265,294.

¹⁴⁴ ACRWC art 15.

harmful to children's health or development and does not prevent them from attending school regularly.¹⁴⁵

The Act prohibits the employment of any person under fourteen in any occupation or activity that is prejudicial to children's attendance at school or any other vocational or training programme.¹⁴⁶ Here again, the importance of education as a catalyst for change and as a tool for addressing child labour is emphasised. To further reinforce the Employment Act 2000 and the provision on hazardous work in the ILO Convention 138, Malawi has the Employment Order of 2012, which encapsulates prohibitions on hazardous work for children.¹⁴⁷ The Order outlines the conditions of work that must be followed when employing children. These include the hours they are allowed to work, parents' consent when the child is to work at night (between 6 PM and 9 PM), and safety measures after work, such as providing transportation to their homes.¹⁴⁸ Furthermore, the Order outlines a schedule of prohibited work for children in various sectors, including agriculture, industry, entertainment, tourism, health, and others.¹⁴⁹

The Act allows for the employment of children in age categories below eighteen. It provides that no person under the age of fourteen shall be employed or work in any public or private enterprise.¹⁵⁰ However, this provision only applies to work done in vocational and technical schools or other training institutions.¹⁵¹ It also provides that no person between the ages of fourteen and eighteen shall work or be employed in any hazardous work.¹⁵²

Unfortunately, it is argued that there has been limited progress in harmonising Malawi's subsidiary laws to be consistent with the Constitution's provisional amendment, and many people are not aware of the Constitutional amendment or the laws in general.¹⁵³ The contradiction between the Constitution and the Employment Act 2000 regarding the flexibility of work for children likely makes it difficult to combat child labour, especially for community development workers who

¹⁴⁵ Convention 138 art 7(1). The age of 14 is reported as below the international standards by US Department of Labour (n 8).

¹⁴⁶ Employment Act 2000 s 22(1)(b).

¹⁴⁷ Employment (Prohibition of Hazardous Work For Children) Order 2012 (Malawi).

¹⁴⁸ Ibid para 4(1-3).

¹⁴⁹ Ibid para 6.

¹⁵⁰ Employment Act 2000 s 21.

¹⁵¹ Ibid s 21(2).

¹⁵² Ibid s 22(1).

¹⁵³ African Union, 'Concluding Observations and Recommendations ACERWC on the Initial Report of the Republic of Malawi on the Status of Implementation of the ACERWC' (AU 2018) para. 10.

work directly with people on the ground. This is probably worse for parents who prioritise their children's work over education, as discussed in Chapter 4. Often, it is challenging for parents to appreciate and understand why eighteen-year-olds are considered children in the law, despite the community's expectation that they act like adults, given their socialization, where they are expected to conform to tradition.¹⁵⁴

Furthermore, the prohibition of work that the Employment Act 2000 provides through Article 21 does not apply to domestic work done in private homes.¹⁵⁵ Thus, while Labour Officers have the power to inspect the involvement of children in child labour practices in companies and workplaces where they suspect child labour is happening, their powers to intervene do not extend to homes. Unfortunately, this is where child labour is more prevalent than in the wage labour market, where such inspections are allowed.¹⁵⁶ It's no wonder that the revision of this section has been included as a critical area of intervention in Malawi's National Action Plan on Child Labour (NAPCL).¹⁵⁷ This revision is being proposed in conjunction with the ratification of the ILO Convention 189 on Domestic Work, which, among other things, extends the scope of inspection to domestic work.¹⁵⁸

In the institutional arrangements of the Act, Labour Officers working under the direction of the Labour Commissioner are provided for. The Act empowers Labour Officers to enter any workplace or suspected workplace to inspect whether laws related to persons' employment are being strictly observed.¹⁵⁹ Furthermore, the Act obliges every employer to maintain a register of any person under eighteen years of age employed by or working for them.¹⁶⁰ This provision recognises that children under eighteen can be employed, and its effectiveness depends on the goodwill and compliance of the companies and the employees in disclosing their employees' actual ages.

¹⁵⁴ Afua Twum-Danso, 'The construction of childhood and the socialisation of children in Ghana: Implications for the implementation of Article 12 of the CRC' In Barry Percy Smith and Nigel Thomas (eds), *A Handbook of children and young people's participation* (Routledge 2009) 158.

¹⁵⁵ Employment Act 2000 s 21(2).

¹⁵⁶ Eric Edmonds, 'Child Labor' in Paul Schultz and John A. Strauss (eds) *Handbook of Development Economics* (Elsevier 2007) 6.

¹⁵⁷ Ministry of Labour, Youth, Sports and Manpower Development, *National Action Plan on Child Labour 2020-2025* NAP II. (Ministry of Labour, Youth, Sports and Manpower Development, 2017) 24.

¹⁵⁸ ILO, Domestic Workers Convention, C189, 2011 art 17(3).

¹⁵⁹ Employment Act 2000 s 9 (1)(b).

¹⁶⁰ Ibid s 23.

Additionally, the Employment Act 2000 provides that any person who contravenes any provision related to the employment of children shall be guilty of an offence and liable to a punishment.¹⁶¹ The establishment of institutions and structures mandated to ensure that children are protected from exploitation from child labour in the Employment Act 2000 aligns with what is provided for in the UNCRC and the ACRWC, where states are asked to provide protective measures for monitoring, identifying, and reporting child rights violations.¹⁶²

Furthermore, the Employment Act 2000 retaliates the international standards, and calls upon the state to put measures that punish or contravene the enjoyment of children's rights through penalties and sanctions in Convention 128¹⁶³ and ACRWC.¹⁶⁴ However, it is submitted that, given the existence of these laws, their enforcement is generally limited due to weak national legal structures and procedures.¹⁶⁵ For instance, the ACERWC, in its Concluding Observations on Malawi's First Periodic Report, notes the importance of effectively enforcing provisions in various legislations to combat child labour. Among other things, it noted the challenge of labour inspectors enforcing child labour laws, particularly concerning the restrictive and bureaucratic procedures required to obtain a warrant for home inspections.¹⁶⁶ Furthermore, it has been reported that, where available, child labour cases are resolved through an out-of-court settlement with support from Non-Governmental Organisations and not as an effort by the government.¹⁶⁷ In this thesis, these challenges are fully appreciated and demonstrated through the perspectives of the communities, as discussed in Chapter 5.

3.6.3. Child Care, Protection and Justice Act 2010

Malawi has the Child Care, Protection and Justice Act 2010 (CCPJA 2010), which presents a significant reform and a step towards aligning the legal and regulatory framework for matters

¹⁶¹ Ibid.

¹⁶² ACRWC art 16(2).

¹⁶³ Convention 138 art 7.

¹⁶⁴ ACRWC art 15(2).

¹⁶⁵ Athena K. Ramos, 'Child labor in global tobacco production: a human rights approach to an enduring dilemma' 2018 20(2) Health and Human Rights 235, 236.

¹⁶⁶ African Committee of Experts on the Rights and Welfare of the Child, 'Concluding Observations and Recommendations to the Government of the Republic of Malawi on its First Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child' (ACERWC, January 2025), para 39.

¹⁶⁷ US Department of Labour, 'Child Labor and Forced Labor Reports: Malawi'

< https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2016/Malawi2016Report.pdf > accessed 27 December 2024.

involving children in Malawi.¹⁶⁸ The Act consolidates the law relating to children by making provisions for childcare and protection, as well as for child justice, and for matters concerning the social development of children and related matters.¹⁶⁹ In a way, the consolidation helped in putting together all child-related laws for easy use and reference.

Section 2 of the Act defines a child as any person below the age of sixteen, contrary to the repealed provision of the Constitution that defines a child as any person below the age of eighteen. Furthermore, the Act protects children from harmful practices such as child abduction, child trafficking, harmful cultural practices, and forced marriage.¹⁷⁰ It specifically provides that no person shall force a child into providing labour for the income of a parent, guardian, or any other person.¹⁷¹ There appears to be an assumption in the provision that children are or may be forced to work for the economic benefit of an adult or guardian, which is not always the case. Children living alone in child-headed households or caring for ailing grandparents work to earn an income to meet their needs, support their development, and ensure household survival. Consistent with this, a study by Plan International on child labour in tobacco growing districts in Malawi found that orphaned children and those living with their grandparents are involved in tobacco picking and grading to support themselves and their siblings.¹⁷²

Considering that children may already be subjected to exploitation and abuse of different kinds, the CCPJA 2010 mandates the social welfare office to provide a place of safety for children who have been repatriated from trafficking, abduction, or any other harmful practices such as child labour.¹⁷³ This place of safety has been defined as an appropriate temporary place for a child in need of care and protection, including a safe or foster home.¹⁷⁴ Although these safety spaces are often under-resourced and not easily accessible, the Malawi government provides safety spaces through child protection service points, including community-based safe spaces for children aged

¹⁶⁸ Lea Mwambene and Obdiah Mawondza, 'Children's Rights Standards and Child Marriage in Malawi' (2017) 17 *African Studies Quarterly* 21,29.

¹⁶⁹ See title of the Child Care, Protection and Justice Act, 2010 (CCPJA 2010).

¹⁷⁰ *Ibid* s 78-81.

¹⁷¹ *Ibid* s 82(c).

¹⁷² Glynis Clacherty, *Hard work, Long hours and little pay* (Plan Malawi, Clacherty & Associates Education & Social Development, 2009) 29.

¹⁷³ CCPJA 2010 s 84(d).

¹⁷⁴ *Ibid* s 2.

6 to 18.¹⁷⁵ Article 24 provides that a police officer, a social welfare officer, a chief, or any community member is responsible for taking a child into a place of care or temporary custody.¹⁷⁶ This expansive allocation of responsibility may have been due to the issue of limited capacity in the social welfare offices. However, it is posited that bestowing responsibility of providing temporary shelter to children to any community member is usually impractical, as people are often afraid that their act of goodwill in taking a child to a place of safety or in their own homes might be interpreted as kidnapping.¹⁷⁷ Furthermore, even though this provision implores the principle of care for children on any member of society, this wholesome responsibility leaves the child in need of care with practically no one. This is because no explicit duty bearer would be held accountable, as everyone would assume that another authority or person would act as a good Samaritan to the child.¹⁷⁸

Aligning with the UNCRC and the ACRWC, the CCPJA 2010 recognises the child's responsibility. Such duties are towards parents, guardians, superiors, and elders. The children are also called upon to serve their communities and contribute to their development into valuable members of society.¹⁷⁹ Nevertheless, while recognising children's traditions, culture, and social development, as well as the African context in which children are socialised to be part of a broader community, the Act provides that these should not impede the child's rights by considering their ability and age.¹⁸⁰ This is in tandem with the ACERWC's position, which recognises that while the child's right to participate is guaranteed and the child's responsibility towards their parents is recognised, this should be implemented in accordance with the child's age, maturity, and competencies.¹⁸¹

¹⁷⁵ UNICEF, *Country Office Annual Report 2022: Malawi* (UNICEF 2022) < <https://www.unicef.org/media/136166/file/Malawi-2022-COAR.pdf> > accessed 25 September 2024.

¹⁷⁶ CCPJA 2010, s 24.

¹⁷⁷ Memory Jayne Tembo and Siv Olteda, 'Social work and families in child welfare in Malawi: Social workers considerations when placing a child outside the home' (2015) 10(1) *Journal of Comparative Social Work* 50, 53.

¹⁷⁸ During the research in Nsanje, it was reported that there is generally limited coordination between stakeholders in child protection initiatives. As a result, some eligible vulnerable children are left out as project beneficiaries. This is because everyone takes on the role of a duty bearer and leaves out the key ministries and departments responsible for children's welfare. See also NAP II (n 157) 29.

¹⁷⁹ CCPJA 2010 s 4(e).

¹⁸⁰ *Ibid.*

¹⁸¹ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child on "The Responsibilities of the Child"' (2017).

It is posited that the CCPJA 2010 upholds the cardinal principle of the child's best interest through its multiple provisions.¹⁸² Furthermore, the Act is considered a principal piece of legislation concerning children in Malawi.¹⁸³ Possibly, this is because the Act harmonises almost all laws relating to children and addresses the issue of numerous disjointed and unconsolidated legislations that deal with children. In this case, it is contended that the Act comprehensively incorporates provisions concerning various aspects of children.¹⁸⁴ In this regard, it appears that the CCPJA 2010 addresses most of the challenges related to child protection and care in Malawi. It covers nearly all matters related to the child's life stages and experiences as they progress through childhood. Despite other challenges that might be considered inconsistent with the 2017 Amended Malawi Constitution, the Act provides a benchmark for addressing and promoting children's rights by complementing the rights provided in the Constitution and other international instruments.

3.6.4. Child labour-related policies in Malawi

Following the provision in the Malawi Constitution that notes children's rights as a matter of policy, the Malawi government developed a National Policy on Early Childhood Development in 2003, which was revised in 2006 to address emerging issues.¹⁸⁵ The policy aims to promote a comprehensive, holistic approach to Early Childhood Development (ECD) programs and services for children from conception to eight years of age.¹⁸⁶ It prioritises providing and establishing ECD centres that offer services to stimulate children's learning and development. The policy also focuses on developing ECD transition services, including establishing primary schools within walking distance for children and providing protection to guard against abuse, neglect, and exploitation.¹⁸⁷

The development of ECD policies and their related programmes has been praised for contributing to the communal care of orphaned children. It is crucial in preparing them for primary school

¹⁸² Benyam D Mezmur, 'Child justice in Malawi' (2006) 8(2) Sabinet African Journal < https://journals.co.za/doi/pdf/10.10520/AJA00000003_81 > accessed 20 June 2024.

¹⁸³ Mwambene and Mawondza (n 168) 27.

¹⁸⁴ Fatsani Mateo Chitha, 'Malawi's legislative integration and the court's interpretation and application of 'the best interests of the child' principle vis-à-vis international and regional standards' (2024) 1(1) Kenyatta University Journal of Children's Rights 84,90.

¹⁸⁵ Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) *National Policy on Early Childhood Development* (MoGCDSW, 2017) 3.

¹⁸⁶ Ibid 17.

¹⁸⁷ Ibid 18.

education.¹⁸⁸ Similarly, UNICEF's Basic Education and Youth Development Program (BEYD) in Malawi, from 2013 to 2018, also supports Early Childhood Development (ECD) programs. The program is claimed to have enhanced children's readiness for primary education, which in turn affects other educational variables, such as retention.¹⁸⁹ Additionally, it has been found that ECD frees up time for mothers and guardians to perform other economically productive duties. Besides, ECD programs further take children away from abusive experiences at home and provide care and protection for children at risk of mistreatment and exploitation, such as child labour, sexual abuse, and human trafficking.¹⁹⁰ All these programmes and auxiliary acts to the Constitution align with the international standards and obligations that states are called upon to implement to address the problem of child labour, considering the contextual challenges outlined in the UNCRC and the ACRWC.¹⁹¹

Furthermore, in line with its constitutional obligation to address child rights through policy interventions, the Malawi Government developed the National Action Plan on Child Labour 2020-2025 (NAP II) to guide the implementation of the National Child Labour Policy through the Ministry of Labour.¹⁹² Among other things, the policy outlines governments' strategies for dealing with child labour, including the worst forms of child labour. Through this action plan (NAP II), the government envisage tackling child labour through interventions in the (1) critical areas of laws and policy, (2) institutional and human resource capacity of stakeholders involved in child labour elimination; (3) public education and awareness; (4) prevention, withdrawal, rehabilitation, and social re-integration of children in child labour; (5) mitigating HIV/AIDS and other chronic illnesses; and (6) improving the availability of information on child labour.¹⁹³

The NAP II also recognises that tackling child labour in Malawi requires strategic direction that allows for a legal and policy framework to enable the extension of labour inspectors' mandates to the informal sector and private homes, the development and implementation of community-led

¹⁸⁸ Allister C Munthali, Peter M Mvula and Lois Silo, 'Early childhood development: the role of community based childcare centres in Malawi' (2014) 3(1) SpringerPlus 1,7.

¹⁸⁹ UNICEF (n 136).

¹⁹⁰ Munthali, Mvula and Silo (n 188).

¹⁹¹ See CRC (1989), art 32(2); ACRWC art 15(2). The obligations for addressing child labour entails formulation of policies, which is an administrative and legislative measure by the Malawi Government.

¹⁹² NAP II (n 157).

¹⁹³ Ibid xiv.

initiatives, and their active participation.¹⁹⁴ It further acknowledges the importance of building the capacity of different stakeholders, including teachers, and developing child rights clubs in schools.¹⁹⁵ This is because the government recognises the gap in legislation, its implementation, enforcement, and the general awareness of stakeholders regarding what child labour entails.¹⁹⁶ All these measures reflect the aspirations for addressing child labour and promoting children's rights through administrative and legislative approaches that the states are obliged to undertake as provided for in the international instruments.¹⁹⁷

3.7. Alignment with international frameworks

While Malawi's legal framework discussed above aligns with the international children's rights instruments and offers a strong foundation for protecting children from child labour, the ILO argues that some gaps in the legal framework provide room for the proliferation of the problem.¹⁹⁸ These challenges have been identified in the enforcement mechanisms and the institutional arrangements in the legal frameworks.

Among other things, it has been identified that the Employment Act 2000 provides for the Labour Inspectors. However, their mandate is limited to workplaces and not applicable to domestic homes. Besides, they are required to obtain a warrant should they seek to work in domestic and private homes. Furthermore, there are capacity gaps where a few Labour Inspectors are available to cover their catchment area. Additionally, the penalties imposed for contravening the Employment Act 2000 seem ineffective,¹⁹⁹ which will be thoroughly explored in the following chapters.

The challenges briefly outlined above have been lamented by the African Commission. While applauding the strides made by Malawi in the implementation of the ACRWC and the promotion of children's rights through enacting the CCPJA 2010, among other efforts, the African Commission notes that there is a weak implementation of national laws and policies, which inhibits Malawi's ability to ensure that all its citizens enjoy the rights guaranteed under the African Charter,²⁰⁰ which are also available in domestic legislation.

¹⁹⁴ Ibid xv.

¹⁹⁵ Ibid xvii.

¹⁹⁶ See NAP II (n 157), 31-33 on strategic direction for elimination of child labour in Malawi.

¹⁹⁷ CRC (1989) art 32(2); ACRWC art 15(2).

¹⁹⁸ ILO, *Understanding child labour* (n 41) 72.

¹⁹⁹ ILO, Direct Request (n 79).

²⁰⁰ African Union (n 153).

Nonetheless, Malawi's legislation displays a commitment to protect children from child labour, as provided for in Conventions 138 and 182 discussed above. For instance, regarding the provisions on age stipulated in Convention 138, Malawi has set the minimum age for employment of children at fourteen, which is within the threshold set in the ILO's Minimum Age Convention.²⁰¹ Although it is opined that the minimum age of fourteen does not meet international standards,²⁰² this variation may be attributed to the unique circumstances surrounding children in Malawi, as permitted by Convention 138. Here, Convention 138 provided that a Member State, whose economy and educational facilities are insufficiently developed, may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.²⁰³

Additionally, Malawi has a list of work that is considered hazardous for children,²⁰⁴ which aligns with the standards provided for in Convention 182 on the worst forms of child labour. Consistent with the urgency that is needed in mitigating the worst forms of child labour and the harm this type of exploitation has on children, Malawi also has eighteen as a minimum age for children regarding the worst forms of child labour.²⁰⁵

Just as with the ILO convention, Malawi has taken strides in formulating domestic legislation that considers the general implementation principles provided for in the UNCRC. For instance, the recent amendment of the age provisions from sixteen to eighteen in the Malawian Constitution is viewed as a response to align with international standards regarding the understanding of a child.²⁰⁶

Furthermore, recognising the diversity and complexity marring child labour mitigation, the UNCRC calls upon state parties to take all appropriate national, bilateral and multilateral measures to prevent the exploitation of children.²⁰⁷ Consistent with this requirement and provision, Malawi joins the other members of the Southern African Development Community (SADC) in coming up with accelerated and coordinated regional efforts and plans to address child labour through rights-

²⁰¹ Employment Act 2000, s 21(1)(a).

²⁰² US Department of Labour (n 8).

²⁰³ Convention 138 art 4.

²⁰⁴ Employment Order (n 147) para 6.

²⁰⁵ Ibid.

²⁰⁶ Constitution of the Republic of Malawi 1994 (n 128) s 23.

²⁰⁷ CRC (1989) art 34(1).

based approaches and the best interests of the child as some of the fundamental driving principles and strategies of managing child labour.²⁰⁸

3.8. Conclusion

The normative framework at international and national levels, as discussed above, has demonstrated how child labour is addressed in several ways. The cardinal principle of children's rights, as provided for in the international legal framework, has not only informed the provisions available in the Bill of Rights in the Malawian Constitution but has also been reflected in various legislations dealing with the engagement of children in work. Examples are the Employment Act 2000 and the CCPJA 2010. Additionally, the chapter has highlighted that enacting the different legal frameworks in Malawi and the amendments that have been taken not only recognise the standards set by the international legal framework but also consider some selected contexts of children in Malawi. It is justifiable to conclude that the legal framework on child rights in Malawi, specifically dealing with child labour, seems comprehensive enough to contribute towards addressing the child labour problem in Malawi.

However, there are challenges in enforcing mechanisms and institutional arrangements that prevent child labour laws from being optimally effective in protecting children, which need to be addressed while considering an integrated childhood perspective in a Malawian context. Meanwhile, there are contradictions within different Malawian legislation, as well as in how communities perceive a child, let alone childhood. Furthermore, there are institutional challenges in legislation where structures meant to tackle child labour seem to be limited., This could be tackled if the community's perspective on child labour were adequately considered. Moreover, procedural challenges in enforcing and implementing child labour laws discussed above seem to arise from the limited recognition of the importance and influence of contextual perspectives and community-based approaches in addressing social issues rooted in grassroots structures. In other words, the alignment with the international and regional frameworks highlighted above suggests and provides justifiable claims that Malawi's legal framework resonates with the international and regional frameworks on child labour to a greater extent and depth. The gaps identified are what global and domestic institutions, as well as other scholars, seem to have recognised and are

²⁰⁸ SADC, Code of conduct on child labour (revised): Accelerating action to eradicate child labour in SADC, (SADC/ELS/M&SP/2022/5).

concerned with. However, a majority of the provisions in these laws remain to be adequately examined in relation to the realities of children facing child labour on the ground. In the unlikely event that this examination has been done, unknown to this research, such an analysis has probably not been done through the nuanced approaches being proposed in this thesis. In this research, the analysis primarily presented in Chapter 5 demonstrates this.

Before analysing how these laws manifest in the context of child labour from the communities' perspectives, the next chapter discusses the situation of child labour in Malawi. The chapter provides a synopsis of the factors influencing the problem at the community level. The analysis either validates or refutes the implicated factors with insights from the research participants in this study. In part, the chapter addresses Research Question 2 of the thesis: How does the socioeconomic matrix of child labour inhibit the legal framework from achieving efficacy in addressing child labour?

Chapter 4: Situation of child labour in Malawi

4.1. Introduction

Child labour is a pressing global issue that has undergone extensive research and discussion from various perspectives. The problem is complex to address because many of its causes stem from multiple disciplines, making it challenging to tackle. This chapter comprehensively explores the underlying causes and push factors of child labour in three categories: socioeconomic factors, legal framework and implementation deficiencies, as well as corporate practices and economic environment. It explores the extent to which the socio-economic matrix of child labour inhibits the legal framework on child labour in Malawi from achieving its promise. The exploration of these factors emanates from the different research approaches employed in this thesis. However, an expansive examination of the gap between the legal framework and the realities of child labour on the ground, as informed by the performative analysis, will be given in the forthcoming chapter.

4.2. Socioeconomic factors

In this section, the thesis discusses poverty and income, limited education and perceived benefits, as well as household vulnerability, as influencing factors of child labour. These are discussed in light of their general applicability as explored from other studies, and how they are specifically applicable to the communities in Malawi.

4.2.1. Poverty and income

The correlation between poverty and child labour has been found in many studies discussing the causes and consequences of child labour.¹ These studies have proposed and informed the development of policies and programmes at different levels. For instance, Basu contends that children are involved in child labour practices to support their parents' minimum subsistence income, and therefore proposes policies that address human capital formation, such as education, as a solution to poverty.² Likewise, it has been argued that poverty is both a cause and an effect of child labour.³ In this assertion, Passo took the position that children who grow up in impoverished households are more likely to be involved in child labour practices. This cycle

¹ Carol Ann Rogers and Kenneth A Swinnerton, 'Does child labor decrease when parental incomes rise?' (2004) 112(4) *Journal of Political Economy* 939.

² Kennedy Basu and Zafiris Tzannatos, 'The global child labor problem: what do we know and what can we do?' *The World Bank Economic Review*, 17(2), 147-173.

³ *Ibid.*

continues as these children become adults who, in turn, involve their children in work that is detrimental to their health and development. Subsequently, he proposes developing policies that end the poverty dynasty through education and poverty alleviation programmes.⁴ Similarly, the ILO submits that due to poverty, families subject their children to child labour to cushion family members from different shocking experiences and uncertainties at the expense of the children's health and education.⁵

Consistent with the assertions above, discussions with government officials, CSO representatives, and women in Mzimba, Zomba, Ntchisi, and Nsanje districts identified poverty as one of the primary factors driving child labour practices in their areas. Firstly, the Child Protection Workers (CPWs) from Nsanje district reported that a majority of children repatriated from child labour practices come from families that are considered poor. Such families are eligible to receive social cash transfers and other safety nets, which only validates the assertion that they are impoverished. In agreement with the CPWs' claim, a focus group discussion with women in Ntchisi district advanced the view that families that have a good harvest and have some income rarely send their children to work on other people's farms compared to those families that have a poor harvest and are considered economically disadvantaged. Secondly, the CSOs upheld that some of the projects they are implementing in the districts are geared towards alleviating poverty, which is a root cause of many of the districts' social problems, including child labour. For instance, a local organisation in Nsanje district reported that it is implementing a project where communities are provided with soft loans to start small-scale businesses, aiming to address poverty, which is one of the primary drivers of child labour in the district. The CSOs submitted that "the battle against child labour can only be addressed by projects that deal with household poverty; when this is done, all other things will fall into place."⁶ Similarly, the women in the focus group discussions asserted that if many women had sustainable sources of income, they would not involve their children in work that keeps them out of school.

In light of these revelations, poverty alleviation programmes were strongly proposed as solutions to child labour. Such disclosures and findings are consistent with earlier studies on child labour

⁴ Alberto Posso, *Child Labor in the Developing World* (Springer Singapore 2020) 16 < https://doi.org/10.1007/978-981-15-3106-4_1 > accessed 31 January 2025.

⁵ ILO and OECD, *Ending child labour, forced labour and human trafficking in global supply chains* (ILO, OECD, IOM, UNICEF, 2019) 20.

⁶ KII interviews with CSO representative, Nsanje District, November 2022.

and poverty as a driving force. For instance, Edmonds put forward the proposition that child labour is a symptom of poverty and that addressing poverty will eventually address the problem of child labour.⁷ However, he cautions that poverty alleviation programmes are long-term and may not address the child labour problem in the short term. He proposes education and financial incentives for parents to send their children to school as intermediate solutions to addressing child labour.⁸

Apart from poverty, it has also been opined that lack of access to credit and prevailing financial market imperfections significantly contribute to the escalation of child labour.⁹ Similarly, it is argued that when families have limited options for accessing loans, they risk borrowing money from loan sharks, becoming trapped in money laundering scams, or obtaining loans with high interest rates from microfinance lenders.¹⁰ Furthermore, it has been contended that accessing financial services from formal financial institutions is prohibitive due to transaction requirements, costs, and the need for collateral.¹¹ All these factors make it hard for parents to access loans to address their immediate needs, including educational expenses for their children. If they fail to access credit, the parents are compelled to push their children into child labour practices.

In connection with access to loans and poverty, discussions with parents and government community workers revealed that families residing in rural areas within the study area often rely on community-based initiatives, such as Village Savings and Loans (VSLs), to secure credit. They claimed that the loans obtained from these groups not only support their everyday needs but are also used to pay school fees for the children, start businesses, and support their farming costs. This revelation is supported by earlier findings, which show that loans from VSLs enable small-scale enterprises to scale up their investments, and farmers use these loans as a form of insurance against farming shocks.¹² Accessing these loans is reportedly crucial in enabling these families to address their immediate economic needs, including the severe financial consequences resulting from

⁷ Eric Edmonds and Nina Pavcnik, 'Child labour in the global economy' (2005) 19(1) *Journal of Economic Perspectives* 199, 200.

⁸ Ibid.

⁹ Edmonds and Pavcnik (n 7) 205.

¹⁰ Rachel Cassidy and Marcel Fafchamps, 'Banker my neighbour: Matching and financial intermediation in savings groups' (2020) 145 *Journal of Development Economics* 102460 < <https://www.sciencedirect.com/science/article/pii/S0304387820300353> > accessed 24 January 2024.

¹¹ Mercy Muhaniwa Chijere and Ngcimezile Mbano Mweso, 'Financial inclusion through village banks: the gateway to women's economic Empowerment in Malawi' (2021) 6(2) *Journal of the African Women's Studies Centre* 22.

¹² Cassidy and Fafchamps (n 10).

recurring floods and droughts, as well as other household vulnerabilities, and in promoting a savings culture among VSL members.¹³

It was reported by the CSOs and CPWs, who are also involved in supporting the operations of these VSLs, that families often diversify their business ventures to bolster their profit margins and enhance their prospects of obtaining larger loans from microfinance institutions and multiple VSL groups. Sometimes, VSL members resort to securing additional loans from other sources. It is worth noting that in both scenarios—seeking another loan or diversifying their business activities—children become involved. On the one hand, when a larger loan has been accessed, families are forced to find additional means of servicing the loan. This increases the demand for more work in the household, resulting in children's involvement in work beyond their capacity. On the other hand, it was revealed by the CPWs that diversifying businesses also propels adults in households to operate businesses outside their communities. This means that caring for their families and carrying out household chores falls upon the children. In Nsanje, the CPW reported that “when children are left to care for the home, it is mostly at the expense of their playtime. They are often given extra chores, which take away their interest and time for school work. However, in the eyes of the parents, this is not considered to be child labour.”¹⁴

Inasmuch as poverty has been implicated as a primary cause of child labour, other studies argue that evidence supporting this hypothesis is inconclusive and inconsistent.¹⁵ It has been opined that while some children might work to supplement their families' income because of their household's poverty, some only work to fulfil their personal needs that are not out of poverty.¹⁶ Furthermore, the presence of child labour in developed economies, such as the United States of America, suggests that poverty is not the only influencing factor.¹⁷ Besides, diverse views indicate that other causes of child labour are prominent and appealing, and this casts doubt on the view that poverty

¹³ Ibid.

¹⁴ FGD with women, Traditional Authority Tengani, Nsanje, November 2022. This is discussed further in Chapter 5.

¹⁵ Michael FC Bourdillon, Ben White and William E. Myers, ‘Re-assessing minimum-age standards for children's work’ (2009) 29(3/4) International Journal of Sociology and Social Policy 106, 109.

¹⁶ Lire Ersado, ‘Child Labor and Schooling Decisions in Urban and Rural Areas: Comparative Evidence from Nepal, Peru, and Zimbabwe’ (2005) 33(3) World Development 455, 457.

¹⁷ Ashley Soriano, ‘Company fined \$172K after children employed to clean Iowa pork plant’ *News Channel* (San Angelo, 6 December 2024) < <https://www.wjbf.com/news/company-fined-172k-after-children-employed-to-clean-iowa-pork-plant/> > accessed 11 December 2024; Also see T20 Indonesia 2022. *Policy Brief Eliminating child labour: Essential for human development and ensuring child well-being* < <https://www.unicef.org/innocenti/media/4371/file/UNICEF-Eliminating-Child-Labour-2022.pdf> > accessed 25 June 2024.

is a primary determinant of the problem.¹⁸ In this respect, therefore, it is proposed that programs meant to address the child labour problem have to dig deeper to analyse the contextual underlying causes of child labour that are beyond the poverty claims.¹⁹

Nevertheless, the situation of children in Malawi attests to the fact that household poverty significantly contributes to child labour. For instance, discussions with children in Nsanje, Ntchisi, and Mzimba districts confirmed that most children involved in cattle herding, crop harvesting, and other farm-related piecework do so because their families lack the necessary resources to support them. The children further reported that even though some of the children involved in child labour attend school, this is usually intermittent, especially during the farming season when the family food reserves are depleted, and their parents have no income to support their children's basic needs. Again, during this time, the demand for labour in crop fields is high. In such situations, children help their families source food or an income through piecework in other people's fields. Also, it was further reported that children stay home to care for younger siblings and do household chores while their parents work to earn an income.

In addition to poverty being a well-established contributor to child labour within households, it is crucial to recognise that the failure of the labour market and the limited inclusion of individuals in income-generating activities underlie this poverty, thereby perpetuating the cycle of child labour.²⁰ Conversely, advocates argue that fostering economic and industrial development, which creates more employment opportunities for adults, can equip parents with the necessary resources to alleviate poverty and, in turn, diminish the prevalence of child labour.²¹

Illustrative of the claims above, a noteworthy example is evident in the findings from Nsanje district, where ongoing projects to rehabilitate a railway line and a main road are considered significant economic and industrial developments. In these communities, it was observed that parents who the construction companies did not employ involved their children in child labour compared to those who secured part-time jobs at the construction sites. This assertion was validated by the District Labour Officer in the district, who advanced the view that when the

¹⁸ Ersado (n 16), 457.

¹⁹ Bourdillon and others (n 15) 87.

²⁰ Nicola Phillips, Resmi Bhaskaran, Dev Nathan, and Upendranadh, 'The social foundations of global production networks: towards a global political economy of child labour' (2014) 35(3)Third World Quarterly 428, 431.

²¹ Edmonds and Pavenik (n 7) 200.

construction of the railway line began, most parents employed by the construction company could afford to buy school necessities for their children to attend school. He further reported that a boom in small-scale businesses along the railway line had boosted the income of most families, enabling them to support their children in school and thereby reducing the likelihood of children being involved in child labour practices.

Furthermore, women from Zomba and Ntchisi districts also expressed that when local markets for agricultural produce are easily accessible to communities, parents in the districts have the means to operate their businesses and generate income without relying on child labour. These families sell surplus produce locally, eliminating the need for their children to supplement household income through work or by staying home to care for younger siblings while parents search for distant markets. These findings align with earlier research, which shows that the elevated price of farm produce, such as rice, enhances families' income-generating capacity and contributes to their financial stability, thereby reducing their reliance on child labour.²²

4.2.2. Limited education and perceived benefits

One of the Focus Group Discussions with teachers and CPWs in Mzimba district reported that some parents send their children to school not primarily because they want them to acquire an education, but because of a limited workload at home. This assertion was validated by the head teacher at Kamtchenja Primary School in Mzimba district. He indicated that absenteeism within the school, attributed to tobacco farming, is higher during labour-intensive farming periods than other farming periods. This is consistent with the findings in a report on child labour in the tobacco growing sector in Africa, which found that children provide adjustable labour during peak farming periods, where they are used as domestic workers paid through food and clothes.²³

Apart from alleging that the children are made to stay at home to help the parents with work, the teachers in Mzimba district also reported that some parents do not see the advantage of sending their children to school when they need an extra pair of hands. The parents alleged that involving children brings apparent and immediate income to the household. Likewise, children in a

²² Kathleen Beegle, Rajeev Dehejia and Gatti, Roberta, 'Why should we care about child labour? The education, labour market, and health consequences of child labour' (2009) 44(4) Journal of Human Resources 871, 881.

²³ Line Eldring, Sabata Nakanyane, and Malehoko Tshoaedi, '*Child labour in the tobacco growing sector in Africa*' (Conference Paper on Elimination of Child Labour, Nairobi, 2000) 61, 39 <<https://www.eclt.org/filestore/feforeport>> accessed 23 January 2025.

Children's Corner discussion in Ntchisi district asserted that parents who prioritise farming over education often keep their children at home to work on onion and Irish potato fields, even when schools are in session. This claim is consistent with earlier studies on child labour, where it is argued that when education is perceived as unattractive and meaningless, families send their children into child labour.²⁴ Likewise, it is upheld that parents anticipating low benefits from schooling are most likely to prioritise other meaningful activities for their children, leading them to opt out of education.²⁵ With respect to the discussion with parents and CPW in this study, the parents likely weighed the options of sending their children to class for almost half a day or helping them grade tobacco and groundnuts, which could provide an income for the whole family, and opted for the latter.

Furthermore, earlier studies have put forward the proposition that the school system's failure to provide vocational skills necessary for individuals' survival and functioning contributes to school dropout, which eventually leads to child labour.²⁶ In this regard, when parents do not see the apparent relevance of sending their children to school, they withdraw them and use their time for alternative purposes, including work that generates an income for the household. This has been observed among different cultures and communities where children's right to education is perceived to be less important than the provision of child labour that sustains the household's income.²⁷ It is claimed that in societies where formal education is not prioritised, children are socialised and exposed to learning the values of generosity, kindness, and humility through observing their siblings, myths and taboos, and social gatherings of men, which are essential values for survival that cannot be learned in formal schools.²⁸ In this regard, sending children to formal school is likely not a viable alternative for parents who opt to engage their children in work, as attested to by the ILO's observation that the lack of worthwhile schooling options is a reason for children to enter the labour market early.²⁹

²⁴ Emma Charlene Lubaale, 'The recognition of the right of children to freedom from child labour in Africa: is it enough?' (2015) 28(1) *Afrika Focus* 23.

²⁵ Edmonds and Pavcnik (n 7) 215.

²⁶ Ray Ranjan, 'The determinants of child labour and child schooling in Ghana' (2002) 11(4) *Journal of African Economies* 561, 563.

²⁷ Samuel Lisenga Simbine and Liana MP le Roux, 'Vatsonga people's Perceptions of Children's Rights' (2021) 57(4) *Social Work* 472, 479 < <https://socialwork.journals.ac.za/pub/article/view/971> > accessed 31 March 2024.

²⁸ Ibid.

²⁹ ILO and OECD (n 5) 19.

Lastly, it is claimed that even if schools are made available and accessible, child labour will persist as more child work happens in the home, so an increase in school accessibility does not significantly reduce the incidence of child labour.³⁰ Contrary to this assertion, this study found that children attend school in the morning and return in the afternoon. Apparently, this reduces their time at home to contribute to work at the expense of their education. In support of this, a CPW in Nsanje submitted that “schools act as a safe space for children to be inaccessible to work and invisible to be seen as an extra pair of hands.”³¹ Similarly, a UNICEF study found that children not in school spend more time working than those in school.³² Unsurprisingly, programmes for eliminating child labour worldwide include interventions aimed at increasing access to education, making schools more attractive, and developing vocational skills, among others.³³ This only justifies schools' critical role in dealing with child labour in the intermediate and long term. However, even when the schools are accessible, engaging, and offer prospects for a better future, when the situation at home is not conducive, children are most likely to be pushed into child labour practices, as discussed in the following section.

4.2.3. Household vulnerability

Children's vulnerability to engaging in child labour is particularly pronounced when there are changes in household circumstances. When the breadwinner is no longer present or unable to support the family, children risk being trapped in child labour.³⁴ This situation is prevalent in several African countries, including Malawi, where children find themselves involved in child labour due to increased vulnerability that prevents families from avoiding reliance on child labour.³⁵ It has been argued that one significant factor contributing to this vulnerability is the HIV and AIDS pandemic, which leads to orphanhood and places additional strain on family resources, ultimately increasing the likelihood of children being forced into more severe forms of child labour, such as prostitution.³⁶

³⁰ Florence Kondylis and Marco Manacorda, 'School proximity and child Labour evidence from rural Tanzania' (2012) 47(1) *Journal of Human Resources* 32, 53.

³¹ CPW interview, TA Tengani, Nsanje District, October 2022.

³² Edmonds and Pavcnik (n 7) 205.

³³ ILO, 'About the International Programme on the Elimination of Child Labour (IPEC)' < <https://www.ilo.org/ipecc/programme/lang--en/index.htm> > accessed 03 May 2022.

³⁴ Bjørne Grimsrud *Millennium development goals and child labour. Understanding Children's Work Project*, (UNICEF, 2003) 6.

³⁵ ILO and OECD (n 5) 19.

³⁶ Bill Rau, *Combating child labour and HIV/AIDS in sub-Saharan Africa* (International Labour Office 2002).

For instance, the District Labour Officer from Nsanje district reported that between January and June 2022, the Nsanje district office successfully repatriated twelve children engaged in various child labour practices across the district. Among those repatriated, seven were orphans living alone or with their grandparents. Similarly, discussions with children in Nsanje and Mzimba districts revealed that after being orphaned, they actively began searching for piecework on people's tobacco fields or engaging in livestock herding to support themselves, compared to when they had one or both parents alive. These findings echo revelations from a participatory research study conducted across three districts in Malawi involving 44 children by Plan International.³⁷ According to the children in Plan International's study, losing a parent or both parents compelled them to work on farms to provide food for their grandparents or siblings.³⁸ These findings indicate that the vulnerability of children and their families often drives them into child labour as a means of coping with their situation.

When perceived from a gender lens, it is argued that child labour is more likely to take place in households where children have lost a mother than in families where the children's father has died. It is claimed that mothers usually give higher importance to their children's education and health, and are less likely to put them at risk of earning an income through child labour.³⁹ Even though it has not been verified in this thesis, it is also most probable that upon the death of the father, who is mostly the primary source of income in a lot of Malawian families, children will be involved in child labour. This is because most children's financial needs are likely to be affected. Likewise, the children will probably be involved in caring for the household and assuming their mother's roles and responsibilities, which will likely be beyond their age and capacity upon the mother's demise. This diversity of likelihood and possible scenarios only validates earlier opinions that the causes and push factors of child labour are contextual and diverse and need to be treated cautiously.⁴⁰

Another vulnerability that has pushed children into child labour is the COVID-19 pandemic. According to the ILO and UNICEF, the COVID-19 pandemic raised concerns that, without urgent

³⁷ Glynis Clacherty, *Hard work, Long hours and little pay* (Plan Malawi, Clacherty & Associates Education & Social Development, 2009) 29; See also 'Mugabe's Legacy: Zimbabwe's Forgotten Children' (*Real stories* 2010) < <https://www.youtube.com/watch?v=s0mKndUkWik&t=21s> > accessed 21 January 2025.

³⁸ Ibid 29.

³⁹ Twumwaah Lucy Afriyie, Bashiru II Saeed and Abukari Alhassan, 'Determinants of child labour practices in Ghana' (2019) 27 *Journal of Public Health* 211, 214.

⁴⁰ Ersado (n 16) 457.

interventions, more children would be pushed into child labour.⁴¹ This concern has been verified in discussions with the research participants in Mzimba, Zomba and Nsanje districts, where they indicated that due to school closures during the pandemic, children were readily available at home and became involved in work that exceeded their age and ability, sometimes even in hazardous conditions. The research participants reported that schools, which previously provided an escape and a safe haven, were no longer accessible to children. This is in tandem with other reports across Africa where the closure of schools meant that teachers had limited or no contact with their students, impeding their ability to intervene and prevent parents from involving their children in child labour practices, which was not the case before the pandemic.⁴² Furthermore, the adverse effects of COVID-19 on parents' income, coupled with rising prices of goods, forced parents to push their children into work as a response to these shocks.⁴³

Domestic violence has also been attributed as another household vulnerability that pushes children into child labour. Due to domestic violence, children run away from their homes and eventually become vulnerable to child labour.⁴⁴ Similar findings have been observed in a study in Egypt, where it was found that children who are subjected to psychological aggression and physical punishment are engaged in child labour.⁴⁵ This is consistent with the opinion of CSO representatives from Nsanje and Ntchisi districts, who submitted that there is a correlation between domestic violence and child labour in the areas where they are implementing social development projects. According to the CSOs, children from families where gender-based violence is prominent often spend much of their time away from home out of fear of the violent situation or in quest of peaceful environments. This situation, coupled with inadequate food and income, leads to the children searching for petty jobs to find food, leading to exploitation as they have nowhere to report, let alone parental support, to meet their daily needs.

Nonetheless, the CSOs, CPWs, and other key informants revealed that, inasmuch as there are vulnerabilities in the home and other socio-economic challenges that push children into child

⁴¹ ILO and UNICEF, *Child Labour: Global estimates 2020, Trends and the Road Forward* (ILO and UNICEF 2021) 8 < https://www.ilo.org/ipec/Informationresources/WCMS_797515/lang--en/index.htm > accessed 15 December 2024.

⁴² Abdul-Rahim Mohammed, 'Children's lives in an era of school closures: Exploring the implications of COVID-19 for child labour in Ghana' (2023) 37(1) *Children & Society* 91.

⁴³ ILO and OECD (n 5) 19.

⁴⁴ *Ibid* 22.

⁴⁵ Khaled Khatab, Maruf A. Raheem, Benn Sartorius and Mubarak Ismai, 'Prevalence and risk factors for child labour and violence against children in Egypt using Bayesian geospatial modelling with multiple imputation' (2019) 14(5) *PLoS One* 2.

labour, some elements in the legal framework share the blame for the child labour incidents, as discussed below.

4.3. Deficiencies in the legal framework and implementation

Child labour is considered a human rights issue. It has, therefore, been argued that some of the reasons for the proliferation of child labour emanate from the failure of the legal frameworks to provide solutions to deal with the problem effectively.⁴⁶ The ILO posits that, although laws promoting international human rights are available, challenges in awareness of these international laws, their implementation, enforcement, understanding, and access create a gap in compliance with international standards.⁴⁷

Apart from ratifying the international and regional human rights frameworks that protect children's rights, Malawi has domestic laws to safeguard and protect children from child labour. The protection of children from child labour is explicitly provided for in Section 23 of the Malawi Constitution and in the Employment Act 2000. The Employment Act 2000 prohibits the employment of any person under the age of fourteen in any public or private agricultural, industrial, or non-industrial undertaking.⁴⁸ On the one hand, the Constitution defines a child as any person under 18 years of age.⁴⁹ On the other hand, the Employment Act 2000 provides that no person between the ages of fourteen and eighteen shall work or be employed in any occupation or activity that is likely to harm their health, safety, education, morals, or development.⁵⁰

According to the CSOs in this study, the evident contradiction between the provisions in the Constitution and the Employment Act 2000 regarding the age of employment and the definition of a child in the provisions above provides a basis for difficulty in implementing the laws. This resonates with earlier claims that contradictions or a lack of harmonised understanding of laws are challenging because they create inconsistencies, resulting in legal conflicts.⁵¹ Assenting to this claim, the CPWs in this study reported that it is hard to sensitise communities that a child is anyone below 18 as provided for in the Constitution, and then reverse it that a boy or a girl of 15 years can

⁴⁶ ILO, *Combating child labour: A handbook for labour inspectors* (ILO 2002) 5 < https://www.ilo.org/public/libdoc/ilo/2002/102B09_296_engl.pdf > accessed 12 June 2024.

⁴⁷ ILO and OECD (n 5) 18.

⁴⁸ Employment Act 2000, s 21(1); Constitution of the Republic of Malawi 1994 (as amended through 2017, s 23(5).

⁴⁹ Constitution of the Republic of Malawi 1994 (as amended through 2017) s 23(6).

⁵⁰ Employment Act 2000, s 22(1).

⁵¹ Rowena Bernard B, 'The regional regulation of child labour laws through harmonisation within COMESA, the EAC and SADC' (2023) 23(1) AHRLJ 48, 71.

be employed. The CPWs further argue that experts and other individuals working with CSOs on child protection matters have a reasonable understanding of the provisions of the Constitution and the Employment Act 2000. However, it is often hard for them to help communities understand and appreciate the distinction, as this seems contradictory.

Furthermore, the thesis highlighted other challenges in legislative provisions, particularly in the Employment Act 2000, which can facilitate the proliferation of child labour practices. It has been revealed that apart from the normative provisions in these laws, there are also institutional and procedural challenges in the laws that do not reflect the realities of children involved in child labour in Malawi. These challenges have been discussed in more detail in Chapter Five.

4.3.1. Awareness of the legal frameworks

Children involved in this study reported that they had heard that the government and NGOs are against child labour. They reported hearing that

children are not supposed to work...because chiefs and NGOs say so. Children are not allowed to carry heavy loads and work with tobacco, as it is bad for their lungs...and children are not supposed to get married before they are 18 years old.⁵²

From the discussion above, the children revealed that they know that there are NGOs in their community that work on child protection matters, especially early child marriages. (During my first field research, from October to December 2022, campaigns against child marriage were intensified by NGOs and the government during the COVID-19 pandemic. This explains why the children talked more about child marriage).

Likewise, interviews with CSOs and CPWs revealed that most of their projects include a community awareness component, discussing available legal remedies for various injustices occurring in the community. However, they pointed out that despite such awareness efforts, the communities have limited knowledge because implemented projects are only within designated areas, not the whole district. They, therefore, attributed the presence of child labour partially to this deficiency. This finding confirms the observation made by the Committee on the Rights of the Child (the Committee) in its Concluding Observations on the combined third to fifth periodic

⁵² FGD with boys, Mzimba Primary School, October 2022.

reports of Malawi.⁵³ The Committee registered severe concerns about the limited capacity and access to protection and response services, particularly regarding the police, community victim support centres, and child protection workers, as well as the lack of awareness about these support services.⁵⁴ Consequently, lack of access to these justice delivery structures means the communities are denied access to information and knowledge on child protection issues, including the availability of services offered by child protection workers on children's rights and protection from abuse, neglect, and exploitation.⁵⁵ As earlier studies established, knowledge of the law encompasses exposure to its preventive and remedial aspects. The preventive elements create a deterrent effect, while the curative aspects involve enforcing desired behaviour.⁵⁶ In respect of this assertion and the claims by the CSOs on the unavailability of child protection services and lack of awareness, communities in the study areas are denied both the remedial and preventive aspects of knowledge of the law. Therefore, they are prone to conflict with the law and perpetuate child labour.

Furthermore, interviews with traditional leaders, parents, CPWs, and CSOs revealed that the problem is not only the general lack of awareness of the laws but also the lack of understanding of their specific aspects. This is especially true of the duties and responsibilities of parents and guardians towards the child, as well as the responsibilities of the child towards their parents. For instance, Article 3 of the Child Care Protection and Justice Act (CCPJA 2010) provides that parents or guardians shall protect the child from neglect, discrimination, violence, abuse, exploitation, oppression, and exposure to physical, mental, social, and moral hazards. It further imposes a duty on the parents to provide proper guidance, care, assistance, and maintenance for the child to ensure their survival and development.⁵⁷ Then again, Article 4 imposes duties and responsibilities on the child to respect their parents, guardians, superiors, and elders at all times, to assist them in cases

⁵³ Committee on the Rights of the Child, 'Concluding observations on the combined third to fifth periodic reports of Malawi' (3 February 2017) CRC/C/MWI/CO/3-5, para 20(b).

⁵⁴ Ibid.

⁵⁵ Ministry of Gender, Children, Disability and Social Welfare *Reference Manual for Child Protection Workers* (Ministry of Gender, Children, Disability and Social Welfare, 2021) 63.

⁵⁶ Andrea J Melnikas, Nancy Mulauzi, James Mkandawire and Sajeda Amin, 'Perceptions of minimum age at marriage laws and their enforcement: qualitative evidence from Malawi' (2021) 21 BMC Public Health 1,3.

⁵⁷ CCPJA 2010, art 3(b)(ii).

of need, and to contribute to the child's development into a useful member of society, depending on the child's age.⁵⁸

It was revealed by the different stakeholders in this study that most parents claim that the parents' responsibility towards their children, as provided in Article 3 above, does not stop at giving the children's physical needs but extends to guiding the children's conduct and moral development through raising them in a way that will not bring shame to the family. Thus, some parents perceive that one way to ensure children grow up to be reliable citizens is to have them work, acquire skills to help the family, and become valuable members of society. From the parents' perspective, such a responsibility is provided for by the law and in their traditional ways of raising a child. In light of this extended understanding, some parents subject children to work that exceeds their capacity, at the expense of their education and other related rights.

Moreover, the interviews further revealed that parents, when they are aware of certain laws, are usually selective about the provisions that seem to be in their favour and tend to ignore or feign ignorance of those provisions that impose a responsibility upon them to promote their children's welfare. The CPWs reported that this selective awareness of the laws affects their work protecting children from abuse and exploitation. This revelation aligns with earlier findings that suggest a lack of understanding of the existence and rationale of laws has led to a disjuncture between legal provisions and practical implementation, resulting in diminished impact.⁵⁹ In view of this, it is proposed that legal education, which develops people's understanding of the law and improves their ability to access justice, should be encouraged.⁶⁰ This initiative is a collaboration between the CSO, traditional leaders, CPWs, and teachers in the fight against child labour, particularly in Ntchisi and Mzimba districts. CSOs are implementing child protection projects in these areas with support from partners such as Save the Children, the ILO, and the ECLT Foundation.⁶¹

⁵⁸ Ibid art 4(e).

⁵⁹ Thomas Marambanyika and Heinz Becketdahl, 'The missing link between awareness and the implementation of wetland policy and legislation in communal areas of Zimbabwe' (2016) 24 Wetlands Ecology and Management 545,560.

⁶⁰ Kgomoetso Mokoena and Louis Koen, 'Promoting Access to Justice through the Broadcasting of Legal Proceedings' (2022) 25 PELJ/PER 21.

⁶¹ YONECO, 'CLEAR Project Hands Over Three Teachers' Houses to Ntchisi District Council' <<https://yoneco.org/2018/07/06/clear-project-hands-over-three-teachers-houses-to-ntchisi-district-council/>> accessed 12 December 2024.

4.3.2. Implementation of the laws

It has been argued that the rise in child labour is due to shortcomings in enforcing child labour laws.⁶² In its Concluding Observations on Malawi's third to fifth periodic reports, the Committee on the Rights of the Child recommended that the government allocate sufficient resources for labour inspections to fully, regularly, and effectively enforce laws and policies on child labour. This recommendation particularly encompasses the agricultural and mining sectors. The Committee also suggested that anyone violating child labour laws should be prosecuted.⁶³ This reflects the situation where many checks and balances required of CPWs are left undone due to insufficient human and financial resources, as well as the requisite knowledge.⁶⁴

Additionally, the Committee recommends that Malawi finalise and implement its child labour and child protection policies to protect children from the worst forms of child labour.⁶⁵ Currently, Malawi does not have a National Child Labour Policy (NCLP) as the draft is still at the cabinet level.⁶⁶ It is, therefore, most likely that the absence of this policy also contributes to the situation of child labour in Malawi. This observation has also been alluded to by other scholars who discovered that poor implementation of legal and policy frameworks for combating child labour and getting children into school are among the leading causes of child labour in most African countries.⁶⁷

This observation was echoed by the District Labour Officer in Nsanje and the District Social Welfare Officer in Ntchisi, who both faulted the government's delay in finalising the policy as retrogressive. These officers argued that, in the absence of the NCLP, child labour projects are implemented with limited coordination, as different stakeholders conduct activities independently and with minimal policy guidance.

4.3.3. Access to legal remedies

Article 9(1) of the ILO Convention on Minimum Age stipulates that to contain child labour, all necessary measures, including the provision of appropriate penalties, must be taken by the

⁶² Committee on the Rights of the Child (n 53), para 40(d).

⁶³ Ibid para 40(d).

⁶⁴ Ministry of Gender, Children, Disability and Social Welfare (n 55) 28.

⁶⁵ Committee on the Rights of the Child (n 53), para 40(a).

⁶⁶ Ministry of Gender, Children, Disability and Social Welfare (n 55) 24.

⁶⁷ Asha Kitambazi and Reginald Lyamuya, 'Effects of Child Labour on School Attendance in Muheza District, Tanzania' (2022) 5(4) East African Journal of Education Studies 1, 17.

competent authority to ensure the effective enforcement of the Convention's provisions.⁶⁸ Furthermore, Article 7 of Convention 182 on the Worst Forms of Child Labour obligates member states to take all necessary measures to ensure the effective implementation and enforcement of the Convention's provisions, including the establishment of penalties and other sanctions.⁶⁹ Accordingly, the Malawi government, through the Employment Act 2000, provides that any person who contravenes any provision concerning the employment of children below the minimum age, including employment of children in hazardous work, shall be guilty of an offence and liable to a fine of K20,000 (about 11 Euro)⁷⁰ and imprisonment for five years.⁷¹ Regarding this provision, it has been argued that such a penalty is not deterrent enough to stop the practice, especially for business enterprises that might weigh the options of arresting the problem against the benefits they are getting through the involvement of children in their value chain,⁷² as in *Josiya & Ors v British American Tobacco Plc & Ors* (2021).⁷³ In this group action, claims were brought by 7,263 Malawian tobacco farmers, over 3,000 of whom are children, against British American Tobacco and Imperial Brands for negligence, unjust enrichment, and conversion.⁷⁴ In a case like this, a penalty of K20,000, as provided for in the Employment Act 2000, cannot compel or deter such multimillion-dollar companies from involving children in their tobacco value chain. This topic has been further discussed in Chapter Five.

It is further established that fragmented labour inspection is another factor proliferating child labour cases in Malawi.⁷⁵ This is despite Malawi's ratification of Convention 129, Labour Inspection (Agriculture) Convention, 1969, in 1971.⁷⁶ This Convention empowers Labour Inspectors to ensure the enforcement of legal provisions relating to the employment of women,

⁶⁸ Convention 138 art 9(1).

⁶⁹ Convention 182 art 7.

⁷⁰ Oanda Currency Converter < <https://www.oanda.com/currency-converter/en/?from=MWK&to=EUR&amount=20000> > accessed 20 September 2024.

⁷¹ Employment Act 2000 s 24(1).

⁷² Tinashe Madziwa, 'A critical analysis of child labour protective laws in Southern Africa: a case study of Malawi, South Africa and Zimbabwe' (MA Thesis, University of Kwazulu-Natal, 2014) 55.

⁷³ *Josiya & Ors v British American Tobacco Plc & Ors* [2021] EWHC 1743 (QB).

⁷⁴ Travers Smith, 'High Court declines to strike out "value chain" negligence claim' (*Legal Briefing*, August 2021) < <https://www.traverssmith.com/knowledge/knowledge-container/high-court-declines-to-strike-out-value-chain-negligence-claim/> > accessed 12 June 2023.

⁷⁵ ILO, *Understanding child labour and youth employment in Malawi* (International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), 2018).

⁷⁶ ILO, Ratification for Malawi <

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103101 > accessed 12 June 2025.

children, and young persons; provide technical information in compliance with these provisions; and report instances of worker abuse.⁷⁷ The Convention applies to agricultural undertakings with salaried employees or apprentices, and, subject to a declaration by the ratifying member State, to tenants, sharecroppers, cooperative members, the operator's family, and the informal sector.⁷⁸ However, protection of children from child labour, as is intended through this Convention, is limited, as was observed by the ILO Committee of Experts on the Application of Conventions and Recommendations. This Committee noted with concern that, although the government of Malawi provided information indicating that 22 Labour Inspectors had been deployed to different districts, as well as the number of inspections carried out in other industries, the report conspicuously omits the inspections conducted in the agriculture sector.⁷⁹ Additionally, the Malawi Government indicated that statistics in the agricultural industry, which are subject to regular checks, are not up to date. Besides, there are no reliable statistics on the number of inspections carried out in the sector.⁸⁰ This is a worrisome development in the fight against child labour on two fronts.

Firstly, this revelation casts doubt on the roles that the Labour Inspectors are undertaking in the communities in dealing with child labour. It eventually suggests that even if child labour is taking place in the communities, there is little that the Labour Inspectors are doing to deter others from engaging in the practice.

Secondly, it suggests that the government's interest is somehow misplaced as more effort and concentration are being given to other areas where child labour is not very prominent compared to the agriculture sector, which provides livelihood to 80 per cent of the population and has a high incidence of child labour.⁸¹

Regarding the claim that inspections primarily occur outside the agriculture sector, the revelation of the District Labour Officer for Nsanje District appears to support this assertion. The officer reported that their 2021-2022 inspection and child protection campaigns in collaboration with the Ministry of Gender and Children Affairs focused on construction, markets, and fisheries, as more children are visible in such places. This probably leaves out domestic work and children who are

⁷⁷ ILO Convention 129 art 6(1) (a-c).

⁷⁸ ILO (n 46).

⁷⁹ ILO, Direct Request (CEACR) - adopted 2022, published 111st ILC session (2023) <https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4326250,103101> accessed 12 June 2024.

⁸⁰ Ibid.

⁸¹ US Department of Labour, *2021 Findings on the Worst Forms of Child Labour, Malawi* <<https://www.dol.gov/agencies/ilab/resources/reports/child-labour/malawi>> accessed 12 June 2023.

caught in child labour practices in the subsistence agriculture sector at the domestic level. The discussions with Labour Inspectors and CSOs also highlighted that inspections are infrequent due to a lack of sufficient financial and human resources. This shortage leads to inconsistent and outdated data regarding the prevalence of child labour in the districts.

4.4. Corporate practices and economic environment

It is contended that child labour is linked not only to the household-level dynamic but also to the contemporary global production chains that include both children and adult workers.⁸² Thus, business enterprise conduct and other factors affecting the value chain can create an environment incentivizing child labour within companies and homes. It is argued that commercial dynamics in the production chain foster the incorporation of children as direct workers or make household working conditions less detrimental to the children, thereby allowing adults to be available for paid or waged work.⁸³ It can, therefore, be ascertained that child labour is available and can be perpetuated by changes or shifts in the production chain, where children are employed directly, or by changes in the value chain that incentivise the involvement of children in child labour practices. According to the ILO, labour outsourcing, a high degree of business informality, demand for specific quotas, and pressure on prices, supply, and production in the manufacturing value chain are interlinked factors contributing to child labour.⁸⁴ Although these factors may seem peripheral to the lives of the people in this study, they have a bearing on the discussion of solutions to the problem. This is more specific to policy interventions that aim to address the intersectional causes and influencing factors of child labour at the household, community, and country levels, which have been discussed in the recommendations and conclusion chapter of this thesis.

4.4.1. Business conduct-related factors

In its report on a study of children and business in Africa, the ACEWRC found that as trade and investment opportunities continue to grow, with women and children as strategic players, such growth comes with rights violations at the hands of corporate actors.⁸⁵ The ACERWC partially attributes this to the lack of policy and institutional alignment, as well as a lack of policy

⁸² Phillips and others (n 20) 429.

⁸³ Ibid 430.

⁸⁴ ILO and OECD (n 5) 25.

⁸⁵ African Committee of Experts on the Rights and Welfare of the Child, 'Study on Children's Rights and Business in Africa' (2023) <https://www.acerwc.africa/sites/default/files/2023-08/Study_Children%27s%20Rights%20and%20Business_English.pdf> accessed 4 March 2025.

commitments that institutionalise sustainable practices or ethical codes of conduct that promote respect for children's rights.⁸⁶

In the same vein, the ILO asserts that outsourcing production perpetuates child labour since it involves workers outside the inspection parameters of the Labour Inspectors. This is linked to labour subcontracting, where intermediaries supply labour and create an informal supply chain involving children as child labourers.⁸⁷ Additionally, it is posited that child labour can be checked and regulated in companies and firms. However, the same diligence in ensuring compliance is not followed when companies subcontract to increase production and supply. In this case, subcontracting and outsourcing enable some producers and employers to disclaim the obligations of the workers.⁸⁸ Thus, it is most likely to hear claims that there is a reduction in child labour in regulated and monitored commercial industries, but the same may not be the case at the community and household levels.

Furthermore, it is also argued that a high degree of business informality creates an environment that makes it difficult for inspectors to carry out their duties and implement businesses' due diligence.⁸⁹ This is where companies may be aware of the minimum age for child recruitment, but may lack the capacity to prevent third-party suppliers or parents from involving children in their business.⁹⁰ In such instances, as more work that feeds into the global value chain is done in the informal sectors, this limits the traceability and transparency of how businesses contribute to child labour or proliferate it through the conduct of parents, intermediaries, or third-party contractors.⁹¹

Relatedly, demand for production quotas, where employers are required to produce a specific weight or amount of goods over a certain period, is also reported to be among the factors implicated in child labour cases.⁹² In such instances, parents involve their children to meet the minimum quota agreed upon by their employers. Consequently, children often become involved in the work.⁹³ Consistent with this opinion, it has been held that some tobacco estates in Malawi prefer to employ tenants with families, as they are considered more stable. Indirectly, employers know that the quota

⁸⁶ Ibid.

⁸⁷ ILO and OECD (n 5) 29.

⁸⁸ Phillips and others (n 20) 435.

⁸⁹ ILO and OECD (n 5) 26.

⁹⁰ Ibid.

⁹¹ Ibid 22.

⁹² Ibid 29.

⁹³ Ibid.

assigned to the tenant is less likely to be met. As a result, the tenant engages their whole family, including children, to work on the farm to meet the production quota.⁹⁴

In discussing the claims above, the Nsanje DLO argued that, theoretically, the formal or informal employment of children is possible in districts with commercial industries, such as Chikwawa, located to the north of Nsanje district, which has sugarcane estates for sugar production. He advanced the view that it is more likely in the district for sugarcane out-growers to hire people from other faraway communities to work for them as seasonal labourers. These labourers often travel with their families. To meet the demands of work in a new environment, they often end up affecting their children's attendance at school or asking them to do some work that will supplement the wages they earn from their seasonal employment. Nevertheless, this practice was not verified in this study, as Labour Inspectors and traditional leaders maintained that it is not a practice in their communities. Echoing these sentiments, the CPW and CSOs in Ntchisi argued that no formal companies or big tobacco farms exist in their areas of jurisdiction. However, they reported that some tobacco farmers are involved in contract farming with big tobacco companies. They expressed that there are reports of children involved in sorting or processing tobacco within their families. Additionally, they stated that children are engaged in the sorting and packing of onions, but this is done on a small scale and not necessarily in larger production value chains that include big estates or companies. Regardless of the scale of involvement at the household level, it was verified that, in some instances, this work prevents the children from attending school.

The claims from the discussions with different participants in Nsanje and Ntchisi districts are consistent with earlier contentions. It is established that only a relatively small number of children are employed directly by an employer, probably less than 10 per cent of working children worldwide. On the contrary, it is established that more than 85 per cent of the global estimate of child labour is done under the control of parents in the children's household, family land, or family businesses.⁹⁵ It was, therefore, not verified that most of the business-related factors found in other studies apply to children and families living in the population of this study in Mzimba, Ntchisi, Zomba, and Nsanje districts. However, this study confirmed that children are involved in child

⁹⁴ Eldring and others (n 23) 40. However, by 2021, the Malawi Government amended the Act prohibiting the tenancy labour. See, Employment (Amendment) Act 2021, s. 3. Regardless, the effectiveness of such an amendment is yet to be investigated.

⁹⁵ Rena Ravinder, 'The child labour in developing countries: a challenge to millennium development goals' (2009) 3(1) Indus Journal of Management & Social Sciences 1,3.

labour when there is a lot of demand for labour during the peak agricultural season. It was revealed that children are engaged in caregiving for younger siblings, selling farm produce, and sorting and grading tobacco, onions, and Irish potatoes occasionally. This phenomenon highlights the correlation between increased labour demand and heightened child labour activities.

Nevertheless, inasmuch as the factors discussed in the previous sections are implicated as causes and push factors of child labour, they are even made worse when the communities are also grappling with the adverse effects of climate change. These effects range from floods to droughts, which subsequently aggravate or widen the gap between the child labour legal framework and the situation of child labour on the ground.

4.5. Amplification of push factors by climate change

Climate change is one of the most critical challenges that the world is currently facing. The world has been experiencing an increase in the frequency of natural disasters linked to climate change, including cyclones, floods, and heat waves.⁹⁶ It has been claimed that if no action is taken to reduce greenhouse gas emissions, temperatures will increase by 1.5 to 5.0°C by the 2090s, leading to increased heavy rainfall.⁹⁷ The United Nations Framework Convention on Climate Change (UNFCCC) has recognised that these changes may negatively impact natural ecosystems and humankind,⁹⁸ which are already being felt. Across the world, climate change has been associated with increased poverty, changes in weather patterns, displacement, migration, and other social disruptions.⁹⁹

Primarily, climate change manifests in several unmistakable and readily observable ways, including a surge in the frequency and intensity of natural disasters such as droughts and floods, as well as the encroachment of desertification and water scarcity.¹⁰⁰ These catastrophic events

⁹⁶ Peoples' Friendship University of Russia (RUDN University) and Alexander Solntsev, 'Climate Change: International Legal Dimension' (2018) 1 Moscow J Intl L 60 < <https://doi.org/10.24833/0869-0049-2018-1-60-78> > accessed 24 January 2024.

⁹⁷ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

⁹⁸ Ibid Preamble.

⁹⁹ John Magrath and Elvis Sukali, 'The winds of change: Climate change, poverty and the environment in Malawi' (2009) 9(4) Oxfam Policy and Practice: Agriculture, Food and Land 1-52; See also Richard Black, Neal Adger, Nigel Arnell, Stefan Dercon, Andrew Geddes and David Thomas, 'The effect of environmental change on human migration' (2011) 21 Global Environmental Change S3-S11.

¹⁰⁰ RUDN University and Solntsev (n 96).

destroy property, displace families, and exacerbate migration issues.¹⁰¹ Consequently, families with limited land holdings or those reliant on daily wage labour are stripped of their livelihoods and rendered landless.¹⁰² Moreover, families are often compelled to relocate to other regions in pursuit of alternative sources of income.¹⁰³

In such precarious circumstances, where parents struggle to make ends meet, children are often burdened with responsibilities that exceed their age and capabilities. These responsibilities include caring for younger siblings, attending to the needs of older people, seeking occasional employment to support the family's transition, or engaging in hazardous occupations such as brickmaking and construction work.¹⁰⁴ Consequently, they find themselves exposed to dangerous situations that can result in physical harm or expose them to hazardous substances, which inflict lasting damage on their health, education, psychological well-being, and overall developmental trajectory.¹⁰⁵ This disproportionate effect of climate change on children is underscored in an analytical study by the Office of the United Nations High Commissioner for Human Rights (OHCHR) examining the intricate relationship between climate change and the practical realisation of children's rights. The report argues that profound and disproportionate changes in children's social and physical environment can significantly impact their rights.¹⁰⁶

Furthermore, the extreme weather conditions destroy infrastructure, which in turn disrupts social protection structures and mechanisms.¹⁰⁷ These social protection structures include social welfare offices, justice delivery institutions, schools, referral systems, and networks for different services. This ultimately affects children with no place to complain or seek assistance on various matters affecting their lives, including child labour practices. As much as disruption of social amenities and extreme weather conditions affect everyone in the community, it is found that children are

¹⁰¹ Richard Black, Neal Adger, Nigel Arnell, Stefan Dercon, Andrew Geddes and David Thomas, 'The effect of environmental change on human migration' (2011) 21 Global Environmental Change S3-S11

¹⁰² Lisa Myers and Laura Theytaz-Bergman, *The neglected link: Effects of climate change and environmental degradation on child labour* (Osnabreuk, Germany: Terres des Hommes International Foundation, 2017) <<https://www.terredeshommes.org/wp-content/uploads/2017/06/CL-Report-2017-engl.pdf>> accessed 11 November 2024.

¹⁰³ Ibid 4.

¹⁰⁴ Ibid.

¹⁰⁵ Ann Sanson and Susie Burke, 'Climate change and children: An issue of intergenerational justice' in Nikola Balvin and Daniel. J. Christie (eds), *Children and Peace* (Springer International Publishing 2020) 368.

¹⁰⁶ Office of the United Nations High Commissioner for Human Rights, 'Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child' (4 May 2017) UN Doc A/HRC/35/13.

¹⁰⁷ Ibid 345.

disproportionately affected. They are often taken advantage of by being given work beyond their capacity or through sexual exploitation and all sorts of exploitative forms of labour.¹⁰⁸

As articulated above, poverty is one of the leading causes of child labour worldwide, and unfortunately, climate change only aggravates the problem.¹⁰⁹ It has been posited that climate change forces families and institutions to adapt their livelihood strategies and diversify their assets to survive and thrive.¹¹⁰ However, child labour is one of the mechanisms used to adapt to climate change despite its harmful effects.¹¹¹ As climate change disrupts families' sources of income, coupled with a scarcity of water and food, they are pushed deeper into poverty. This pressure most likely leads to families involving their children in child labour to meet their everyday needs. This is consistent with the perspective that low-income households will engage their children in productive work to sustain themselves in times of shock.¹¹² It is further contended that the adverse effects of climate change only exacerbate the financial strain on families, leading them to resort to unsustainable coping mechanisms such as sending their children to work in unfavourable conditions.¹¹³ This negatively impacts children's development and perpetuates the cycle of poverty that many households currently experience.

Furthermore, it has been argued above that some of the gaps in enforcing the legal framework on child labour likely push more children into child labour practices. These gaps are even made worse due to the adverse effects of climate change, which exacerbate other social protection services, rendering children vulnerable.¹¹⁴ For instance, rural children in Nepal have been pushed into child prostitution and sacrificed to other forms of abuse to substitute for the survival of other children

¹⁰⁸ Nicholas Rees and David Anthony, *Unless we act now: The impact of climate change on children* (UNICEF 2015).

¹⁰⁹ FAO, *The relations between climate change and child labour in agriculture – Evidence on children's work trends after climate-related events in Côte d'Ivoire, Ethiopia, Nepal and Peru*. (FAO, Rome, 2023) <<https://doi.org/10.4060/cc6244en.4060/cc6244en>> accessed 05 September 2023, 140.

¹¹⁰ Basu and Tzannatos (n 2).

¹¹¹ Raymond Frempong, 'Child Labour in Sub-Saharan Africa: Empirical Evidence and New Perspectives' (Universität Bayreuth, 2019).

¹¹² Basu and Tzannatos (n 2).

¹¹³ Rees and Anthony (n 108) 54.

¹¹⁴ Ibid 34.

within the same household.¹¹⁵ Similarly, child abuse and exploitation, as forms of child labour, have been reported in camps where floods in southern Malawi have displaced people.¹¹⁶

According to the CPWs, Labour Inspectors, traditional leaders, and CSOs involved in this study, floods caused by climate change hinder their efforts to inspect child labour practices, repatriate children from child labour, or educate communities on the harmful effects of child labour. This highlights the claim that climate change poses numerous challenges for families, exacerbating existing problems, intensifying the issue of child labour, and making it hard for the legal framework to function effectively.

Arguably, it has been reported that climate change is a multiplier factor for other push factors of child labour globally.¹¹⁷ Consistently, the CPWs in Nsanje district reported that during and after floods, parents involve their children in rebuilding their homes. Furthermore, children work with their parents in swampy areas as they try to replant crops that the floods have washed away. In both scenarios, children miss out on school (either because the schools have also been affected by the floods or because their parents need their support) or are exposed to working conditions that are detrimental to their health. Thus, despite the different challenges that serve as push factors for child labour, climate change exacerbates the problem. Inasmuch as climate change and its adverse effects are a direct contributing factor, the ripple or spiral effect that it has either aggravates other factors to further influence the employment or engagement of children in child labour, or makes the factor very hard to address in the fight against child labour.

4.6. Conclusion

The discussion above highlights that child labour is caused and proliferated by multiple factors. These factors exist within a social context that includes poverty and income, limited access to education, and the perceived benefits of education. Additionally, household vulnerabilities, such as violence, contribute to the problem. Furthermore, some deficiencies in the legal framework, including their implementation, provide an opportunity for child labour to thrive. The limitations

¹¹⁵ Bartlett Sheridan, *Climate change and urban children: impacts and implications for adaptation in low- and middle-income countries* (Human Settlements Discussion Paper Series, Climate Change and Cities, IIED 2008) 2.

¹¹⁶ James Chavula, 'United Against Abuse: Camp Leaders and Police Tackle Gender-Based Violence in Cyclone-Affected areas' (*UNICEF Malawi*, 20 June 2023) < <https://www.unicef.org/malawi/stories/united-against-abuse-camp-leaders-and-police-tackle-gender-based-violence-cyclone-affected> > accessed 05 September 2024.

¹¹⁷ ILO, *Vulnerabilities to child labour*, International Labour Organization, 2022 < https://www.ilo.org/global/topics/child-labour/publications/WCMS_845129/lang--en/index.htm > accessed 08 June 2024

in the legal frameworks, identified as influencing factors of child labour, are introduced in this chapter and will be discussed in more detail in the next chapter.

The discussion also identified certain business conduct-related factors that promote child labour. The chapter further discusses how these factors are compounded and exacerbated by the adverse effects of climate change. Consequently, the gap between the legal framework on child labour and the realities on the ground widens even further, making it challenging to address it.

The discussion with different people, either separately through KII or jointly through FGD and group discussions, provided an account of what communities think are the push factors of child labour in their context. The discussions affirmed that, among other factors, poverty, household vulnerability, and other external factors encourage families to engage their children in work that may be considered harmful to them.

However, the discussions did not fully elucidate how the current solutions provided through the legal frameworks are being limited by the context of the communities' realities. Thus, a debate was warranted that would provide an open forum, where people could reassess their situation, interrogate why child labour persists, and look within themselves to find solutions to the problem. Most of the revelations discussed in this chapter were revealed during my first field research, conducted from October to December 2022. It was during the analysis of the data from this first field research that I was prompted to look beyond the doctrinal research methods that I had employed. Subsequently, I reflected on using Theatre for Development (TfD) as a research method for conducting social legal research. In this study, TfD was employed to understand why the solutions offered through the laws seem to be making little progress. In addition to evaluating the challenges and limitations of the current child labour legal framework, the communities offered an alternative perspective on how child labour should be perceived and how innovative solutions to child labour outside the law need to be reimagined. The following chapter, therefore, provides an examination of the applicability and enforcement of the child labour legal framework in the context of communities in Mzimba, Ntchisi, Zomba, and Nsanje districts, as unveiled through the performative analysis in the TfD process, which was employed as a research method.

Chapter 5: Lived realities and the efficacy of the law on child labour

5.1. Introduction

This chapter builds on the discussions in the previous chapters, focusing more on exploring the gap between the legal frameworks on child labour and the reality of the problem on the ground through a performative analysis. It does this by first exploring the communities' perspectives of child labour and the implications of such perspectives on the implementation and enforcement of child labour laws. Furthermore, to illustrate how this perspective impacts the enjoyment of various rights, the chapter examines the rights to education, health, and play from the perspective of the communities.

The choice of these particular rights is influenced by the fact that education is considered an antidote to child labour, as provided through legal frameworks, government initiatives, and child rights advocacy.¹ Furthermore, it is one of the most visibly affected when children are involved in child labour, besides the fact that education is the most competing activity for children's time.² The right to health, along with the right to life, survival, and development, is also one of the critical rights affected when children are involved in child labour. It is considered the worst form of child labour due to its physical, mental, psychological, and developmental effects.³ In essence, the chapter delivers empirical evidence for its argument that the sociocultural understanding and perceptions of communities regarding child labour, childhood, and child rights have implications for the efficiency of the law in addressing child labour in specific contexts. It suggests that if child labour and children's rights were considered from an *integrated childhood perspective*, the child labour legislation could have been more effective in tackling the problem. This will primarily be done by analysing the provisions outlined in the Employment Act 2000. It will be illustrated how communities understand or perceive these provisions within their respective contexts. Through the performative analysis conducted with the communities during the TfD process, various legal provisions, claims, and opinions on child labour, childhood, and children's rights have been tested.

¹ ILO-IPEC, *IPEC action against child labour 2012-2013: Progress and future priorities* (ILO-IPEC, 2014).

² Lire Ersado, 'Child Labor and Schooling Decisions in Urban and Rural Areas: Comparative Evidence from Nepal, Peru, and Zimbabwe' (2005) 33(3) *World Development* 455, 457

³ Owen O'Donnell, Eddy Van Doorslaer and Furio C. Rosati, *Child labour and health: Evidence and research issues' Understanding Children's Work Programme* (UWC, Working Paper 2002) 3; See also Maria Charity Agbo, 'The health and educational consequences of child labour in Nigeria' (2017) 11(1) *Health Science Journal* 1.

In this study, some of these have been validated or refuted as being compatible or incompatible with the realities of Malawian society.

Subsequently, this exploration provides an *integrated childhood perspective* as an alternative lens for understanding child labour to reconcile, narrow, or close the gap between the legal framework and the lived realities of children affected by child labour.

5.2. Presentation of further findings

The various research approaches employed in the thesis enabled the researcher to develop themes that were also informed by the research question. Firstly, the desk-based research analysis was primarily guided by the research questions, yielding different themes. Later, the same research questions and emerging themes were used to develop the data collection tools for the empirical research. Data from the empirical research was recorded in research journals and audio and video recorders. The researcher transcribed the data, clustered the participants' responses, and developed codes and categories based on the captured data.

The themes were further refined and described through familiarisation with the data, which involved multiple readings of texts and field notes, as well as relistening to the interviews. While in the field, these preliminary themes were discussed with the drama group participants to gather more insights. These initial themes also informed the plays developed and used in the performative analysis of child labour, together with the communities.

Three interrelated themes emerged and will be discussed in the following section. These include child labour legal frameworks and realities on the ground, the implications of various perspectives on children's rights, and the cultural context of child labour. Before discussing these themes, the thesis provides a brief overview of the participatory approaches and community engagement processes that informed the research findings, as they are central to the discussion of the themes.

5.2.1. Participatory approaches and community engagement

This thesis argues that child labour can be better understood, and its laws can be more effective if communities are given a platform for analysing their problems through participatory approaches. In light of this, the discussion under this theme explores how Theatre for Development (TfD), participatory approaches, and community input highlight the importance of involving local perspectives in addressing child labour issues. This includes the application of child labour laws.

The discussion further details how engaging communities can lead to better legal and policy formulations that are sensitive to the realities of the community.

5.2.1.1. TfD as a participatory approach in practice

As discussed earlier, TfD performances were carried out in this study. As a form of participatory theatre, the researcher employs language, tactics, approaches, and strategies that do not require any form of literacy from the people involved, unlike other research approaches. It is argued that the approach is also helpful in exploring research questions on lived realities and experiences that may sometimes be difficult to express verbally, except through bodily gestures and gazes.⁴ That is why, when the approach is used as a research tool to understand communities' perspectives on a particular issue, there is much improvisation, miming, the use of song and dance, and dialogue between the performers and the audience.⁵ In essence, the study employed this approach by utilising modes of communication that the communities are familiar with to explore some of the questions about child labour and the law.

As Erel and others argue, the approach is an open-ended process in which the audience is left to provide definite or absolute responses to an issue under research or performance.⁶ This is where the researchers and facilitators encourage the audience to become producers, actors, and playwrights.⁷ If considered in terms of knowledge generation, the participants and the researchers become co-creators of knowledge through the dialogue that characterises this approach. Thus, the facilitators, who are also the researchers, provoke thought in the audience to ignite debate surrounding a research question, allowing them to find solutions or alternative understandings of a particular issue without prescribing the solutions.⁸ Other scholars have advanced the view that TfD differs from other forms of inquiry because, through this approach, there is a deliberate effort to humble the researcher and eliminate all forms of bureaucracy and hierarchy created by the presence of pen, paper, and writing associated with other forms of inquiry.⁹

⁴ Umut Erel, Tracey Reynolds and Erene Kaptani, 'Participatory theatre for transformative social research' (2017) 17(3) *Qualitative Research* 302, 309.

⁵ Christopher Kamlongera, 'Theatre for development in Africa' in Oscar Hemer and Thomas Tufte, *Media and glocal change: Rethinking Communication for Development* (Buenos Aires: Clasco Books 2005) 435, 439.

⁶ Erel and others (n 4) 312.

⁷ Ibid.

⁸ Augusto Boal, *The rainbow of desire: The Boal method of theatre and therapy* (Routledge 2013) xxiv.

⁹ John Martin, Mojisola Adebayo and Manisha Mehta, *The Theatre for Development Handbook* (Pan Intercultural Arts 2010).

Additionally, the views, opinions, and facts surrounding a research matter are validated through the ethnographic research activities conducted by the researchers with the community. As was done in this study, this entails living in the community, engaging in community activities, eating local food, and attending social gatherings. This provides an opportunity for researchers to unveil deep-rooted and unspoken ideas that motivate certain types of behaviour in a community.¹⁰ It has been claimed that this process validates some of the facts that researchers might have encountered during interviews and the desk research conducted prior to the TfD activities.¹¹

As a participatory process used by many stakeholders and organisations to address various community issues, it has undergone significant transformation and simplification to serve its purpose. However, the approach's basic skeleton and core tenets have always remained.¹² Likewise, the performative analysis conducted during the field day performances informs the findings of this thesis.

5.2.1.1.1. Field day performances

An average of 100 people attended each TfD field performance in Ntchisi and Nsanje districts. These participants include stakeholders from the District Social Welfare Office, the magistrate court, the police Victim Support Unit, teachers and learners from surrounding primary and secondary schools, CSO representatives, and traditional and religious leaders. As is the custom in many Malawian societies, the traditional leaders welcomed everyone and introduced the TfD group to all guests and the community. This was followed by welcoming remarks from the CPW of the area where the performance occurred. In their introductions, they sought consent to record the performances and encouraged the participants to engage in the research. The performance storylines were derived from information triangulated from the interviews conducted in each district and the literature analysed (refer to the synopsis/storylines for plays, Appendix 8.11).

During and after the performances, the performers engaged with the communities to solicit comments on what was happening in the plays. They opened up to the audience, inviting them to participate in the plays by answering the questions posed by the performers, interjecting and

¹⁰ Kamlongera (n 5) 444.

¹¹ Christopher Odhiambo, *Theatre for development in Kenya: In search of an effective procedure and methodology* (Bayreuth African Studies 2008 (86) 30.

¹² Ibid.

suggesting alternative reactions from the performers, or offering solutions to problems illustrated in one of the performances below.

In the second scene of the performance at Bengavula village in Ntchisi district, when the parents go to the farm and leave their children, (Chisomo, 12 years old) and his two siblings (Yamikani, 9 years old, and Chifundo, 5 years old) at home, the audience argues that the mother should take the little child with her to the farm so that the other two can go to school. In debating this option, the audience retracted and stated that the mother would not be effective in her work with the child in question. A woman from the audience, acting as a neighbour, offered to take care of the little child, allowing the family to go to the farm and the other two to attend school. While agreeing that this is a workable solution, it was noted that it is unrealistic and cannot happen daily, as the neighbour will have their own things to attend to. The play then continued with Chisomo staying at home with her siblings as the parents went to work on the farm.¹³

These interjections and participations, as illustrated above, allow the community to provide alternative solutions to their problems while becoming active participants in the research process through this approach.¹⁴

The following section discusses how the communities' active participation and reimagination of alternative solutions, referred to as performative analysis in this thesis, were employed to address the research questions. The process unveiled the child labour problem in these communities and the communities' perspectives on how the laws could be applied and enforced to address it in their community. The key to this process is that communities are given a platform to reimagine their situation and offer alternative perspectives on a problem. This is probably why it is argued that Theatre for Development strives to bring about social and personal change through people's involvement. The process enables the audience to role-play what they could have done to change the situation and practice an action they might have taken in real life.¹⁵ Likewise, in this thesis, the performances aimed to elicit the community's perceptions of child labour and child labour laws, as well as suggest solutions to the problems. In extension, the performances unveiled how the

¹³ Refer to Annex on performance at Bengavula village.

¹⁴ Odhiambo (n 11) 30.

¹⁵ Martin and others (n 9) 243.

communities' perceptions of child labour implicate the fulfilment, enjoyment, and promotion of other children's rights.

This performative analysis process juxtaposed the communities' current lived realities and legal frameworks to see how such an alignment can be reconfigured to reflect what is workable and relatable. This was done by following the structure of the examined legal instruments, which has been thoroughly discussed in the following section. It has been argued that in this legal structure, the normative framework deals with the laws provided for in a particular legal document. Then, the institutional framework looks at the expertise and human resources that apply the laws and principles. Lastly, the jurisprudential framework develops over time as the two frameworks, normative and institutional, interact.¹⁶ However, for the sake of this thesis, the structure followed does not examine the jurisprudential framework but rather the normative, institutional, and procedural framework. While discussing the substantive themes, the thesis demonstrates that community participation and involvement are crucial in shaping the community's understanding of child labour, how laws are applied and enforced, and how perspectives towards these laws and procedures impact different children's rights.

5.2.2. Child labour legal framework and the realities on the ground

This theme combines the findings on normative frameworks, legal constraints, and the tension between law and the reality of communities in Malawi. It analyses the shortcomings of existing legislation, particularly the Employment Act 2000, in reflecting community realities.

Notwithstanding the shortfalls and the limitations of the legal frameworks, the communities applauded the work done by the CPWs and Labour Inspectors, as well as their effective use of the law in regulating the engagement and treatment of children. However, it was asserted that their work seems to make limited progress. According to the communities, the laws seem to overlook the people's way of life, accepting that children work, given the realities of Malawian society. It was claimed, therefore, that the application and enforcement of child labour laws can be practical and effective when this reality is taken into account in their application and enforcement. The research with the communities has revealed tension between the legislation's provisions and the realities on the ground. In this discussion, the thesis explores the tension between the provisions,

¹⁶ Robert Doya Nanima, 'Evaluating the Role of the African Committee of Experts on the Rights and Welfare of the Child in the COVID-19 Era: Visualising the African Child in 2050' (2021) 21 AHRLJ 52,53.

institutions, and procedural frameworks related to child labour and how they are perceived or manifest in the communities under this study.

5.2.2.1. Employment Act 2000 Normative frameworks

This section outlines the core values, obligations, and expectations that the Employment Act 2000 seeks to establish and enforce. Specifically, it explores the perspectives of the communities regarding child labour provisions, as well as employer and employee provisions.

5.2.2.1.1. Children and child labour provisions

From the onset of desk research to the performance stage carried out during the empirical field research, it gradually became evident that there are differences and reservations between how the laws define child labour and how communities understand the problem. One way that the laws define child labour is by describing it as any work that economically exploits children and is likely to be hazardous or to interfere with the child's education, health, or physical, mental, spiritual, moral, or social development.¹⁷ During the group discussions with the performers, it was argued that communities describe child labour more positively as work that children perform to support their parents and help the family function, thereby acquiring skills. Similarly, during the performances, it was submitted that when children are asked to do some work in the morning before school, this is not done with any harmful intentions towards the child. On the contrary, they are exposed to a working environment where they acquire skills that will be instrumental for their survival. This claim aligns with the socio-cultural perspective of child labour, where it has been opined that, depending on the context, children are involved in household work to generate an income and develop transferable skills that will be instrumental in their adult lives.

Furthermore, it was revealed that when a child is asked to look after their sibling, it is not a sign of a lack of care for the child by the parent. It was posited that the child is not left in the care of their sibling for an unrealistically long time or under conditions that would negatively impact them. Instead, the children are left together for a reasonable time, enabling the parents to work while allowing the children to interact and play without adverse effects.

Besides, it was alluded that children in these communities work, which is a common practice. During one of the discussions, the CPW recalled that the ILO Convention on Minimum Age does

¹⁷ CRC (1989) art 32(1); See also Employment Act 2000 s 21(1)(a).

not restrict children from working. Instead, it only sets parameters for involving children in specific work under particular conditions. It was reported that this is almost the case with all children's work in the community. It was submitted that:

It must be acknowledged and accepted that children work. We were working when we were young. During the farming season, I take my children to plant, weed, apply fertiliser, and harvest. It's a given reality that we should not deny. Letting children work is our way of life (Nsanje CPW KII Interview).

Through this assertion, the CPW accepted that children are involved in work that might be considered harmful. However, he quickly advanced the view that there is a thin line between allowed work and work that the law prohibits. He alluded that this can be more pronounced in industries and formal work settings, as opposed to communities where working hours are not known or structurally recorded, and formal contracts are not in place.

Consistent with these views, during an FGD with women in Nsanje district, it was opined that when mothers are overburdened with duties within and outside the home, they occasionally ask their children for support. The women asserted that the work that the children are asked to do is consistent with their capacities and abilities. In such instances, the issue of a child's age does not automatically become a primary consideration; rather, it is the capacity to perform the assigned work. Additionally, the women acknowledged that occasionally, some younger children are assigned tasks that would not typically align with their age. However, they denied involving children in harmful work. They said they would not leave a younger child to attend to cooking or look after their sibling when they (parents) are busy, as such tasks are not safe for both children (FGD with female participants, Nsanje)

The laws also determine child labour based on the duration and conditions in which children work.¹⁸ The duration and conditions in which particular work is performed determine whether such work can be considered hazardous or not. During the TfD performances, it was argued that most of the time, parents determine how long children work depending on the volume of work within their households. The parents further claimed that they are better judges of their children's capacities, which is not related to the time factor. Here again, they advanced the proposition that

¹⁸ ACRWC art 15 (2)b; Employment (Prohibition of Hazardous Work For Children) Order 2012 (Malawi) art 3.

there is no need to turn to the law to specify how long a child should work, as no parent would let their child work until they are sick (TfD performance contribution, Ntchisi).

Furthermore, it was alluded that the involvement of children in work in the communities is more a matter of socialisation and less of contractual obligations. Thus, there are no rules that regulate the duration of work, working conditions, and remuneration, as is typically required in formal contracts. As such, it was argued that:

There is limited benefit in treating this matter as a matter of law, but as a social phenomenon where no strict rules of engagement are set, and people operate on mutual understanding. Law matters can be particularly relevant when dealing with land issues, selling livestock to each other, and marriage. Even so, we examine such matters from the perspective of our everyday engagement (Group Village Head Chisi, Nsanje district).

By this assertion, the traditional leader emphasised that some social contracts in the communities are established without formal legal procedures. Additionally, the mutual understanding and the lack of strict rules governing these social engagements are associated with the socialisation process for children, where no formal rules of engagement are followed as they navigate their childhood.¹⁹ During the performances, the plays demonstrated that children's involvement in work on farms and within their homes exposes them to various forms of danger, as several studies discussed in the introductory section above suggest.²⁰ However, regarding these findings and the scenarios portrayed, it was claimed that the work children do on these farms and in their households is not exploitative and does not harm their health, education, or physical well-being.²¹

We recognize that children work, and we involve them in various forms of work. However, there has never been a case where children have been injured due to this type of work, and there has not been an instance where children have become ill because of work (TfD performance contribution, Nsanje).

Against this assertion, the teachers and the CPWs rebutted in reporting that:

¹⁹ It has been claimed that socialisation happens through play, where reality is suspended and the children enter the world of pretence, where what is reality is defined by those who are involved. It is in the same simplicity of playing that children are socialised alongside work. Lucie K Ozanne and Julie L Ozanne, 'A child's right to play: the social construction of civic virtues in toy libraries' (2011) 30 (2) *Journal of Public Policy & Marketing* 264, 265.

²⁰ Nicholas Rees and David Anthony, *Unless we act now: The impact of climate change on children* (UNICEF 2015).

²¹ Farms are being used loosely here. These are ordinary crop fields owned by households for subsistence farming.

Although there have been no reports of illness or injuries among the children involved in work, their school attendance remains erratic. Their performance and participation in school work are concerning, as they often appear too tired to engage or consistently seem uninterested in learning (TfD performance contribution, Nsanje).

Discussions with various stakeholders, the performers, and the general community during the performances revealed that the communities' understanding and perceptions of child labour differ from what is provided for in the laws. On the one hand, the laws explicitly prescribe certain working conditions and offer a particular age as a standard limit for allowing children to work. On the other hand, communities seem to imply that their conditions and realities define what constitutes child labour.

Furthermore, the findings also seem to confirm that children work in most households and that prevailing conditions encourage parents to involve their children in work. The same conditions determine how much and how long children will be engaged in work. However, it has also been argued that this involvement ensures that the children are not subjected to harmful or detrimental conditions. In essence, there is an apparent denial that children are involved in child labour as is provided for in the laws; instead, there seems to be some strong perceptions that children are engaged in work as a form of socialisation, play, and training. This stems from the immediate realities and contexts of the families and children involved, as described in the socialisation childhood perspective, as well as the socio-cultural perspectives of child labour.

These diverse perspectives most likely impact how child labour is addressed. This, in turn, affects how the legal framework can and should be utilised to address the problem at the community level. Furthermore, these perceptions also impact the fulfilment and enjoyment of different children's rights.

This tension can most likely be reconciled if child labour is viewed from the perspective that acknowledges that, in these communities, and in a Malawian context, children work, just as their families and communities expect, while upholding child rights principles. Thus, while children are expected to support the welfare of their families through work, such work must be done in the child's best interest and without any threat to their life, survival, and development. This might involve work that promotes the development of skills that benefit both the children and their families' welfare.

5.2.2.1.2. Employer and employee provision and child labour

The thesis, under the theme of legal frameworks and the realities on the ground, also examined the relationship between the employer and the employee from the community's perspective. The Employment Act 2000 defines an employee as a person who offers services under a written or oral employment contract or any person who performs work or services for another person for remuneration or reward.²² This provision protects the relationship between employees and their employers by setting parameters that the contracting parties must adhere to, as stipulated in Part V of the same Act.²³ However, in the context of Malawian communities, it is rare for children working with or for their parents to enter into a contract, as provided for in this Act. For instance, during the performance in Ntchisi district, it was upheld that every household member knows that they are supposed to go to their onion, potato, or maize fields at a particular time and for a specific duration without entering into a contract with any other household member. This is because no one is an employee or an employer, so no formal agreement is required. Besides, children do not work in their families as employees of their parents.

Furthermore, it was claimed that children work for their families out of obligation, socialisation, and as a norm. Through this work, they do not expect to be remunerated or receive any form of reward, at least not in the sense of this law. During the performance in Nsanje and Ntchisi districts, children reported that they expect new clothes, presents, and some money from their parents after the harvest. Likewise, parents reported buying new clothes and giving their children some money after the crop harvest. However, the parents denied doing this as a form of payment or reward, but rather a fulfilment of their parental obligation.

Subsequently, in reimagining a different situation regarding the provision of contracts through performances, the communities opted for a promise to fulfil their parental obligations through an oral agreement rather than a written one. In the re-enactment, they showcased how cumbersome a written agreement can be. They further advanced the opinion that literacy and the formalities required in entering a written contract compound the problem. The parents advanced the view that they could not imagine entering into a formal contract with their children and being held accountable for failing to fulfil this promise. Furthermore, it was argued that:

²² Employment Act 2000, s 3(a-b).

²³ Ibid s 25.

If we start entering into contracts with our children to help in farming, we can as well extend these contracts until the children leave our homestead and ask them to pay for the services we have rendered since their birth (Village Head Chabuka, Ntchisi district).

The assertion above confirms that the Act's aspiration regarding this provision is not in line with the lived realities of the communities and is likely to be limited in its application and enforcement. Additionally, the discussions from these performances affirmed earlier claims by the Labour Officer in Nsanje district, who stated that the Employment Act 2000's contract provisions mainly apply to formal employment arrangements. He expressed that these contracts are rare when children have been employed, even as household maids and garden boys. He was sceptical that parents or employers would formalise their employment agreements with minors because this seems to be an acceptance or documentation of an offence.

In this regard, the thesis demonstrates that if parents and communities perceive the contract provision outlined in the Employment Act 2000, as discussed above and reported in the performances, they will likely refrain from using it. Let alone, they will not recognize the advantages of respecting such a provision. Discerning meaning from what has been alluded to in these performances, a mere promise would most likely achieve more protection for the parties involved in a contract than a formal written contract in the context of these communities. However, this promise is also prone to abuse, as there is no record of it. Additionally, a Labour Inspector tasked with protecting children and repatriating those involved in child labour may face challenges doing so. This is particularly true in communities like those studied in this research, where there is a negative perception of the regulation in this Act regarding the employer-employee relationship.

It is relatively simple and obvious, therefore, to allude to and comfortably conclude that this provision is far from aligning with the realities of people on the ground and is prone to be challenging in its implementation and enforcement. Thus, this provision fails to recognise the non-contractual relationship that children have with their families and the community in general. It is also limited in reflecting the reality that most children work in their domestic settings and homes, where formalities are often not observed.

5.2.3. Employment Act 2000 Institutional frameworks

The thesis also examined the institutions responsible for implementing or enforcing the child labour provisions outlined in the Employment Act 2000. Just as in the provisions discussed above, the performances provided the communities with a platform to examine the provisions of the laws and assess them in light of their everyday experiences.

5.2.3.1. Labour inspectors and child labour

Under the Employment Act 2000, Article 8 provides for the appointment of a Labour Commissioner and the Labour Officers/Inspectors responsible for enforcing the provisions of the Act.²⁴ The Labour Officers are mandated to enter any workplace freely.²⁵ However, they are limited in their entry to private homes or employers unless they have the employer's consent or are under the authority of a warrant issued by a magistrate.²⁶

According to the communities, these provisions are entirely problematic if the realities on the ground are taken into consideration. Firstly, it was claimed that there are not enough Labour Inspectors to inspect child labour practices within the communities. This assertion has been confirmed by the National Action Plan of Child Labour, which states that limited personnel capacity affects the effective execution of duties related to child labour.²⁷ For instance, in October 2022, the District Labour Officer for Nsanje district reported that his office had only four officers who could be delegated to carry out child labour inspection work, given the district's population of 299,168.²⁸ He further noted that although the office attempted to collaborate with district and community child labour committees to address this capacity gap, they are not fully equipped to carry out such duties, a challenge duly noted by the line ministry through the NAPCL.²⁹

Secondly, it was submitted that, given the limitation of entry into private homes, unless there is consent or a warrant, child labour is most likely to thrive. During one of the performances in Ntchisi district, the play depicted the inspectors attempting to obtain a warrant to enter private tobacco estates. The play portrayed an ideal scenario in which the warrant was successfully

²⁴ Employment Act 2000 s 9.

²⁵ Ibid s 9(a).

²⁶ Ibid s 9(c).

²⁷ Ministry of Labour, Youth, Sports and Manpower Development, *National Action Plan on Child Labour 2020-2025* NAP II. (Ministry of Labour, Youth, Sports and Manpower Development, 2017, 28.

²⁸ National Statistical Office, *2018 Malawi Population and Housing Census Main Report* (NSO, 2019) 46.

²⁹ Ministry of Labour, Youth (n 27).

obtained. The community retaliated by stating that the play showcased something unrealistic. They put forward the proposition that it is usually complex and time-consuming for the inspectors to get such a warrant. They further argued that in the unlikely event that the warrant had been issued, the children would have been taken off the farm, rendering the warrant irrelevant. It was, therefore, claimed that the provision did not accurately reflect their everyday realities.

Furthermore, the people doubted whether a company or a farm owner would consent to having their farms searched if they had children employed there. Considering such scepticism, it was contended that this provision is more applicable to big industries because such companies would want to appear credible in the eyes of compliance regulations, but not in small enterprises, let alone households.

In the performances, it was revealed that Labour Officers would not manage to execute their duties because they are limited in number compared to the population. To overcome this challenge, the communities opted for the involvement of community-based structures such as Mother Groups, Village Development Committees, Community Policing Forums, and Community Child Labour Monitoring Committees. Although they identified capacity gaps in these committees and structures, the communities emphasized that these committees are closer to the people and are better positioned to curb child labour at the grassroots level than the mandate given to the Labour Inspectors in the laws. In one group discussion, it was stated that ‘At least these committees are closer to the realities of the people, rather than the inspectors promised in the Act.’ (FGD performance Ntchisi district).

This provision also aligns with the socialisation and social constructivism perspective discussed earlier. It echoes the idea that a child, prevalent in many African societies, belongs to the community, not just their immediate family.³⁰ In the same vein, communities utilise the social capital they have in each other and invest it in their relationships to regulate conduct, practice, and behaviour. Similarly, the communities opine that mandating community-based structures to monitor and regulate child labour would yield more positive results than the vested responsibility bestowed on Labour Inspectors, who are mostly considered outsiders.

³⁰ John Mbiti, *African religions & philosophy* (Oxford, Heinemann 1990)110.

In essence, the performances reveal the mistrust and scepticism that the communities have regarding the effectiveness of laws in the inspection of child labour and other roles of Labour Inspectors. On the contrary, it has been shown that communities have confidence in how some of their community-based structures work and could be more effective in regulating conduct within the community, including regulating child labour. Thus, it has been demonstrated that communities have vested trust in their ways, traditions, customs, and cohesion to such an extent that the need for inspectors, let alone a warrant to inspect the economic exploitation of children in domestic homes, is irrelevant, as it does not reflect their realities.

5.2.4. Employment Act 2000 Procedural frameworks

The research also tested how the Employment Act 2000 is operationalised. Through the performances, the communities discussed the Act's enforcement provisions and how the institutions established in the Act operate. Apart from achieving latent outcomes where the community's knowledge and awareness of child labour laws were enhanced, the performances provided the communities with a platform to examine the practicality of these laws in their specific context.

5.2.4.1. Registers for young employees' provision and child labour

The Employment Act 2000 recognises that young people can be employed. For this reason, it obliges every employer to maintain a register of any person under eighteen years of age employed by or working for them.³¹ During the performances, it was revealed that sometimes, children work out of desperation. This is where they have nowhere to turn to source an income. It was also reported that estate owners and even small-scale farmers engage children on their estates because they want to maximise profit. Therefore, it would be impractical for children seeking employment to reveal their actual age, and for companies seeking profit to conduct thorough due diligence in verifying the ages of the young people they employ.

In Ntchisi district, this provision was put to the test during the performance. A boy, seemingly young (below 18), was called into the performing arena, and it was revealed that he was 15 years old but had a national identity card indicating that he was 19.³² The audience advanced the view

³¹ Employment Act 2000, s 23.

³² Registration of children younger than 18 was reported prior to the 2020 Tripartite elections in Malawi. See Aliko Munde, 'Malawi: Under aged children should not be registered as voters' (*All Africa*. 4 May 2020)<<https://allafrica.com/stories/202005050321.html>>accessed 18 April 2024; See also Gift Mauluka, 'Falsified

that if a Labour Inspector were to follow the register and records, as stipulated by this provision, the boy would be employed and allowed to work, even in hazardous areas within a company.

On the contrary, the communities submitted that, despite the official document stating that this boy is old enough to be employed, the community knows that he and many others are young and would not allow them to be involved in decisions and work typically reserved for adults. In other words, it was revealed that communities, through their well-connected networks and community records, are well-positioned to determine whether a person is old enough to be involved in certain work. Thus, if the Labour Inspectors were to rely on the company registers and records to identify child labour, the effort would be meaningless, child labour statistics are most likely to be flawed, and the laws would continue being ineffective in addressing child labour.

By borrowing the African community principle, where a child belongs to the community and not to a single household,³³ alongside the child rights principle of non-discrimination, one can realise how communities conceive their communal power in addressing child labour rather than relying on Labour Inspectors. As it was reported that the labour offices in the districts have capacity challenges, communities argued that their community structures are well-positioned to deal with the problem. They opined that their communities rely heavily on their social capital and intricate relationships. Through this relationship and their strong social bonds, they are better equipped to ensure that children contribute to the welfare of their families without being exploited, and this reflects their realities on the ground. Such a perspective, if used and appropriately incorporated in the fight against child labour, is most likely to contribute to narrowing the gap between the laws and the reality of addressing child labour on the ground.

5.2.4.2. Limitations of inspection provision and child labour

The Employment Act 2000 provides that Labour Inspectors may examine employment records, books, and registers to ensure compliance with the provisions of the Act and any other employment-related laws.³⁴ This, therefore, extends to inspecting child labour practices in different workplaces. However, the prohibition on employing children under fourteen, as provided

registrations threaten child rights' *African Legal Studies*, 2020 < <https://africanlegalstudies.blog/2020/05/18/falsified-registrations-threaten-child-rights/> > accessed 20 January 2025.

³³ Mbiti (n 30) 110.

³⁴ Employment Act 2000 s 9 (d)(ii).

for in Section 21 of the Employment Act 2000, does not extend to work in homes.³⁵ This limitation prevents inspectors from regulating work done by children in domestic homes, including caring for siblings, gardening, and even farming for subsistence at a domestic level.

During the performances, it was opined that:

People seem to know that the government is against children working on farms, estates, and other establishments. This is sometimes followed, but it is challenging for parents and guardians to adhere to this promise when their workload is high. In such instances, children are asked to stay home and attend to household matters. Therefore, it is possible that children may not be seen working on farms and other places, but they are equally working at home, sometimes in hazardous situations (CPW KII, Nsanje).

Consistent with the observation above, the Labour Officer in Nsanje revealed that sometimes, parents comply with the law by not taking their children to work. However, they usually leave several tasks that need to be completed before returning home. These tasks range from caring for siblings to washing, cleaning, cooking, collecting water, gathering firewood, and feeding livestock. Thus, since Labour Inspectors may not find children within work establishments, there is a lot that children do at home.

Alternatively, the performances enacted a scenario where it was proposed that the laws should be changed and inspectors should be allowed to extend their mandate into domestic homes. This was performed alongside the suggestions for an increase in the number of inspectors. However, it was decided that this also stretches the imagination to unrealistic breaking points and empty wishes. It was reported that the government cannot afford to employ enough inspectors to cover the district effectively. Furthermore, it was alleged that revising the laws takes time and will likely result in the same conclusion, where the realities of the communities are not fully considered or incorporated into the laws. Eventually, the communities proposed alternative non-legal solutions to address child labour, complementing the efforts outlined in the legislation, as discussed in Chapter Six.

Additionally, it was claimed that this provision is a good example that illustrates that the current laws do not reflect the reality of the majority of Malawian communities. Firstly, it was contended

³⁵ Ibid s 21(2).

that the keeping of records is already faulty, which means that their inspection is likely to be flawed. Secondly, it was maintained that a majority of child labour happens in the domestic setting, other than in the formalised industries and companies. Therefore, the limitation of this provision, where inspection does not extend to work in the homes, is a total claw-back that completely misses the target for tackling the child labour problem. Thus, if the laws could have considered that, in reality, more child labour is happening in the homes, the gap created through this provision could have been closed beforehand.

5.2.4.3. Offences and fines against child labour provision

As earlier stated, within the performance, the performers ask questions that open up space for the audience to provide their input. In one of the scenes, the play in Ntchisi district showcased the Labour Inspector inspecting one of the farms, where he discovers that the farm involves children transporting green tobacco leaves from the farm to the sorting areas within the farm. The inspector threatened to deal with the farm managers and stated that he would impose a substantial fine for the offence.

The Labour Officer invited to the performance was asked to answer a question on fines and penalties for child labour offences. He reported that the law imposes a fine of K20,000 (11 Euro)³⁶ and imprisonment for five years on anyone who employs children,³⁷ to the audience's laughter. He further reported that his office, through the Labour Inspectors, has the duty to ensure that all labour-related matters are amicably resolved between employees and employers.

Firstly, the laughter suggested that K20,000 for a crime committed by the farms is probably not stringent enough to stop the employment of children. Secondly, it implicitly communicated that if this rule is to be religiously applied, then all parents in the community will be imprisoned or fined, as it is common practice for children to be involved in work, which can be described as child labour under current laws. Although the meaning of the laughter was not immediately decoded during the performance, the post-performance evaluation revealed that communities believed everyone whose child is involved in work commits an offense. Nevertheless, such sentiments also indicate that there is a need to sensitise the communities more about the work that is referred to as child

³⁶ Oanda Currency Converter < <https://www.oanda.com/currency-converter/en/?from=MWK&to=EUR&amount=20000> > accessed 20 September 2024.

³⁷ Employment Act 2000 s 24.

labour within the laws and the child labour laws in general. It also validates the thin and nebulous gap between child labour and light work, as discussed earlier.

In almost all the stages of the Tfd process in this thesis, it has been argued that the fine for child labour offences is not deterrent enough to discourage employers from employing or engaging children. It has also been revealed that the number of labour inspectors is inadequate to carry out their work on farms within their areas of jurisdiction.

Additionally, the discussion during the performances suggested that the community has its way of deterring, punishing, or reprimanding individuals who seem to conflict with the ways of life within their community. As it has been established, traditional leaders utilise their extensive knowledge of their communities and local circumstances to influence decisions in various situations.³⁸ In this thesis, it has been suggested that chiefs impose sanctions that are even feared more than the fines provided by the laws. For instance, in Ntchisi district, it was revealed that custom allows damages to be awarded to a farm owner when another person's animal has grazed on their crops, and the owner demands payment in the form of a goat or an equivalent market price. Again, when a person is found to be disrespectful to the traditional leaders, they risk losing out as beneficiaries of government support such as Farm Input Programmes, where they are given coupons for subsidised fertiliser and seed (during the time of the research, a bag of fertiliser was selling at around K90,000 /50kg bag. With a coupon, beneficiaries were expected to pay about K15,000).³⁹ Therefore, it was claimed that if child labour is to be contained or if the laws against child labour are to be effective, heavy penalties, which are genuinely feared by the people in the community, have to be considered as an alternative because those that are provided for in the 'government laws'⁴⁰ are laughable. Additionally, it has been reported that chiefs utilise their influence because the people trust the traditional leaders' processes and approaches, as described below.

Such penalties, fines, or sanctions must be recognised as the valid will of the people in the community that is owned by them. We, as chiefs, only have the power to ensure that they

³⁸ Ragnhild L Muriaas, 'Local perspectives on the 'neutrality' of traditional authorities in Malawi, South Africa and Uganda' (2009) 47(1) *Commonwealth & Comparative Politics* 28, 49.

³⁹ In most cases, Traditional leaders have even used these safety nets and subsidies to enforce good conduct from communities. The leaders have used their influence and control over these benefits to attract community participation in self-help community projects.

⁴⁰ Statutory laws are usually called government laws. This is another sign of detachment from the laws by the communities.

are followed as agreed by the community. This differs from the laws prescribed to the people by the government (KII Group Village Head Tengani, Nsanje district).

Therefore, it was argued that the responsibilities of conducting inspections and enforcing laws, as outlined in legislation, should consider how traditional leaders fulfill their roles and duties. It was expressed that while the Labour Inspectors rely on the law and their mandate to stop people from involving children, the chiefs utilise their power as custodians of culture and their people's trust to govern, guide, and regulate practices and norms in the community.

During the performance, it was submitted that if the Labour Inspectors were to inspect how many children are employed on all the farms in the community, it would take them a year to catch a handful of them. On the contrary, if the communities and chiefs are engaged and take on the role of inspectors, it will take them less than a week to catch all the children involved in child labour because they have eyes everywhere. This way, the challenge of a limited number of inspectors would not arise.

The discussions and findings on the legal frameworks and the realities on the ground, as demonstrated in the debate above, suggest that people have low confidence in child labour laws and their enforcement. There appears to be a lack of trust in the law's effectiveness due to the impracticality of some of its provisions. For instance, keeping registers for children employed is reported to be only effective in established workplaces but not in the communities. Additionally, the communities perceive the penalties proposed in the laws as not deterrent enough.

Alternatively, the findings reveal that the communities have trust and confidence in undertaking tasks through their community-based structures and arrangements, such as traditional leaders and other community institutions. It is believed that laws are mostly 'from the government and CSOs, and more formal, to be effective in addressing child labour problems that communities perceive as work meant for the socialisation of children'.⁴¹ This claim highlights the notion that communities often perceive laws as external or imposed rather than as their own. Nevertheless, communities recognise that some work is detrimental to children, which affects the enjoyment and fulfilment of their rights. This is further compounded by how the communities perceive these rights in the context of their everyday realities.

⁴¹ Post-performance evaluation with TfD performers in Nsanje.

The communities submitted that the provision limiting child labour inspection to domestic settings is a clear example demonstrating the gap between the laws and reality. As it has been reported earlier, child labour is even more dire in domestic settings, and yet the laws do not cover inspection in these settings. The balance between what the laws aim to achieve in this provision would most likely entail extending the inspectors' mandate to households or, better still, enhancing the capacity of community-based structures to take on this role. Through this latter extension, communities will ensure that children contribute to household work, enjoy their right to participation, and prevent this from becoming an overstretched variant of light work that borders on exploitation. Even though the effectiveness of such suggestions can only be speculative, the redress of some problems, such as violence against women, HIV/AIDS, and deforestation, through the engagement of community structures and institutions and the contextualisation of problems from the community's perspectives, is highly recommended.⁴²

The subsequent section discusses how the community's perspectives of child labour affect children's enjoyment of some of the rights that are also affected by child labour practices. It further demonstrates the proposition that if child labour were to be perceived from an integrated childhood perspective, the gap between the promise in the laws and the realities of children affected by child labour on the ground could have been narrowed or tackled. The exploration of these rights is based on all the data collection processes deployed in this thesis. It is not limited to the performative analysis in the TfD process, as explored in the preceding sections.

5.2.5. Implications of perspectives on other child rights

Under this theme, the thesis merges discussions on children's rights to education, health, and play with the social implications of child labour. As pointed out earlier, these rights are chosen because of their direct effect resulting from child labour practices. The discussion assesses how child labour practices affect these rights and the overall well-being of children, primarily from perspectives that do not consider integrated childhood perspectives.

⁴²Alfred Babo, 'Child Labor in Cocoa-Growing Communities in Cote d'Ivoire: Ways to Implement International Standards in Local Communities' (2014) 21 UC Davis J Intl L & Pol'y 23, 23.

⁴² Ibid; See also Emma Lovell, *Gender equality, social inclusion and resilience in Malawi* (Discussion paper, Building resilience and adapting to climate change, 2021) 6.

5.2.5.1. Child labour and rights to education

All around the world, societies pass on their values, traditions, and customs to the next generation through various means. While in some societies, children are taught these values through initiation ceremonies, some societies send their children to formal schools. Regardless of society's methods, sources, and model of schooling, the inculcation of knowledge that will be valuable to the welfare and functioning of children in their adult lives is a common denominator in all forms and types of education.⁴³ Recognising the importance of education and its impact on children's development, the international community, through human rights instruments, imposes an obligation on States to provide education to their citizens. For instance, the International Covenant on Economic, Social and Cultural Rights (ICESCR), through Article 13, provides that everyone has the right to education, and states are mandated to ensure that this right is protected and promoted by providing necessary support for its realisation.⁴⁴ Similarly, the UNCRC, through Article 28, provides the same right. While the same right is provided for through Article 11 of the ACRWC, it is argued that in terms of strengths and weaknesses between the UNCRC and the ACRWC, the latter stands out stronger in protecting the right to education for African children because it is more expansive and further specifies the needs of girls in an African community.⁴⁵

The UNCRC's aspiration for education to be free for all children is echoed in the ACRWC and the Malawi Constitution, as well as in Article 25 and other domestic legislation and policies.⁴⁶ This litany of provisions, echoing the same right across international, regional, and domestic legislation, indicates an unwavering and coordinated consensus on the importance of this right. It is unsurprising, therefore, that perceptions of education and its relationship to development, economic empowerment, and social transformation are often highlighted in international and government programmes, where education is viewed as a remedy for social, economic, and political challenges.⁴⁷

⁴³ Kelum Gamage AA, DMSCPK Dehideniya and Sakunthala Y Ekanayake, 'The role of personal values in learning approaches and student achievements' (2021) 11 (7) Behavioral Sciences.

⁴⁴ ICESCR, 1976 art 13 (2) e <<https://www.ohchr.org/sites/default/files/cescr.pdf>> accessed 12 October 2024.

⁴⁵ Lea Mwambene, 'Implementing the Girl Child's right to education in selected countries in Africa' in Julia Sloth-Nielsen (ed), *Children's rights in Africa* (Routledge 2016) 223.

⁴⁶ Constitution of the Republic of Malawi 1994 (as amended through 2017) s 25; ACRWC art 11.

⁴⁷ Malawi News Agency, Ugly face of child labour (*Nation Online* 11 April 2024) <<https://mwnation.com/ugly-face-of-child-labour/>> accessed 18 April 2024; See also ILO-IPEC (n 1).

On the one hand, when education is perceived as a means to a brighter future for children and their families, as is usually submitted,⁴⁸ parents and children find it attractive and provide all the support in developing the learning and teaching infrastructure and environment. For instance, it was revealed that during the construction and renovation of school blocks at Bengavula Primary School in Ntchisi district, communities were asked to contribute to a development fund either through their labour or by paying for the work done on the school project. It was claimed that this was not a challenge for parents who take an interest in their children's educational affairs. Similarly, the CPWs in Nsanje and Zomba districts posited that community projects, primarily those involving the construction and development of Early Childhood Development centres and school feeding programmes, are more effective when parents see the benefits of giving their children an early start in education, preparing them for primary school through these ECD centres. This willingness to participate in children's educational development projects has been attributed to the parents' perception of the importance of education. On the other hand, it is argued that when education or schooling is perceived as competing for children's time, parents have limited interest in it. Parents are more likely to involve their children in other, more beneficial activities, such as farming, rather than letting them attend school.⁴⁹ Similarly, their interest in anything related to their community and their children's educational development is perceived with hostility. As a result, their children invest limited time in school and more in work, which affects their academic performance when they combine work and schooling.⁵⁰

This relationship between education and child work has been validated in several studies. For instance, it has been found that children who work and attend school tend to perform poorly, as they often miss school and frequently miss homework assignments.⁵¹ This poor performance is not attributed to other factors at home, except that they are involved in work, which affects their test scores.⁵² It is also maintained that parents and children who juggle school and work fail to prioritise time for learning. Furthermore, they lack awareness of the long-term benefits of

⁴⁸ Catherine Davies, Sylvia Pui-Kei Kong, Alexandra Hendry, Nayeli Archer, Michelle McGillion and Nuria Gonzalez-Gomez, 'Sustained Benefits of Early Childhood Education and Care (ECEC) for Young Children's Development During COVID-19' (2024) 22 *Journal of Early Childhood Research* 238, 250.

⁴⁹ James Allen IV, *Double-booked: Effects of overlap between school and farming calendars on education and child labour* (IFPRI Discussion Paper, International Food Policy Research Institute, 2024) 3.

⁵⁰ Christopher Heady, 'The effect of child labor on learning achievement' (2003) 31(2) *World Development* 385, 393.

⁵¹ Patrick M Emerson, Vladimir Ponczek, and André Portela Souza, 'Child labor and learning' (2017) 65(2) *Economic Development and Cultural Change*, 265, 294

⁵² *Ibid* 289.

education and instead focus on immediate economic gains from work.⁵³ As a result, children are more motivated to work rather than attend or invest their time in school-related activities.⁵⁴

However, as already pointed out, the decision to send children to school or work is also influenced by parents' perceptions of the immediate and future returns on education. This perception is held regardless of the community's availability of all necessary school infrastructure. On this point, it has been submitted that even when a community's learning and teaching environment is conducive and attractive, parents will not send their children to school if their perception of children's education is not related to immediate or future benefits.⁵⁵ This suggests that the availability of schools and learning materials is insufficient; perceived returns also play a role.

During discussions with teachers from Bengavula Primary School in Ntchisi and Kamtchenja Primary School in Mzimba, it was observed that parents often appear less interested in their children's education and more focused on ensuring the economic well-being of their families. With such a perspective, parents take their children out of school and involve them in work, which turns out to be child labour-related. However, it was argued that this is mostly common when the agricultural calendar clashes with the school calendar.

During discussions with parents whose children are often absent due to work at home, it was revealed that if schools provided an opportunity to combine school and work, children would be less likely to be involved in child labour. They claimed that during their time at home, children learn skills that are not taught at school. Thus, if what they do at home and what they learn at school could be combined or reconciled, more children could be available both at home and at school.

This assertion aligns with an earlier study on Malawi's labour calendar and rural poverty, which found that Malawi's agricultural labour calendar features a few months of intensive work, primarily during the planting season.⁵⁶ As a result, there is a high level of hidden unemployment during the rest of the agrarian calendar when labour demand is low.⁵⁷ Likewise, another study found a negative correlation between the school and farming calendars, which may impede

⁵³ Ibid 294.

⁵⁴ Ibid.

⁵⁵ Ersado (n 2) 456.

⁵⁶ Alain De Janvry, Claire Duquenois Elisabeth Sadoulet, *Labor calendars and rural poverty: A case study for Malawi* (University of California, Working Paper 2018).

⁵⁷ Ibid 3.

primary school completion.⁵⁸ This study argues that when school schedules do not align with farming calendars, children can attend school consistently throughout the academic year while working on their family farms during the planting and harvesting seasons.⁵⁹ These studies support the claims made by communities in Mzimba, Ntchisi, and Zomba districts, which indicate that children's time for work and school often conflicts. These views warrant the suggestion to revise the school calendar to accommodate children's availability for work in their households and attend school during less labour-intensive agricultural months. Otherwise, children are more likely to remain home and be susceptible to child labour if this conflict is not reconciled.

Discerning from the performances and the above claims, one would conclude that parents and communities realise the importance of children's right to education. It can also be inferred that communities value the contributions that children make within their households. Nonetheless, it is clear that when the school seems to take away more time for children than household responsibilities, children end up dropping out of school. Furthermore, the assertions suggest that communities perceive children's work as beneficial to the children and their families. These findings suggest that parents' perceptions of their children's education are influenced by their social and economic context. The findings further indicate that parents care about their children's education as much as they care for their children's welfare. Given the chance, they would prefer the children to be both in school and involved in work. Therefore, a perspective that balances these two would be more practical in tackling child labour. In contrast, deviations from this perspective are most likely to affect how the right to education and the enforcement of child labour laws can promote the welfare of children.

5.2.5.2. Child labour and right to play

The international community recognises the paramount importance of play in children's development. This is highlighted in Article 31 of the UNCRC, where state Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the child's age, and to participate freely in cultural life and the arts.⁶⁰ To ensure this promise is met, the UNCRC obliges state parties to respect and promote the right of children to participate fully in cultural and artistic life by providing appropriate and equal opportunities.⁶¹ The same is recognised

⁵⁸ Allen IV (n 49) 3.

⁵⁹ Ibid.

⁶⁰ CRC (1989) art 31(1).

⁶¹ Ibid art 31(2).

through Article 12 of the ACRWC. In light of the obligations stated in international instruments, Malawi enacted the CCPJA 2010, which obliges the local government to provide and maintain sufficient and appropriate recreational facilities for children.⁶² Furthermore, CCPJA's guiding principles on matters involving children stipulate that children have the right to leisure activities that are not morally harmful and to participate in sports and positive cultural and artistic pursuits.⁶³ Through the General Comment on the right of the child to rest, leisure, play, recreational activities, cultural life, and the arts, the Committee on the Rights of the Child (the Committee) opines that play contributes to the physical, emotional, and cognitive development of the child. This is continuous throughout the child's childhood experiences.⁶⁴ Additionally, the Committee has argued that children develop conflict resolution and decision-making skills through play and generate new ideas about their social position in the world.⁶⁵ Similarly, it is claimed that health and development will likely be impaired without play, as through play, children cope or adapt to infringement of their rights, such as abuse and neglect, as they develop physical attributes necessary for facing challenging situations.⁶⁶

On its part, the ACERWC recognises that children need to be given space and an opportunity to express themselves through the principle of participation.⁶⁷ In its guidelines on child participation, the ACERWC recognises that children require appropriate space and time to freely formulate and communicate their opinions on any matter that concerns them, to participate effectively.⁶⁸ Furthermore, it provides that such space shall not be confined or limited to a formal arrangement,⁶⁹ which is an essential characteristic of the right to play.⁷⁰

Other scholars have also contended that, in addition to being recognised as a right in its own right, the right to play is also considered a means of attaining the rights to health, development, and

⁶² CCPJA 2010 s 70(1)(c).

⁶³ Ibid Third Schedule para. 4(a).

⁶⁴ Committee on the Rights of the Child, 'General Comment No. 17 (2013) on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts' (17 April 2013) UN Doc CRC/C/GC/17, para 9.

⁶⁵ Ibid para 9.

⁶⁶ Stuart Lester and Wendy Russell, *Children's Right to Play: An Examination of the Importance of Play in the Lives of Children Worldwide. Working Papers in Early Childhood Development 57* (Bernard van Leer Foundation, 2010) 4.

⁶⁷ ACRWC art 4(2).

⁶⁸ African Committee of Experts on the Rights and Welfare of the Child, 'Guidelines on Child Participation' (2022) < https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation_English.pdf > accessed 5 March 2025

⁶⁹ Ibid.

⁷⁰ Committee on the Rights of the Child (n 64) para 14(d).

education.⁷¹ Furthermore, it is contingent on these rights for it to be realised.⁷² Similarly, the Committee emphasises this connection between the right to play and other human rights. In interpreting this right, the Committee encourages states to protect it by recognising the guiding principles of children's rights and the interconnected nature of rights. Here, the Committee provides that when the right to play is not fulfilled, other rights are also affected, and poor realisation of the right to play can negatively impact the realisation of other rights.⁷³

Despite the advantages and positive attributes associated with the right to play and the recognition of its importance to the child's development, there are varying and conflicting attitudes towards children's play.⁷⁴ Some adults dismiss it as a waste of time and dangerous, while others view it as a means of learning and socialisation.⁷⁵ In some societies, it is also considered dirty, a waste of time, and disruptive.⁷⁶ It is argued that considering a child's right to play as irrelevant, coupled with a lack of knowledge about supporting children in playful ways, undervalues and misunderstands the fundamental importance of play in children's development.⁷⁷

In their study on the value of play in traditional and modern education in Nigeria and South Africa, some authors report that the place of play in education cannot be divorced from the discussion on colonialism and the missionary invasions of Africa.⁷⁸ Here, they report that following Western religion and indoctrination, those who considered play as wasteful regarded children's play as "the devil's workshop...leading to sin" and wasteful time for serious responsibility towards God's work.⁷⁹ Regarding colonialism, the authors found that parents' perceptions of child play in education were primarily influenced by Western education, which was considered modern and classy. This perception influenced the attitude that teachers who incorporated play into their teaching were lazy.⁸⁰ Following such Westernised and colonial perspectives will probably discourage children's play. Additionally, teachers who perpetuate these perceptions through

⁷¹ Lester and Russell (n 66) 4.

⁷² Ciara Davey and Laura Lundy, 'Towards greater recognition of the right to play: An analysis of article 31 of the UNCRC' (2011) 25(1) *Children & Society* 3, 4.

⁷³ Committee on the Rights of the Child (n 64) para 16-31.

⁷⁴ Lester and Russell (n 66) xi.

⁷⁵ *Ibid* 1.

⁷⁶ Committee on the Rights of the Child (n 64) para 33.

⁷⁷ *Ibid*.

⁷⁸ Taiwo F Ogunyemi and Henning Elizabeth, 'From traditional learning to modern education: Understanding the value of play in Africa's childhood development' (2020) 40(2), *South African Journal of Education* 2

⁷⁹ *Ibid*.

⁸⁰ *Ibid* 5.

education and parents who have power over their children's time are more likely to apply Westernised and colonial perspectives and discourage play both in school and at home.

On the contrary, it is argued that when play is considered an integral part of children's lives, providing a foundation for readiness in early primary school learning, the attitude towards its incorporation in teaching is different.⁸¹ In this vein, it is established that parents who are primarily interested in cognitive development, such as reading, numeracy, and learning the alphabet, will not be interested in their children's play, as this is considered a waste of time.⁸² However, teachers who understand the benefits of playful learning will incorporate it into their class activities to develop behavioural skills such as sharing, assertiveness, self-control, and sensitivity to others.⁸³

Overall, the views of parents, teachers, and other professionals who work with children can significantly influence how they incorporate the right to play into their programs and decisions. These decisions are not made in isolation but are linked to the situation and context. It is submitted that regardless of the children's situation and context, it is crucial to understand that play is an essential part of childhood, characterised by challenging experiences, uncertainty,⁸⁴ and a break from reality.⁸⁵ Notwithstanding such uncertainty and suspension of reality, it is further claimed that each society perceives the value of play differently, based on the culture and values they want to promote. These values are then incorporated into society's various play opportunities.⁸⁶

It has been suggested that modernisation is changing the way children play and the types of games they enjoy, thereby preventing the incorporation of cultural values into play.⁸⁷ However, it is still necessary to consider a traditional-modern model of childhood development, as proposed by child education experts. Ogunyemi and Henning contend that this model emphasises African socio-cultural child-rearing practices while recognising the benefits of global research on holistic child development. Among other things, it promotes community life over individualistic values.⁸⁸

⁸¹ Maryellen Schaub, 'Is there a home advantage in school readiness for young children? Trends in parent engagement in cognitive activities with young children, 1991–2001' (2015) 13(1) *Journal of Early Childhood Research* 47.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ Committee on the Rights of the Child (n 64) para 14(d).

⁸⁵ Lucie K Ozanne and Julie L Ozanne, 'A child's right to play: the social construction of civic virtues in toy libraries' (2011) 30(2) *Journal of Public Policy & Marketing* 264, 265.

⁸⁶ *Ibid* 266.

⁸⁷ Ogunyemi and Henning (n 78) 7.

⁸⁸ *Ibid.*

Following the claims discussed above, the TfD performances in Ntchisi and Nsanje presented that play is a human right on its own. It is dependent on other rights, and it should be spontaneous, flexible, and free from any other obligations, as earlier articulated by different scholars⁸⁹ and echoed through the discussion with Child Protection Workers in the districts. While the children present during the performances were jubilant about this idea and seemed very happy to have such an assertion presented in front of their parents and guardians, the parents held a contrary opinion. They articulated that, given the fact that households need food, clothing, and shelter, which are realised through the work that everyone in the household does, it is impossible to give children such a right in its entirety. The parents advanced the view that:

One must balance giving children the freedom to play as much as they want and what people will eat. Given the chance, children can play every day and all the time. They may not want to sleep but play. Children can drop out of school to play.⁹⁰

By asserting this, the parents seem to suggest that they cannot allow children to play without attaching some obligations tied to the family's economic output.

CSOs working on children's rights and education programmes agreed with the assertion that play, in its status as a right, conveys legitimacy and seriousness, which is sometimes absent from adult discussions about play. As with other rights, play should be given attention, with structures in place to enable children to enjoy it fully.⁹¹ In light of this position, the CSOs contended that parents and the government have a shared responsibility and an obligation to ensure that children's rights to play are fulfilled. The children's right to play falls into parents' responsibility, just as parents are providing amenities for the education, health, and development of the child.

While agreeing that children's rights are affected when children are involved in child labour practices, participants in this research advanced the view that children find play in every situation and engage in play even when they are working. It was, therefore, indicated that if the right to play is to be realised, amenities that enable children to play while contributing to household chores must be implemented. For instance, it was reported that the Mary-Go-Round Water Pumps

⁸⁹ Davey and Lundy (n 72) 4.

⁹⁰ TA Tengani Nsanje district, TfD performance, comments from parents.

⁹¹ Davey and Lundy (n 72) 11.

(PlayPump)⁹² is a good example of children contributing to sourcing water while they play. Subsequently, it was submitted that if laws were formulated around the notion that Malawian children are required to contribute to household work, better child-friendly technologies would have been invented or introduced to ease the burden of overreliance on children. If this is not the case, parents are most likely to steal children's playtime by involving them in work, which ultimately creates tension between their conduct and the enforcement and implementation of child labour laws.

If children can play and contribute to the household's welfare, their right to play and participate is promoted. At the same time, their contribution towards sourcing an income for their families is taken care of. When this balance is realised, it is most likely that the gap between the child labour laws and the realities of the problem on the ground is minimised. In essence, this balance aligns with an *integrated childhood perspective*, where children's rights are promoted, and community and family expectations regarding children's work are met.

5.2.5.3. Child labour and the right to health

There has been consensus that the health of children involved in child labour is compromised due to the nature and conditions in which they work. This assertion has been reported through ILO studies and findings from various projects conducted under the ILO IPEC programme in several African countries. For instance, it has been reported that apart from being exposed to chemicals, pesticides, falling objects, and dangerous machinery, children who work experience physical exhaustion and stress-provoking illness.⁹³ While acknowledging that some of these health effects are easy to see, the report further alludes that some concealed effects are long-term and are linked to the poor working conditions and the exploitative nature of children as they engage with their employers and adults.⁹⁴

Similarly, it has been found that children involved in child labour within the streets in Ghana are prone to health complications that include stomach problems, sight and skin problems, as well as persistent headaches. All these are attributed to the hazardous working conditions to which

⁹² These are innovative pumps used by children in communities where water sources are scarce. They were installed in several villages and schools in Malawi. The Water Channel, Mary Go Round Water Pump < <https://thewaterchannel.tv/videos/mary-go-round-water-pump/>> accessed 15 January 2025.

⁹³ O'Donnell and other (n 3) 1.

⁹⁴ Ibid 3.

children are exposed on the streets and in markets while selling various products.⁹⁵ Furthermore, it has been consistently reported that children working in artisanal mines, in agricultural fields, and on the street have problems breathing, pneumonia, and other injuries that have profound health implications.⁹⁶

Regardless of the effects that child labour has on the health of the children, parents and children find themselves engaged in such practices. It has been reported by children and parents that there are situations that children and parents find themselves in that compel them to be involved in child labour while being fully aware of the risks involved.⁹⁷ Other than the reason that children are engaged in child labour to supplement family income, as has also been reported in various studies, it has also been contended that some parents prefer to expose their children to skills training other than formal education because of their inability to support their children's education beyond the basic level. Unfortunately, this exposure to skills training tends to have negative health consequences for children due to their age and the nature of the skills involved.⁹⁸

The involvement of children in work that affects their health is contrary to the UNCRC, which promises children the right to enjoy the highest attainable standard of health, as outlined in Article 24.⁹⁹ For this right to be enjoyed, the UNCRC obliges states to take all effective and appropriate measures to abolish traditional practices that threaten its attainment.¹⁰⁰ On top of this, the survival and development of children, which is provided through Article 6 of the same Convention,¹⁰¹ is threatened when children are exposed to all the threats encountered through their involvement in work.

Likewise, the Committee to the ICESCR posits that to ensure the protection of this right, state parties should provide an environment that supports the development and building of life skills through youth-friendly centres.¹⁰² Furthermore, the Committee on the ICESCR encourages the

⁹⁵ Emma Seyram Hamenoo, Emmanuel Aprakru Dwomoh, and Mavis Dako-Gyeke, 'Child labour in Ghana: Implications for children's education and health' (2018) 93 *Children and Youth Services Review* 248,249252.

⁹⁶ Agbo (n 3).

⁹⁷ Hamenoo and others (n 95) 252.

⁹⁸ Ibid 249.

⁹⁹ CRC (1989) art 24.

¹⁰⁰ Ibid art 24(3).

¹⁰¹ Ibid art 6.

¹⁰² Committee on Economic, Social and Cultural Rights, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)' (11 August 2000) UN Doc E/C.12/2000/4 <<https://www.refworld.org/pdfid/4538838d0.pdf>> accessed 13 November 2024.

adoption of effective preventive measures against traditional and cultural practices that affect children's health.¹⁰³ Without fulfilling this obligation, parents are most likely to expose their children to hazardous labour as they attempt to develop specific skills in them. The perspectives of child labour and childhoods that compel parents to involve their children in work that threatens their right to health probably emanate from states' failure to live up to their obligations in promoting the right to health as provided for through the ICESCR in article 12, and the deficiency in skills development opportunities for young people. True to this assertion, it was found that when the youth have limited options to develop a skill that provides them with an income, they are more susceptible to engaging in behaviour that is risky to their health.¹⁰⁴

It has been asserted that the adults that children will become in the future are determined by their present childhood experiences.¹⁰⁵ This suggests that children adopt the roles they are exposed to and utilise their everyday experiences to make sense of the world.¹⁰⁶ These experiences shape the societies of tomorrow, just as the socialisation and social constructionism perspectives of childhood discussed earlier allude to.¹⁰⁷ Unfortunately, these young people are susceptible to harm from pollution in the very societies that give them experiences. These pollutants damage the brains, vital organs, and immune systems of children, causing impairments that can persist into adulthood.¹⁰⁸ Therefore, one would be compelled to conclude that societies that involve their younger generation in labour that threatens their right to health have a perception of childhood that suspends the reality that the adults children will become in the future are determined by their present childhood.¹⁰⁹ In agreement with this assertion, in their discussion of why children are allowed to work with green tobacco at the risk of green tobacco sickness and other complications, parents in Mzimba district claim that children develop their tobacco handling skills when they are

¹⁰³ Ibid para 22.

¹⁰⁴ Jane Lakey, Arpita Mukherjee and Michael White, *Youth unemployment, labour market programmes and health* (Policy Studies Institute 2001) 4.

¹⁰⁵ Emma Uprichard, 'Children as 'being and becomings': Children, childhood and temporality' (2008) 22(4) *Children & Society* 303,311.

¹⁰⁶ Jeremy Carpendale and Charlie Lewis 'Constructing an understanding of mind: The development of children's social understanding within social interaction'(2004) 27(1) *Behavioral and Brain Sciences* 79, 82.

¹⁰⁷ Peter Berger and Thomas Luckmann, *The social construction of reality. A treatise in the sociology of knowledge* (Penguin Books 1966) 150.

¹⁰⁸ Committee on the Rights of the Child, 'General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change' (28 August 2023) UN Doc CRC/C/GC/26 para 24.

¹⁰⁹ Uprichard (n 105) 311.

actively involved in the trade.¹¹⁰ They further put forward the proposition that they let children get exposed to working with tobacco as they eventually develop resistance to green leaf tobacco sickness.

When presented with the assertion that communities' social-cultural perspectives on childhood, child labour, and child rights influence how children are involved in work that affects them, the communities maintained that no parent can or is pleased to involve their children in work at the expense of their survival, development, and good childhood experiences. It was suggested that addressing the root causes of child labour, such as poverty and the need for improved access to skills development education, could effectively tackle the problem, regardless of the perspective from which child labour is viewed.

Similarly, CPWs in Nsanje and Mzimba districts took the position that if stakeholders realise that children's right to health needs to be protected at all costs, while acknowledging that the lack of early child development centres influences child labour, ECD centres will be easily accessible at the community level. Likewise, the discussions with the children in the children's corners alluded to the idea that if the government recognised that children's health is paramount, it could have made it possible for the inspection of child labour in farms and homes to be supported, let alone improve other safety amenities in their communities.¹¹¹

Nevertheless, the discussions in this thesis with almost all the stakeholders confirmed that child labour, regardless of the perspective, affects the enjoyment of the right to health for children. Additionally, the communities submitted that their activities and the involvement of children in work ensure that they protect the children from all harm that could befall them. The reasoning behind this is as follows: they recognise that if children are sick and unhealthy, they will not contribute anything to the welfare of the house; instead, the children's unhealthy conditions will make the homes even more vulnerable.

¹¹⁰ Gift Mauluka, 'As you light another cigarette' *African Legal Studies*, 2022 < <https://africanlegalstudies.blog/2022/06/15/as-you-light-another-cigarette/>> accessed 15 January 2025.

¹¹¹ The children discussed safety and their right to health by mapping safe community places. In this discussion, they indicated some homes as unsafe because child labour is prominent in such homes. The reference to the laws and inspection mandate of the Child Protection Workers working as proxies to the Labour Inspectors was made when they were told that the law does not permit inspection by the Labour Inspectors in private homes.

However, this thesis failed to demonstrate how the socialisation perspective of childhood affects children's right to health. The thesis instead suggests that children's involvement in work is part of socialisation and a necessity, which should be used to advance their overall right to health. Additionally, if anything, the thesis highlighted how the over-reliance on children as sources of household labour affects the different children's rights, including the right to a healthy and safe environment. Nonetheless, the communities in Mzimba, Ntchisi, Zomba, and Nsanje districts argued that promoting life skills development centres should be viewed as a strategy to enhance children's right to health, as outlined by the Committee on Economic, Social and Cultural Rights (CESCR).¹¹² This approach could help address child labour issues, promote children's health rights, and address the limitations in the current child labour legislation in Malawi.

5.2.6. Cultural context and child labour

This section explores how tradition, customs, and cultural beliefs shape the understanding of child work and its role in family dynamics. Emerging from the perspectives discussed in Chapter Two, the discussion of the findings under this theme aligns with the community's sociocultural perspectives on child labour, cultural practices, and child socialisation.

To reiterate what was presented earlier, the Employment Act 2000 prohibits individuals under the age of fourteen from being employed or working in any public or private enterprise.¹¹³ It has been submitted elsewhere that a person of this age cannot work, as they are not physically developed enough to engage in gainful employment, let alone at an age when they are supposed to be in school.¹¹⁴ Furthermore, the Malawi Constitution defines children as all individuals under eighteen years old.¹¹⁵ Regardless of these contradictions regarding age, which are not the primary focus of this section, communities in the study population appear to have differing perceptions of what constitutes a child, particularly in relation to the minimum age of employment and their cultural practices and beliefs.

¹¹² Committee on Economic, Social and Cultural Rights (n 102), suggest state parties to provide a safe and supportive environment for adolescents ...to build life skills. The life skills centres in the communities include skills in carpentry, brick laying and other entrepreneurship development.

¹¹³ Employment Act 2000 s 21.

¹¹⁴ Convention 138 art 2.

¹¹⁵ Constitution of the Republic of Malawi 1994 (n 46) s 23(6).

For instance, in Ntchisi district, it was reported that boys aged six and above undergo traditional practices through *gulewankulu*.¹¹⁶ In Zomba, boys around the same age undergo a cultural practice where they are circumcised as a sign of transition from childhood to adulthood. It was further argued that girls who have started their menstruation undergo different traditional ceremonies where they are taught sanitary hygiene and how to carry themselves within the community as they transition into adulthood.¹¹⁷ While the Employment Act 2000 and the Constitution define children in terms of age, communities in these districts define children according to their traditions and the transitions they undergo in various contexts and cultural practices, as stated above.

Relatedly, it has been found that in some cultures, when children reach puberty, which is sometimes below the age of fifteen, they are no longer treated as children, and some even end up getting married.¹¹⁸ As verified through interaction with communities in this thesis, parents are no longer responsible for caring for children who have gotten married and left their parents' household, as they are no longer considered children requiring parental support. To provide for their young families, these children start working and are engaged in all forms of child labour.

Additionally, in Mzimba, Ntchisi, and Nsanje districts, it was reported that families have main pieces of land where they grow their cash crops, such as maize, tobacco, groundnuts, and other winter crops through irrigation. Apart from these fields, children are allocated smaller pieces of land to grow any other crop they choose. So, apart from contributing labour to the main piece of land, the children are responsible for their smaller crop fields. Additionally, in Mzimba district, it was claimed that when children have autonomy over their small plots of land, they learn through practice and are free to make mistakes in such endeavours. It was opined that this also assures parents that their children will be able to care for their main crop fields independently should they

¹¹⁶ This is a quasi-religious institution among the Chewa. For more, see Mapopa Mtonga, 'Gule wamkulu as a multi-state enterprise' (2006) 58(1-2) *Museum International* 59-67; See also Mastone Lenias Kachikwerete Mbewe, 'Assessment of the Gule Wamkulu as a Rite of Passage among the Chewas of the Central Region in Malawi' in Louis Ndekha and others (eds), *African Traditional Religions Revisited : Dynamics in Indigenous Religions in 21st Century Africa; Essays in Honour of Monsignor Professor Joseph Chaphadzika Chakanza* (University of Bamberg Press 2024) 141.

¹¹⁷ For more of these practices, see Mbiti (n 30); Malawi Human Rights Commission, *Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi* <https://www.mwfountainoflife.org/files/4413/9395/3331/cultural_practices_report.pdf> accessed 18 January 2025.

¹¹⁸ Lea Mwambene, 'Recent Legal Responses to Child Marriage in Southern Africa: The Case of Zimbabwe, South Africa and Malawi' (2018) 18 *AHRLJ* 527,528; See also Medson Makwemba, Blessings Chinsinga, Chrissie T Kantukule, Alister Munthali, Mekonnen Woldegorgis, Simon Haenni and Qingyang Lin, *Traditional Practices in Malawi* (Survey Report, 2019) 46.

die. In these communities, these children are perceived as young adults who can take care of themselves without total support from their parents.

Furthermore, the participants in this study contended that the fourteen-year-old age limit for employment seems to suggest that all children grow up in socioeconomically equal households. For instance, in Ntchisi district, it was argued that children who have lost their parents and are living in a child-headed household can find it harder to keep off work than children whose parents are still alive. Also, in Nsanje district, it was found that children whose families have been affected by floods are forced to work than those who have not been affected. Thus, these situations encourage children to assume responsibilities that are typically reserved for adults. Eventually, these minors are no longer regarded as children.

In the conditions and contexts posited above, the communities undoubtedly conflict with the law on the minimum employment age, and the law will be limited in addressing child labour. This was further demonstrated when the performances examined the provisions for maintaining records and registers for children who have been employed, as maintained earlier in this chapter.

Regarding the provision discussed in this section, the age of maturity, related to the minimum employment age, must be reconciled with the community's perception of a child and the corresponding age of maturity. Although the laws specify a minimum employment age, and the community expects children to contribute to household welfare, the child's right to life, survival, and development must be prioritised. In other words, regardless of the child's age, the community must first examine the effects of the type and condition of work in which the children are involved. Furthermore, while traditional and cultural practices sometimes influence how a community defines a child and the kind of work based on their perception, understanding the impact of this perspective on the children's lives, survival, and development can enable communities to reconcile how these children participate in work. This understanding will not only help the communities raise a future generation that holds society's values according to its expectations. But it will also conform to the requirements and aspirations of the ACRWC, where the duties of the child are not overstretched into exploitation under the disguise of culture.¹¹⁹

¹¹⁹ African Committee of Experts on the Rights and Welfare of the Child, 'General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child on "The Responsibilities of the Child"' (2017) para 23-24.

5.3. Conclusion

The chapter empirically demonstrates how communities perceive child labour provisions, primarily based on the Employment Act 2000. It has been shown that some provisions are limited in addressing child labour because they do not align with the community perspective of integrated childhood. Critical to this misalignment is the definition of child labour. Thus, while the Preliminary part of the Employment Act 2000 does not define child labour, subsequent provisions prohibit the employment of children under fourteen years in work or activities that are likely to harm their health, safety, education, morals, or development. According to the community's perspective, children's engagement in work is part of their socialisation, which is a component of household survival strategies and community expectations. Such a perspective, therefore, affects the implementation of the current Employment Act 2000.

The chapter has demonstrated that, from an *integrated childhood perspective*, the normative, institutional, and procedural frameworks of the Employment Act 2000 are limited in their ability to address child labour effectively. Furthermore, when this perspective does not inform communities' ideas around children's rights to education, play, and health, the likelihood of these rights being fulfilled, safeguarded, and promoted is low.

In addition to examining the legal framework of child labour using traditional doctrinal methods, the chapter has showcased this examination through the involvement of communities in the TfD process. Through the performative analysis approach, the communities have examined the various provisions of the Employment Act 2000 and proposed alternatives that could possibly address the existing limitations. By reviewing the current legal frameworks from the lens of the communities, the thesis has demonstrated how child labour laws can be realigned to reflect what is workable and relatable to the communities involved. These alternatives, along with the suggestions provided through the other research approaches discussed throughout the thesis, culminate in the recommendations and conclusion presented in Chapter Six.

Chapter 6: Conclusion and Recommendations

6.1. Introduction

The thesis has examined the problem of child labour in Malawi. It has looked at the reasons and the tension behind why child labour is still a problem in Malawi despite a litany of laws that are meant to protect children from all forms of exploitation, including child labour. It has been demonstrated that the gap between the existence of a promise of protection and the lived realities of children and families affected by child labour is marred by a contestation of factors. Thus, the thesis verifies the complexity of child labour in the context of poverty, household vulnerabilities, misaligned education priorities and programmes, and gaps in implementing and enforcing child labour laws in Malawi. At its core, it establishes that communities' perspectives on childhood and children's rights have an impact on how children are engaged in work, which in turn affects how legal frameworks function in addressing child labour. The thesis suggests that if the gap between the legal frameworks on child labour and the reality of child labour on the ground is to be reconciled, there is a need to reimagine and restate the notion of childhood through the lens of integrated childhood. This new perspective, an *integrated childhood perspective*, acknowledges that children's roles in Malawi are incorporated into household survival strategies and community expectations, which sometimes diverge from the legally framed notion of childhood. The thesis further suggests that a performative analysis should inform holistic approaches to tackling the problem of child labour. This approach to analysing social problems provides affected communities with a platform to reassess their issues and find solutions that are practically applicable in their specific contexts. Furthermore, the approach simplifies the otherwise technical ideas and concepts that characterise legal frameworks, making them more relatable to the people in the communities.

The thesis addressed the following research question using sociolegal research methods. This approach included desk reviews and empirical research utilising participatory and ethnographic techniques, such as Theatre for Development, conducted in Mzimba, Ntchisi, Zomba, and Nsanje districts. The overall question that the thesis was tackling is: How does the current legal framework on child labour in Malawi reflect the lived realities of affected children and their families, and in what ways can an *integrated childhood perspective* inform more context-responsive legal reforms?

In the following section, the thesis provides a detailed reflection on each of the following specific research questions that guided this study:

1. How are Malawi's legal frameworks structured in addressing child labour?
2. How does the socioeconomic matrix of child labour inhibit the legal framework from achieving efficacy in addressing child labour?
3. In what ways can an *integrated childhood perspective* be operationalised within Malawi's legal and policy context to tackle child labour in Malawi?

6.2. Overview of key findings

The section gives an overview of the key findings from the research. It summarises these findings based on the research questions above, further categorised into key themes. Firstly, it looks at the structure of Malawi's child labour legal frameworks in terms of their alignment with international and regional instruments, and the imminent gaps. Essentially, this looks at the disparities between the law and the realities on the ground. Secondly, the section summarises the socioeconomic matrix implicating the efficacy of the legal frameworks. Lastly, it then summarises the findings on question three by looking at the legal and non-legal interventions for tackling child labour, which are the recommendations that the study proposes.

6.2.1. Analysis of legal frameworks and structures

6.2.1.1. Alignment with international and regional instruments

The thesis has articulated that Malawi's legislation on child labour, including the 1994 (rev. 2017) Constitution, the Child Care, Protection and Justice Act (2010), and the Employment Act 2000, is well-aligned with international and regional human rights frameworks in addressing child labour. The alignment is pronounced in the definition of child labour, the minimum age of employment, the categorisation of child labour as light work and hazardous work, and the monitoring of child labour practices in companies and industries through institutions and structures established in the laws.

Besides, regarding the worst forms of child labour, Malawi legislation recognises its local context. This is demonstrated in the provisions that adhere to international conventions and allow for flexibility in revising work that may be considered hazardous, depending on the context and local realities, in consultation with relevant stakeholders, as stipulated in the international conventions.

Furthermore, the Malawi legislation has provided that some forms of child labour are worse and need to be eliminated immediately. Such types of child labour include the involvement of children in dealing with illicit drugs and substances, the involvement of children in prostitution and pornography, as well as human trafficking activities.

Additionally, the laws prohibiting child labour in Malawi align with international conventions on matters dealing with monitoring and reporting progress made in the protection, promotion, and safeguarding of children's rights in general and matters dealing with child labour in particular. Such an alignment is evident in the deployment of labour inspectors at the district level. These inspectors are mandated with the tasks of monitoring child labour incidents, repatriating children involved in child labour practices, and reporting the progress of implementation of the child labour legislation and frameworks at different levels.

The thesis has also verified that Malawi legislation, particularly the Malawi Constitution, provides for access to quality and accessible education for children as a means of addressing child labour in the community. This constitutional provision is bolstered by other legislation, such as the Child Care, Protection and Justice Act (2010) and the Employment Act 2000. Such legislation empowers and mandates various stakeholders to act in matters related to child labour at various levels.

6.2.1.2. Legislation implementation gaps

This study has established that implementing and enforcing these laws remains challenging despite their alignment with international standards. These challenges are widespread and affect people at various levels. They include the limited human and financial capacity of law enforcement officers, differences in understanding the provisions, divergent perspectives on children's rights and child labour laws, as well as limitations in the normative, institutional, and procedural architecture of the legal frameworks, as summarised below.

It has been found that the laws accord power and authority to different stakeholders. In this regard, Labour Inspectors are mandated to serve those who work, to repatriate children from workplaces, including industries, companies, and other establishments. However, actual practice parallels the realities on the ground. For instance, the Employment Act 2000 does not permit inspectors to enter private homes for these inspections without a warrant from a magistrate. In actual practice, obtaining a warrant from a magistrate seems to be a tall order for the inspectors. This bureaucracy hinders efforts to address child labour in a timely manner.

Additionally, the study has found that the critical legislation in dealing with child labour in Malawi, the Employment Act 2000, stipulates that employers must keep records of the children they have employed. This has been revealed as a challenge, as most of the child labour practices identified in the study are not in the industries and formal employment sectors. Firstly, this is because there are no formal industries in these communities. Secondly, it has been established that even if these industries existed, the likelihood of such companies maintaining valid records that attest to the employment of children is almost negligible. This is further compounded by the fact that age identification documents are rarely available in these communities. Thus, in the context of poverty and other child labour influencing factors, parents of children searching for employment are most likely to conceal the actual ages of their children so that the children can get employed.

It has also been found that there are differences in perspectives between what is provided for in the laws and policies and what communities perceive as child labour and its influencing factors. On the one hand, the study has surfaced that the communities perceive the involvement of children in work as a form of socialisation that is accepted, as it allows children a chance to acquire skills necessary for their future survival. On the other hand, the law frowns upon the involvement of children in work that is detrimental to their health, psychological well-being, moral and physical development, and physical well-being. While both perspectives resonate on the effects of child labour on the lives of children, the community's perspectives take precedence in the everyday realities of communities, and children continue being involved in work that harms their educational attainment and physical development. Thus, the law seems to be making limited progress in addressing child labour.

Relatedly, Malawi's law provides a minimum employment age of fourteen years. It further provides for a distinction between work that is acceptable for children, light work, and hazardous work. These categories are differentiated by age. However, the lines between acceptable, light, and hazardous work are nebulous. The study also found that children's work in households is not distinct, scheduled, and monotonous, as would be the case in industries and companies. On the contrary, children's work is sometimes spontaneous, demand-driven, and not bound by time. Due to the unpredictability of work and the need to earn an income on a daily basis, children are often involved in various forms of work, regardless of their age.

Furthermore, the study has revealed that the structural arrangement provided for in the law, where labour inspectors are mandated to monitor child labour in the workplace, is ineffective. Firstly, there is a limited number of labour inspectors within the districts to execute their duties effectively. For instance, there are three labour inspectors in Ntchisi district and four in Nsanje and Mzimba districts, against the populations of 317,069, 299,168, and 940,184 people, respectively.¹ This is challenging as there are not enough inspectors to execute their duties. Secondly, the penalties for employing children are arguably too low to have a deterrent effect on the companies or people involved in child labour practices within domestic settings.

Relatedly, findings of this thesis show that apart from the limited financial capacities of the District Labour Office to operate effectively, their training in child labour monitoring and child labour laws is also deficient. To address these capacity challenges, the District Labour Offices (DLOs) rely on NGOs to enhance the capacity of their officers in monitoring and enforcing child labour laws. The DLO also works with NGOs to establish Community Child Labour Monitoring Committees (CCLMC). These committees are established in the villages to support monitoring child labour activities such as repatriation, raising awareness on child labour laws, and demanding social services from duty bearers. Nonetheless, the NGOs' limited coverage and project timelines bind their involvement with the CCLMC. Thus, in the absence of NGO operations or presence in the communities, the sustainability of the CCLMC's work is very limited.

6.2.2. The disparity between law and reality

In the discussion of how the legal framework on child labour is structured, as well as the socioeconomic matrix that is inhibiting the laws from being effective, the study unveiled that there are disparities between the legal frameworks and the incidence of child labour in Malawi. The thesis has examined the international and domestic legislation on child labour, as discussed in Chapter Three. This examination has been followed by an exploration of how these laws manifest in the communities addressed in Chapter Five. The thesis investigated the reason for the disparities between what is provided for in the legislation and what is on the ground, as summarised below:

¹ National Statistical Office, 2018 *Malawi Population and Housing Census Main Report* (NSO, 2019, 47.

6.2.2.1. Cultural perspective, child rights, childhood, and child labour

It has been established in this thesis that when people's expectations are not met or are contrary to the provisions of the law, there are challenges to implementing or enforcing such laws. In most cases, the thesis has unveiled notions about the cultural acceptance of child labour. This acceptance lies in the nebulous line between legally accepted light work and child labour. In most agriculture and family-based enterprises, children's work is embedded in cultural values around family responsibility and is often considered normal and not exploitative. When there are such contradictions, mainly emanating from cultural acceptances or perspectives of child labour and the legal provisions that frown at child labour, almost always, the cultural perspectives are dominant. Resultantly, child labour laws have limited effect in addressing child labour. Given such differences and tensions, one would be sceptical about how the laws would function in addressing the child labour problem. It is therefore proposed that the problem of child labour be understood within the localised, culturally appropriate means without necessarily using the law as a threat to bring about change.

The thesis has observed that children in Malawi navigate their childhood in a context where cultural values, traditions, customs, and socioeconomic factors expose them to work. It has been found that there is an apparent contradiction between what the communities consider child labour and what is provided for in the laws. In these communities, children work every day as is expected of them. When children take care of their siblings, collect firewood, irrigate crops along the riverbanks, and perform various household chores, it is considered culturally acceptable and encouraged. This type of work is often undertaken by children from an early age. This is how it becomes an integral part of their childhood. On the contrary, the same work is considered exploitative in the eyes of both international and domestic legislation on child labour in Malawi. These seemingly contradictory perspectives invite a reimagination of how differently the laws on child labour can be implemented to ensure that children are protected from exploitation while living up to the expectations of their families and society.

6.2.2.2. Informal economy, community involvement, and child labour

The thesis has investigated and verified that a majority of child labour practices occur within the domestic setting. Children harvest and pack farm produce such as tobacco, Irish potatoes, and onions in these domestic settings. The children are also asked to apply pesticides and fertilisers in

crop fields. In cases where children are not employed to perform these tasks, they are left at home to do household chores, care for livestock, and their siblings while their parents and guardians work elsewhere. This contradicts other instances where children work in formal sectors and companies with established formal employment arrangements. The examination of legislation in this study reveals that labour inspectors are permitted to conduct inspections in formal sectors, rather than informal domestic settings. It has been revealed that because these jobs are informal, they escape regulatory oversight of the labour inspectors, rendering legal enforcement more challenging, leading to more children being involved in child labour.

Additionally, the thesis has verified that even if the law were to be reviewed to enable inspectors to inspect the informal sectors, such a law or provision is most likely to fail unless it is complemented by arrangements that give community structures the total mandate to intervene. Currently, it has been found that due to inadequate personnel at the Labour Offices, Child Protection Workers, Community-Based Child Labour Monitoring Committees, and community social accountability committees are among the structures that address child labour issues at the community level. These committees fill the capacity gap that labour inspectors could otherwise cover. However, the thesis has found that these committees are either not trained to effectively execute their duties, except for a few traditional authorities in Ntchisi and Mzimba districts, where the CSOs are implementing child labour eradication projects.

6.2.2.3. Institutional weaknesses and lack of coordination

On the one hand, it has been found that the mandate to protect children from all forms of exploitation is under the District Social Welfare Office. This office has Child Protection Workers who are based in the communities. This office collaborates with other community-based structures, including Community Child Labour Monitoring Committees, Village Development Committees, and Area Development Committees. These governance structures are established by the government through the Local Government Act and are guided by the Decentralization Policy. On the other hand, it has been revealed that committees such as Community Victim Support Units, Mother Groups, Community Social Accountability Groups, and other project-based structures are established mainly by CSOs working in these communities. The governance structures set by the government and those set by CSOs sometimes work in parallel and sometimes in competition. It has also been revealed that the sustainability of the CSOs' established structures is limited, as they

often end their operations soon after the implementation of the projects by CSOs has been phased out. This creates a challenge in tackling child labour at different levels. Firstly, there is a duplication of efforts in addressing child labour in one area. Secondly, there is limited coordination between the urgencies and committees, resulting in the non-closure of child labour or child exploitation cases. Finally, there is an unclear jurisdictional overlap between these agencies. These institutional weaknesses exacerbate the gap between the promise of protection offered in the child labour legislation and the realities on the ground.

It has also been found that, although Labour Officers are supposed to work with other government officials, such as the Gender Officer and District Social Welfare Officers at the district level, as well as Child Protection Workers at the community level, this is not always the case. This is because there are limited avenues where they can collaborate their efforts, given the limited resources available to both the District Social Welfare officer and the District Labour Office. Furthermore, it has been found that these stakeholders lack the capacity in terms of training and resources to execute their duties effectively at different levels.

6.2.3. Socioeconomic matrix affecting child labour

6.2.3.1. Poverty, household vulnerability, and child labour

The thesis has not only verified that poverty, lack of access to schools and skills development, cultural practices, and other household vulnerabilities are some of the influencing factors that are pushing children into child labour practices. It has been found that most families that involve children in child labour rely on child labour proceeds and do not necessarily involve children in such acts out of choice, but out of necessity.

It has also been established that in some cases, while household poverty influences parents and guardians to involve their children in child labour, the urge to be independent and the pressure to find individual needs amongst children have some effect. Here, it has been revealed that in some instances, children are compelled to find piecework, where they are paid to earn money to spend on their individual needs, but not on the family. Thus, a household might have reached a bare minimum to afford basic necessities such as food and school supplies for the children. However, children, out of their own volition, seek part-time work where they are employed to earn some disposable income to cater to their other needs. However, this does not negate the fact that poverty

and lack of basic necessities within a household compel and exert pressure on families to involve their children in child labour.

The study has also found that family disruptions and changes in family dynamics and composition influence the involvement of children in child labour. These dynamic family disruptions and changes are either through external factors, such as floods and drought, or the death of the primary income provider due to pandemics such as COVID-19, HIV, and AIDS. When these changes occur, the family's resources and income base are disrupted. In such situations, children are forced to work. Additionally, in the face of these external factors, such as floods, parents often migrate to higher lands or urban areas in search of an alternative income. These movements disrupt family composition, as children are usually left with their mothers. In such cases, the children assume the responsibility of finding alternative ways to earn an income or assisting their mothers with household chores, often under conditions that are detrimental to them. Eventually, the children end up in child labour practices.

6.2.3.2. School/education-related factors and child labour

It has also been evidenced that when schools are far away, children are prone to be pushed into child labour practices. This is particularly applicable to children in junior primary school, as they are not yet old enough to walk long distances to school. While they might not be actively involved in physical work that might be considered hazardous, they are left responsible for looking after their even younger siblings while their parents attend to other tasks. Relatedly, the study indicates that because most parents in the study community lack relatable examples of how school or education can help children escape poverty, they struggle to encourage their children to attend school. This is compounded by the fact that no immediate benefits are realised from parents' investments in their children's education. These challenges are worsened because primary school education emphasises cognitive growth over the development of technical, income-generating skills. This emphasis on mental development is often perceived as impractical and worthy of investment by some parents.

This study further identified that, despite Malawi's free primary education system, school-related costs, such as school uniforms, school development funds, examination fees, and school supplies, hinder some children from attending school. The lack of such resources causes some children to work odd jobs, which is detrimental to their physical and emotional development. Furthermore,

when these children combine work and school, they are most likely to drop out. Thus, children who struggle to attend school due to these costs are compelled to start working to cover them. When they combine school and work, they invest a significant amount of their time and effort in their work, often leaving school as a result.

Furthermore, children who are out of school are more prone to be abused and exploited as they miss out on the protection that they are offered when they are in school. In these situations, it becomes more difficult for labour inspectors to protect these children, as the work they are primarily engaged in falls outside the domestic or informal sectors, which are not within the mandate of labour inspectors.

Beyond, Malawi's school and agriculture calendars seem to clash and compete for children's time. On the one hand, the labour-intensive farming period is when people pick green tobacco and apply fertiliser and pesticides. This is also the time that schools are in session. On the other hand, during the less labour-intensive months, the children are on holiday or nearing the end of their third term, and schoolwork is minimal. In communities where agriculture is the primary source of income and livelihood, parents, teachers, and children find it easier to decide where to prioritise and invest their time. In this case, the parents either demand that children stay home to take over household chores or participate in their farming-related tasks. Teachers and other stakeholders find themselves in a difficult position. They are torn between the pressure to keep children in school, which could harm the families' chances of a good harvest, and allowing the children to participate in work that is essential for their families. As the teachers and child protection workers strive to keep children in school rather than on farms, it has become apparent that the conflicting demands of school and farming make it challenging to enforce laws against child labour. In light of the limited capacity to monitor children involved in child labour, coupled with the belief that children are socialised to work, the latter seems more practical, and children find themselves involved in work that is detrimental to their health, physical, and educational development.

6.2.3.3. Cultural acceptance and traditional views of child labour

Moreover, this thesis has documented that there is still a handful of parents who believe and traditionally regard the education of girls as a waste of time and resources, as compared to an investment in the education of boys. Such cultural beliefs are still perpetuating child labour practices as girls are asked to remain at home, do household chores, and carry out other traditional

roles performed by their mothers. At the same time, boys are given the opportunity to rest and complete their schoolwork. Relatedly, the thesis has demonstrated that parents associate their children's work with the values of hard work and resilience. When these connections are made within the context of culture, children are encouraged to participate in work that showcases their resilience and hardworking spirit, sometimes at the expense of their health and development. It has been revealed that in some societies, resilient and hardworking children are assured and guaranteed access to family resources and gain praise from members of their society. This is more pronounced in tobacco-growing communities where children are involved in harvesting, sorting, and grading tobacco, which are considered demanding tasks. In some instances, when children display their resilience and hard work in working with tobacco, they are deemed worthy of an inheritance of a larger piece of land for tobacco farming. In the presence of these values and perspectives, it is problematic for child labour laws and their institutions to be effective in removing children from work that is harmful to them.

One of the most prominent findings in the contradiction above is that children in Malawi will continue to work. As long as the cultural perspective is that a child is a part of society and that their exposure to work strengthens the internalization of the values of hard work, Malawian children will work. It has been validated that even when and if all the influencing factors of child labour are reversed and households no longer rely on child labour for their sustenance, parents will still involve their children in work. It should be mentioned here that this work is different from child labour, which is exploitative work. However, as the line between legally accepted light work and child labour is very thin, the likelihood of children falling into the realms of child labour during their involvement in light work is inevitable. This warrants the reimagination of childhood in the context of child rights and child labour in Malawi, which acknowledges this reality and has been duly termed 'integrated childhood' in this thesis.

6.2.4. Legal and non-legal interventions for tackling child labour

The thesis has demonstrated that child labour is a complex and intersectional problem. This intersectionality manifests in the causes, push, and influencing factors implicated in the struggle to address it. The thesis has further established that holistic approaches must be considered if the problem of child labour is to be tackled at the national, district, and local levels. These approaches must integrate legal reforms with non-legal interventions such as education programs, economic

interventions, and community engagement initiatives. Relatedly, it has been posited that addressing child labour should go beyond desk reviews and traditional approaches to understanding child labour as a cross-cutting socioeconomic and legal problem. The thesis advocates for exploratory participatory approaches to examining social issues. Such methods enable a community to take charge and lead a performative analysis of laws, policies, interventions, and the roles of various structures and institutions. These approaches, as deployed in this research, have informed the following recommended suggestions.

6.2.4.1. Legal interventions

6.2.4.1.1. Strengthening law enforcement and implementation mechanisms

It has been argued that there are inconsistencies between what the communities understand as child labour and the minimum employment age for children. Such differences are primarily based on social values, traditions, and the contextual challenges that the communities face. The thesis has further found that these contradictions and inconsistencies are a contributing factor to the persistence of child labour on the ground. Thus, coupled with the other interventions discussed in this thesis, the Malawi government must reconcile the provisions on minimum age of employment and the definition of child labour to reflect the reality of communities on the ground. Through the mandate of law reform bodies, such as the Malawi Law Commission, the government must revise, amend, or enact legislation that resonates with the will of the people while ensuring that the child rights principles are taken into consideration. Practically, the subsequent research and consultations that inform these law reforms must extend beyond traditional and routine consultation meetings with the elites of society. Such consultation and research should utilise unorthodox approaches that give people control and power to inform policies and laws that truly reflect their needs and realities.

Furthermore, this research has demonstrated that Labour Inspectors are available at the district level. It has also concluded that these inspectors have limited capacity to execute their duties, as they lack sufficient resources. This is in addition to the challenge that there are not enough of them in the districts. Additionally, it has been ascertained that, under the current Employment Act 2000, Labour Inspectors are restricted from carrying out their duties in private or domestic homes. Given these challenges, the Malawi Government should expedite the ratification and domestication of the ILO Convention 189, the Domestic Workers Convention (2011). By ratifying and

domesticating this Convention, the inspection work of labour inspectors is extended to cover non-formal sectors of the economy and informal employment relationships.² While introducing such a law does not guarantee an end to the problem, it may reduce the challenges that inspectors face when obtaining a warrant to search private homes or workplaces where children are suspected of being involved in exploitative work.

In this regard, the ratification of this Convention should be accompanied by capacity building for Labour Inspectors and other stakeholders on the new legislation. It would be prudent for the government to recognise and utilise the potential of community-based structures in addressing child labour. Similarly, the capacity of these community-based structures must be enhanced.

The research has also validated that the fines and punishments provided in the laws are not deterrent enough to stop child labour escalation in Malawi. Community members aware of these provisions, or those exposed to the implications of this provision, argue that a company would be more likely to involve children in its production and pay a fine, as this might be more profitable than employing adults who would likely demand higher wages for the same work. Thus, it is recommended that the penalties and punishments for engaging children in child labour should be revised upwards and categorised for individuals and companies.

In the absence of revisions or reforms to the current laws, it has been contended that the government should utilise the people's trust in their local traditional structures to promote good conduct and the rule of law regarding child labour practices. This is because traditional leaders and local justice delivery systems have legitimacy within the communities. Thus, allowing community leaders to utilize their influence and power could yield more effective deterrent effects than relying solely on statutory law provisions. In other words, the study found that communities seem to be more inclined to respect community bylaws than statutory laws, because the former seem more relatable than the latter.

6.2.4.1.2. Harmonizing laws and policies

The thesis has established that the laws addressing child labour are limited in their effectiveness due to other barriers outside these laws. Among other things, the research has recorded that when

² SADC, Code of conduct on child labour (revised): Accelerating action to eradicate child labour in SADC, (SADC/ELS/M&SP/2022/5) 6.

the Malawi primary and secondary school education calendars conflict with the agricultural calendar, parents are more inclined to send their children to work rather than to school. It would suffice, therefore, to make reforms in the school calendar to align with the lean work periods in the agriculture calendar. Of course, this is not an open invitation for children to be involved in hazardous work, but it would alleviate the competition for children's time that the conflicting school and agricultural calendars currently create. Furthermore, the realignment of the school and farming calendars will be a direct recognition of an *integrated childhood perspective* where children in Malawi are expected to be part of their society and family, and their work contributes to the household's welfare. Subsequently, this will ease the tension that arises when the law operates contrary to the people's expectations of the child and the child's involvement in work.

It is also recommended that the government finalise the formulation and subsequent adoption of the National Child Labour Policy to facilitate the implementation of the National Action Plan. While this cannot fully guarantee a resolution of child labour at the community level, it will enhance collaboration among stakeholders working on child labour and promote data consolidation at various levels.

6.2.4.2. Non-legal interventions

6.2.4.2.1. Education and awareness programs

The thesis has emphasised the importance of education in tackling child labour. Apart from the role of education in raising awareness of child rights and how child labour affects children's access to education, the school also acts as a safe haven for children who are experiencing child labour. It is therefore recommended that schools should be accessible to children for their education and to escape child labour practices at home. In addition to making education and schools accessible, it is essential to adopt an education system that is meaningful to the children's and their parents' needs. In this vein, skills and trade development, which potentially promise intermediate economic returns, should be made accessible to children at an early age and to those who are already out of school and more susceptible to child labour.

6.2.4.2.2. Economic empowerment initiatives

The thesis has verified that poverty is the most implicated factor influencing child labour within the homes and the communities in Malawi. It has also been found that numerous interventions by the international community, the Malawi government, and civil society organisations (CSOs) have

poverty alleviation programs aimed at mitigating child labour. While commending more poverty alleviation programmes, this thesis advocates for targeted and conditional poverty reduction programmes. These programmes infuse child labour reduction initiatives with programmes that enhance people's access to productive resources. For instance, when social cash transfers are implemented, they must be accompanied by programs that do not attract more work for children. Furthermore, programmes that help families access microloans should be accompanied by initiatives that increase children's time in school rather than at home. Therefore, there is a need to reconsider the poverty alleviation programmes to ensure that they do not risk exposing children to more child labour avenues, but are used as a key to reducing child labour.

6.2.4.2.3. Collaboration and business conduct through value chains

The thesis has demonstrated that child labour is persistent at different levels in the agricultural value chain. While there are indications that due diligence is being done at the top level within companies and industries, it is often deficient at the lower tiers of the value chain. Additionally, some of the leading root causes of child labour stem from the poor working conditions of adults in industries, as well as the minimal profits realised from the sales of various agricultural products. It is therefore recommended that the government, in collaboration with major agricultural stakeholders, address pertinent issues, such as the prices of agricultural produce and the working conditions of adult workers. Also, it is crucial to extend the liability of producers in the production value chain to ensure transparency and compliance with business and human rights principles, which prohibit exploitation.

6.2.4.2.4. Enhanced community involvement and participation

As stipulated earlier, the thesis has revealed the valuable contribution of communities to ensuring that the legal framework works effectively in addressing child labour. It has to be reiterated here that community participation in addressing child labour goes beyond providing a conducive environment for the implementation of the legal frameworks. Community participation ensures that interventions for addressing child labour are sustainable. Additionally, community participation ensures that the people's trust in elected officials is maintained by holding them accountable. The communities play these roles through their various structure at the community level. Therefore, there is a need to ensure that the structures that have legitimacy in the communities are sustained and empowered so that the promises offered through the legal

frameworks are fulfilled. This can be achieved when these structures are seen as key players in addressing child labour by building their capacity in child protection and recognising their valuable roles in the enactment of legislation on child protection in general and child labour in particular.

Relatedly, the thesis has proven that understanding child labour goes beyond formalistic research approaches. It has been shown that, although child labour can be understood through desk reviews and other traditional methods of investigation, socio-legal research methods provide more in-depth analyses. The thesis has unveiled that through socio-legal research methods, where ethnographic approaches involve performative analysis for a discussion of social phenomenon, a nuanced analysis of child labour legislation and the lived realities are exposed. In light of this, communities need a platform for discussing child labour or any other social issue from their perspective through nuanced approaches. These platforms, which afford room for performative analysis, suspend a lot of formalistic understanding of laws, policies, and procedures. By being less formalist, the communities are more flexible in interacting and questioning some of the laws' restrictive and otherwise flawed provisions in their current state. Through such interaction, they produce ideas and approaches that can effectively tackle their problem and ensure that child labour is addressed holistically.

Ultimately, this thesis has confirmed that addressing the gap between the realities of child labour and existing laws requires holistic approaches. These approaches should be considered through an integrated childhood lens and involve a performative evaluation of the suggested changes. In other words, this means that recommendations for tackling child labour — whether through legal reforms, the establishment of community bylaws, adjustments to social cash transfers and other safety nets, or strategic modifications to educational policies — must consider community values and perceptions regarding child rights and child labour. Additionally, the community's involvement in addressing its challenges plays a significant role in this process.

6.3. Contributions to literature and future research directions

The thesis has substantiated that the concept of childhood in some Malawian communities influences the effectiveness of child labour laws. Contrary to the universal perception of childhood as a protected, non-working phase in a child's development, this thesis presents the concept of an *integrated childhood perspective*. This perspective recognises that childhood in Malawi is shaped by unique local contexts where the expectation of children to contribute economically is both a

norm and a necessity. The perspective further suggests that children's roles and rights should be viewed through the community's needs and values, which are sometimes different from the Eurocentric notions of childhood captured in Malawi's legal framework. As a result of these seemingly contesting perspectives, there is a gap in the legal frameworks on child labour and the realities of children and their families in Mzimba, Ntchisi, Zomba, and Nsanje districts. Even though the realities explored from the three districts cannot be generalised for all children in Malawi (which should not be), there is a firm and impressive indication that child labour in Malawi happens within opposing perspectives on child rights and childhood. These can be reconciled, closed, or narrowed when the problem is seen from an integrated childhood perspective.

Additionally, this thesis has found and verified that, in applying and enforcing child labour laws (and likely any other law), communities must be given a free and safe space to interact with the law and discuss how these laws impact their everyday lives. Through the performative analysis process, communities try out options and situations that apply to their lived realities to assess how a new or existing law addresses a particular problem. It has been revealed through the TfD performances that when communities are given such a platform, they are more open to criticising different legal provisions, the work of various institutions, and procedures followed by these institutions in implementing the laws more openly and flexibly. Furthermore, the process of performative analysis empowers the communities to offer alternative narratives of how conflicting requirements of the law could have been addressed. Through the flexibility provided by this performative analysis, communities highlight or showcase how their cultural, social, and traditional orders, institutions, and procedures can be incorporated with statutory law to address pressing issues within their communities.

6.4. Future research suggestions

The thesis has investigated the child labour problem in selected districts in Malawi. To a certain extent, the thesis has identified how the context in which children live influences their involvement in child labour. While it has been confirmed that more child labour practices happen in the domestic setting than in formal industries, there is a need for in-depth research on how the development of small—or medium-scale enterprises is influencing child labour in Malawi. This is pertinent, considering the proliferation of such companies operating in domestic and rural settings

in Malawi, primarily due to the influx of Chinese-run businesses expanding into these areas, where child labour is more prevalent.

The thesis also found limitations in enforcing and implementing child labour laws in the community. While this is the case, CSOs have supported communities in formulating bylaws on child protection, land management, and the promotion of education, among other issues. However, the effectiveness of such bylaws, especially those addressing child labour, has not been thoroughly investigated. While investigating the efficacy and nature of these bylaws, it would also be commendable to explore the role of technology in monitoring child labour, given the expansion of technological advancements within rural communities in Malawi, which are areas that have not been thoroughly investigated through this research and other scholarly works.

6.5. Conclusion

Child labour continues to be a complex and interdisciplinary problem. A lot of factors push children and their families into child labour. It is through addressing these factors that child labour can be tackled, and children's rights can be protected, safeguarded, and promoted. This is a task that requires holistic approaches extending beyond policy and legal frameworks. However, for this holistic approach to be more meaningful and realistic in the lives of children and communities affected by the problem, their voices must be incorporated into laws, policies, interventions, and solutions. This thesis has demonstrated that one way of dealing with child labour is through a reimagination of child labour from an *integrated childhood perspective*. This perspective not only provides nuanced lenses for exploring child labour but also balances the disconnect between the promises offered in legislation and the realities of child labour on the ground. Thus, if the current legislation is implemented and enforced through these lenses, if legislation is to be reformed, and if new interventions for addressing child labour are to be put in place, communities and children involved stand to benefit if an integrated childhood perspective is employed.

This thesis demonstrates an aspiration to tackle child labour by researching the problem through socio-legal research methods that incorporate doctrinal research methods and Theatre for Development. Through such an approach, community voices have been taken on board to examine the factors that are implicated in causing child labour. The approach, which has been termed performative analysis, has also been used to analyse child labour legislation. This analysis has informed the conclusions and recommendations presented in this chapter.

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8. Appendices

8.1. Informed Consent Agreement (Children's Corner)

Please read this consent agreement carefully before you decide on your child's participation in the study.

Purpose of the research study: The purpose of the study is to explore why child labour still persists despite an elaborate legal framework that is meant to address the problem.

What you will do in the study: Your child will participate in a Children's Corner discussion. This discussion uses drawings, paintings, role plays, songs and dances. This discussion's key themes will be their understanding of child labour, childhood, and children's rights. I will record our discussion using a recorder and take notes so that I can carefully listen to what was discussed. I will also take pictures or videos of their work (drawings, paintings, etc.), where necessary so that I can give a clear picture of some of the things in the discussion of the findings.

Time required: These sessions will take approximately 60 minutes at a place where their children's corner discussions usually take place.

Risks: There are no anticipated risks in this study.

Benefits: Participating in this research study does not directly benefit the children. However, it may help us better understand child labour and provide solutions to address the problem.

Confidentiality: The information they provide is confidential and will not be shared, but it will help me better understand child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop and a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, they can choose a fictitious name in the discussion, and their confidential information shall be concealed so that no one will identify them through the findings of this research.

Sharing information: Please note that their information might be available to other researchers upon my written consent. In this case, only anonymous data will be provided

Voluntary participation: Your child's participation in the study is entirely voluntary.

Right to withdraw from the study: They can withdraw without penalty. Should they decide to withdraw, I will not use any information related to their identity.

How to withdraw from the study: If the child wants to cancel, they will be encouraged to tell me directly or through their facilitator to stop at any time. They will be asked to leave the rest of the group. Please note that there is no penalty for withdrawing.

Payment: The child will not receive payment for participating in the study apart from the refreshments that will be offered during the discussions.

Please get in touch with the researchers listed below:

- Obtain more information or ask a question about the study.
- Report an illness, injury, or other problem.
- Leave the study before it is finished.

Gift Mauluka

University of Bayreuth, Universitätsstraße 30,95447 Bayreuth

Cell: +49 152 59457155

Email: Gift.Mauluka@uni-bayreuth.de

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Prof. Dr. Thoko Kaime

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Agreement:

☐ I agree to participate in the research study described above.

☐ I do not agree to take part in this research.

Print Name of participant: _____ Date: _____

Parent/Guardian Signature: _____

Print Name of researcher: _____ Date: _____

Signature: _____

You will receive a copy of this form for your records.

8.2.Information sheet: Children's Corner

I am asking your child to participate in this research study for academic purposes.

Before you decide on their participation, please read the following information carefully and discuss it with your child, a Children's Corner member. Then, take time to determine whether they wish to take part.

What is the purpose of this study?

The purpose of the study is to explore why child labour persists despite an elaborate legal framework meant to address the problem. To achieve this goal, I must understand some things from your child. This shall be done through group discussions, usually done using drawings, paintings, role plays, songs and dances performed through the Children's Corner, where your child is a member. This will be conducted at a place and time jointly decided upon by your child and their group facilitators.

During these discussions, your child shall not be compelled to do so against their will or share any information they do not want. I will record our discussion using a recorder and take notes so that I can carefully listen to what was discussed. I will also take pictures or videos of their work (drawings, painting, etc.), where necessary so that I can give a clear picture of some of the things in the discussion of the findings.

The process will take approximately 60 minutes. I will provide refreshments during this period. Should your child decide not to participate in this study, please note that there are no consequences. If they choose not to continue the discussion during our engagement, they will be encouraged to tell me directly or through their facilitators. I will then stop the discussion to let them leave the rest of the group and not use any information they gave me.

Confidentiality

The information they provide is confidential and will not be shared for other purposes besides this research. It will help me better understand and explain child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop and a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, they can choose a fictitious name in the discussion, and their confidential information shall be concealed so that no one will identify them through the findings of this research.

Study results

After completing my research, I will analyse the data in my study thesis, which will be read and marked by my supervisors and examiners. After it has been accepted, I will share the information, mainly the recommendations, with all those who participated in the research through the relevant channels.

I will keep the research data in a secured cloud file at the University of Bayreuth, which can only be accessed with written authorisation.

Sharing information

Please note that, with my written consent, their information might be available to other researchers. In this case, only anonymous data will be provided.

Review of the study

This study has been reviewed and agreed upon by the University of Bayreuth's Ethics Committee.

Contact

If you have any questions about this study, please contact:

Gift Mauluka

University of Bayreuth, Universitätsstraße 30, 95447 Bayreuth

Cell: +49 152 59457155

Email: Gift.Mauluka@uni-bayreuth.de

Thank you.

8.3. Informed Consent Agreement (Drama Groups)

Please read this consent agreement carefully before you decide to participate in the study.

Purpose of the research study: The purpose is to explore why child labour persists despite an elaborate legal framework meant to address the problem.

What you will do in the study: In this study, you will participate in Theatre for Development activities. These shall include developing storylines, composing songs, roleplays, dances and other theatre-based activities. Key themes in these activities involve child labour, childhood, and children's rights. I will record the discussion to help me reflect on it later. I will also take pictures or videos to help me explain some things more visually. Should you wish not to take part in any theatre sessions for development activities, please let me know.

Time required: These sessions will occur over a week (at least 3-4 hours daily).

Risks: There are no anticipated risks in this study.

Benefits: There are no direct benefits to you for participating in this research study. The study may help us understand child labour better and provide solutions that might be used to address the problem.

Confidentiality: The information you provide is confidential and will not be shared, but it will help me better understand child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop and a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, you can choose a fictitious name throughout the process, and your confidentiality shall be concealed where no one will identify you through the findings of this research.

Sharing of information: Please note that your information might be available to other researchers upon my written consent. In this case, only anonymous data will be provided

Voluntary participation: Your participation in the study is entirely voluntary.

Right to withdraw from the study: You have the right to withdraw from the study at any time without penalty. Should you decide to withdraw, I will delete your recording if the data is linked to your identity.

How to withdraw from the study: If you want to withdraw from the study, you can tell me to stop at any time. You can leave the room where we are conducting the performances, discussions, interviews or any other theatre for development activities. Please note that there is no penalty for withdrawing.

Payment: You will receive no payment for participating in the study apart from the lunch and refreshments that will be offered during the days of our engagement.

Please contact the researchers listed below to:

- Obtain more information or ask a question about the study.
- Report an illness, injury, or other problem.
- Leave the study before it is finished.

Gift Mauluka

University of Bayreuth, Universitätsstraße 30,95447 Bayreuth

Cell: +49 152 59457155

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Supervisor

Prof. Dr. Thoko Kaime

Chair of African Legal Studies

University of Bayreuth, Universitätsstraße 30,95447 Bayreuth

Cell: +49 176 73880777

Email: Thoko.Kaime@uni-bayreuth.de

Agreement:

☐ I agree to participate in the research study described above.

☐ I do not agree to take part in this research.

Print Name of participant: _____ Date: _____

Signature: _____

Print Name of researcher: _____ Date: _____

Signature: _____

You will receive a copy of this form for your records.

8.4.Information sheet: Drama Groups

I am asking you to participate in this research study for academic purposes.

Before you decide to participate, please read the following information carefully and discuss it with others if you wish. Then, take time to decide whether or not you wish to take part.

What is the purpose of this study?

The study's purpose is to explore why child labour persists despite an elaborate legal framework meant to address the problem. To achieve this goal, I need to understand some things from you. This will be done through group discussion and participatory theatre, which will be conducted at a place and time to be jointly decided upon by other participants.

If you decide to participate, you will be asked to engage in theatre for development activities. These shall include developing storylines, composing songs, roleplays, dances and other theatre-based activities. These will be devised around child labour, childhood and children's rights. During these processes, you are not compelled to do so against your will or share any information you do not want. I will record our discussion using a recorder and take notes so that I can carefully listen to what was discussed. I will also take pictures or videos, where necessary, to give a clear picture of some of the things in the discussion of the findings.

The process will occur within a week (at least 3-4 hours daily). During this period, I will provide lunch and refreshments.

Should you decide not to participate in this study, please note that there are no consequences to you or anyone else. If you decide not to continue with the discussion or performances during our engagement, please let me know, and I will stop the discussion and not use any information you have given me.

Confidentiality

Your information is confidential and will not be shared besides this research. It will help me better understand and explain child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop and in a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, you can choose a fictitious name in the discussion, and your confidential information shall be concealed where no one will identify you through the findings of this research.

Study results

After completing my research, I will analyse the data in my study thesis, which will be read and marked by my supervisors and examiners. After it has been accepted, I will share the information, mainly the recommendations, with all those who participated in the research through the relevant channels.

I will keep the research data in a secured cloud file at the University of Bayreuth, which can only be accessed with written authorisation.

Sharing information

Please note that the information you provide might be available to other researchers upon my written consent. In this case, only anonymous data will be provided.

Review of the study

This study has been reviewed and agreed upon by the University of Bayreuth's Ethics Committee.

Contact

If you have any questions about this study, please contact:

Gift Mauluka

University of Bayreuth, Universitätsstraße 30, 95447 Bayreuth

Cell: +49 152 59457155

Email: Gift.Mauluka@uni-bayreuth.de

8.5. Informed consent agreement (Focus Group Discussions)

Please read this consent agreement carefully before you decide to participate in the study.

Purpose of the research study: The purpose of the study is to explore why child labour still persists despite an elaborate legal framework that is meant to address the problem.

What you will do in the study: You will participate in a focus group discussion. Key themes in these discussions involve child labour, childhood, and children's rights. I will record the discussion to help me reflect on it later. I will also take pictures or videos to help me explain some of the things in a more visual way. Please let me know if you wish not to participate in the discussions, and I will stop them.

Time required: These discussions will take place for approximately 120 minutes.

Risks: There are no anticipated risks in this study.

Benefits: There are no direct benefits to you for participating in this research study. The study may help us understand child labour better and provide solutions that might be used to address the problem.

Confidentiality: The information you provide is confidential and will not be shared, but it will help me better understand child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop as well as in a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, you can choose a fictitious name throughout the discussions, and your confidentiality shall be concealed where no one will identify you through the findings of this research.

Sharing of information: Please note that your information might be available to other researchers upon my written consent. In this case, only anonymous data will be provided.

Voluntary participation: Your participation in the study is completely voluntary.

Right to withdraw from the study: You have the right to withdraw from the study at any time without any penalty. Should you decide to withdraw, I will delete your recording if the data is linked to your identity.

How to withdraw from the study: If you want to withdraw from the study, you can tell me to stop at any time. You can leave the room where we are conducting the discussions. Please note that there is no penalty for withdrawing.

Payment: You will receive no payment for participating in this study.

Please contact the researchers listed below to:

- Obtain more information or ask a question about the study.
- Report an illness, injury, or other problem.
- Leave the study before it is finished.

Gift Mauluka

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University of Bayreuth, Universitätsstraße 30,95447 Bayreuth

Cell: +49 176 73880777

Email: Thoko.Kaime@uni-bayreuth.de

Agreement:

☐ I agree to participate in the research study described above.

☐ I do not agree to take part in this research

Print Name of participant: _____ Date: _____

Signature: _____

Print Name of researcher: _____ Date: _____

Signature: _____

You will receive a copy of this form for your records

8.6.Information sheet: Focus group discussions

I am asking you to participate in this research study for academic purposes.

Before you decide to participate, please read the following information carefully and discuss it with others if you wish. Then, take time to decide whether or not you wish to take part.

What is the purpose of this study?

The study's purpose is to explore why child labour persists despite an elaborate legal framework meant to address the problem. To achieve this goal, I need to understand some things from you. This will be done through a focus group discussion, which will be conducted at a place and time to be jointly decided upon with other participants.

Should you decide to participate, you will be asked to engage in a discussion with other members of the community. These discussions will be on child labour, childhood and children's rights. During these discussions, you are not compelled to do so against your will or share any information you do not want. I will record our discussion using a recorder and take notes so that I can carefully listen to what was discussed. I will also take pictures or videos, where necessary, to give a clear picture of some of the things in the discussion of the findings.

The process will take place approximately 120 minutes.

Should you decide not to take part in this study, please note that there are no consequences to you or anyone else. If you decide not to continue with the discussion, please let me know, and I will stop the discussion and not use any information you have given me.

Confidentiality

Your information is confidential and will not be shared besides this research. It will help me better understand and explain child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop as well as in a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, you can choose a fictitious name in the discussion, and your confidential information shall be concealed where no one will identify you through the findings of this research.

Study results

After completing my research, I will analyse the data in my study thesis, which will be read and marked by my supervisors and examiners. After it has been accepted, I will share the information, mainly the recommendations, with all those who took part in the research through the relevant channels.

I will keep the research data in a secured cloud file at the University of Bayreuth, which can only be accessed with written authorization.

Sharing information

Please note that the information you provide might be available to other researchers upon written consent from me. In this case, only anonymous data will be provided.

Review of the study

This study has been reviewed and agreed upon by the University of Bayreuth's Ethics Committee.

Contact

If you have any questions about this study, please contact:

Gift Mauluka

University of Bayreuth, Universitätsstraße 30, 95447 Bayreuth

Cell: +49 152 59457155

Email: Gift.Mauluka@uni-bayreuth.de

Thank you.

8.7. Informed consent agreement (KII)

Please read this consent agreement carefully before you decide to participate in the study.

Purpose of the research study: The purpose of the study is to explore why child labour still persists despite an elaborate legal framework that is meant to address the problem.

What you will do in the study: In this study, you will participate in a discussion on child labour, childhood, and children's rights. I will record the discussion to help me reflect on it later. I will

also take pictures or videos to help me explain some of the things in a more visual way. Please let me know if you wish not to respond to other questions in this interview.

Time required: The study will need about 60 minutes of your time.

Risks: There are no anticipated risks in this study.

Benefits: There are no direct benefits to you for participating in this research study. The study may help us understand child labour better and provide solutions that might be used to address the problem

Confidentiality: The information you provide is confidential and will not be shared, but it will help me better understand child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop and a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, you can choose a fictitious name in the discussion, and your confidentiality shall be concealed where no one will identify you through the findings of this research.

Sharing of information: Please note that the information you provide might be available to other researchers upon written consent from me. In this case, only anonymous data will be provided

Voluntary participation: Your participation in the study is completely voluntary.

Right to withdraw from the study: You have the right to withdraw from the study at any time without penalty. Should you decide to withdraw, I will delete your recording if the data is linked to your identity.

How to withdraw from the study: If you want to withdraw from the study, you can tell me to stop at any time. You can leave the room where we are conducting the performances/discussions/interviews. Please note that there is no penalty for withdrawing

Payment: You will receive no payment for participating in the study.

Please contact the researchers listed below to:

- Obtain more information or ask a question about the study.
- Report an illness, injury, or other problem.
- Leave the study before it is finished.

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Cell: +49 176 73880777

Email: Thoko.Kaime@uni-bayreuth.de

Agreement:

☐ I agree to participate in the research study described above.

☐ I do not agree to take part in this research

Name of participant: _____ Date: _____

Signature: _____

Name of researcher: _____ Date: _____

Signature: _____

You will receive a copy of this form for your records.

8.8.Information sheet: Key informant interviews

I am asking you to participate in this research study for academic purposes. Before you decide to participate, please read the following information carefully and discuss it with others if you wish. Then, take time to decide whether or not you wish to take part.

What is the purpose of this study?

The study's purpose is to explore why child labour persists despite an elaborate legal framework meant to address the problem. To achieve this goal, I need to understand some things from you. I will do this by answering questions that have been set for this purpose. These questions will include information about children's rights, their childhood experience, child labour, and the legal framework for child protection in general.

Should you decide to participate, you are not compelled to do so against your will or to share any information that you do not want. I will record our discussion to carefully listen to what was discussed. I will also take pictures or videos, where necessary, to give a clear picture of some of the things in the discussion of the findings.

Should you decide not to participate in this study, please note that there are no consequences to you or anyone else. If you decide not to continue with the interview during our discussion, please let me know, and I will stop the discussion and not use any information you gave me.

Confidentiality

Your information is confidential and will not be shared besides this research. It will help me better understand and explain child labour and how the law is being used to address the problem. It will be stored in a secure folder on my laptop and a password-protected folder through the University of Bayreuth's research data management as part of the Digital Research Environment. If you wish, you can choose a fictitious name in the discussion, and your confidentiality shall be concealed where no one will identify you through the findings of this research.

Study results

After completing my research, I will analyse the data in my study thesis, which will be read and marked by supervisors and examiners. After it has been accepted, I will share the information, mainly the recommendations, with all those who participated in the research through the relevant channels.

I will keep the research data in a secured cloud file at the University of Bayreuth, which can only be accessed with written authorisation.

Sharing information

Please note that your information might be available to other researchers upon my written consent. In this case, only anonymous data will be provided

Review of the study

This study has been reviewed and agreed upon by the University of Bayreuth's Ethics Committee.

Contact

If you have any questions about this study, please contact:

Gift Mauluka

University of Bayreuth, Universitätsstraße 30,95447 Bayreuth

Cell: +49 152 59457155

Email: Gift.Mauluka@uni-bayreuth.de

Thank you.

8.9. Media Consent - Photographs/Audio/Video Recordings

I hereby confirm that I give my consent for the following:

- My photographs or videos may be used in the production of a thesis, conference paper, academic journal publication or book.
- Images, videos, and outputs from the research process may be used for the following reasons.
- This applies to both printed and electronic media.

Please indicate your preference by ticking the appropriate box:

☐ Yes ☐ No

Name of participant: _____ Date: _____

Signature: _____

Name of researcher: _____ Date: _____

Signature: _____

8.10. Interview guides

Introduction

My name is Gift Mauluka. I am a PhD student at the University of Bayreuth in Germany. Thank you for sparing time for this interview. I am researching state obligations in addressing child labour and how child labour legal frameworks are deployed in Malawi. We shall discuss children's activities, including different forms of work they perform and the various stakeholders' work in child protection matters. This is part of my studies at the University of Bayreuth. The information you provide is confidential and will not be shared, but it will help me better understand child labour and how the law is being used to address the problem.

NB: The appropriate information sheet and interview consent form, which are attached, will be read and signed before proceeding.

Guiding questions: Interview Guide for Key Informant Interviews

1. Based on your experience and work, could you tell me how the existing legal frameworks address child labour?
2. How effectively is the law protecting children from work that might harm their development?
3. Do you think there are gaps in these legal frameworks and how they address child labour?
4. Why is there such a vast disparity between the legal framework and the incidence of child labour?
5. What can be done to close the gap between the formal protection of children from child labour as provided for in the law and the lived reality of children?
6. In what other ways can child labour be addressed apart from using the laws?
7. Would you describe the childhood experiences of most children in this community?
8. What is the role of work in these childhood experiences?
9. What is the perspective of the communities on child labour?
10. Is there any link between childhood, child rights and work for children in this community?
11. Do childhood perspectives in this community differ from those experienced elsewhere?
12. In what ways do children's rights influence communities' perspectives of childhood and how children are involved in work?

13. Do you think the law can be used to transform the image of childhood and the involvement of children in work?

14. In what ways can the image and perspectives of children from this society differ from the image of children from other societies (probe on the social, economic, cultural, environmental, legal and political differences)

15. Do you think other approaches in your work might be used in addressing child labour?

NB: The probing in each question should reflect on the existing gap between the realities and the provisions in the laws.

Guiding questions: Focus Group Discussion/Drama Groups

1. How would you describe the childhood experiences of a majority of children in this community?

2. What is the role of work in these childhood experiences?

3. What would you consider child labour in this community?

4. Is there any link between childhood, child rights and work for children in this community?

5. Do childhood perspectives in this community differ from those experienced elsewhere?

6. In what ways do children's rights influence your/communities' perspectives of childhood and how children are involved in work?

7. Which structures are working on the protection of children from work that might be detrimental to their development?

8. How do these structures protect children from work that is detrimental to them?

9. Are there initiatives being done to deal with child labour? Do you think other initiatives can be used to address child labour more effectively?

10. Do you think the law can be used to transform the image of childhood and the involvement of children in work?

11. In what ways can the image and perspectives of children from this society differ from the image of children from other societies (probe on the social, economic, cultural, environmental, legal, and political differences)

NB: The probing in each question should reflect on the existing gap between the realities and the provisions in the laws.

Guiding questions: Children's Corner

This will be facilitated through child-friendly approaches such as drawings, role plays, songs, and any other approach that children feel comfortable with.

1. Would you describe your everyday schedule?
2. What do you think about children and their involvement in work?
3. How would you describe child labour?
4. How can child labour be addressed?

8.11. Synopsis/storylines for plays

Annex Performance one in Ntchisi, Bengavula village

The performance told the story of a family of three children: a boy (Chisomo, 12 years old) and his two siblings (Yamikani, 9 years old, and Chifundo, 5 years old), whose parents worked as seasonal workers at a tobacco farm. Due to pressure from work and other family problems, the parents enlisted their children to help with household activities, such as caring for the younger child, selling flitters by the roadside, and performing other household chores while the parents worked on the farm. Sometimes, when the workload is high, parents may take their children to work on the farm, but they are constantly chased, or this is concealed, as the farm managers claim it is against company rules. At one point, the government inspectors threatened to close the farm and penalise the farm owners when they found that children were doing some piecework at the farm. However, the parents could still engage their children in the work despite the hefty workload when the inspectors were not present. Due to constant absenteeism, a lack of basic school necessities, and limited encouragement to attend school, the children's academic performance declined. This resulted in Yamikani dropping out of school while Chisomo lost interest in school and invested more time herding livestock for other people in the village. This situation represents a typical situation of families who engage their children in child labour practices within communities in Malawi.

Performances Two in Ntchisi, Chabuka village

The play depicts a situation in Chibuka Village where children are engaged in child labour mainly because of educational challenges. The play highlights that children often engage in child labour because schools are far away and poorly resourced, and they do not perceive the value of education when it fails to address their immediate problems.

Performances in Nsanje district

During the discussion with the group of performers in Nsanje, it was decided that, rather than showcasing a situation that resembles the actual situation of children and families affected by child labour, an ideal situation contrary to reality should be displayed. This was after discussions within the group revealed that a majority of the problems faced by children in child labour affect them with almost the same magnitude. Therefore, it was challenging to rank the problems and present a single play that showcases them. The play could have been too long or complicated for the performers to guide the audience in discussions for solutions. However, since the study's problem statement was skewed towards the efficacy of the laws, it was agreed that the play should present an idealised aspiration of these laws and provide the audience with an opportunity to critique or question the experiences being showcased in relation to their lived realities. Thus:

The play showcased a family of three children: Chiletso, Tadala, and Dyangawa, who are 14, 8, and 4 years old, respectively. While Chiletso and Tadala attended primary school, Dyangawa attended a government-run community daycare centre. This accorded the parents a chance to work on their farm. In the play, the CPW and a lead farmer on conservation agriculture in the village visit the family to ensure the children are in school. He further reports that he has just completed supervising farms and other workplaces to ensure that children are not employed. Additionally, he offers a government leaflet outlining the laws designed to protect children from child labour and other related regulations. On her part, the lead farmer provides information on the weather forecast in preparation for the upcoming rainy season, which is expected to bring floods. The play further demonstrates that the man can provide for his family's needs, and the children are doing well in school. Furthermore, it portrays that the traditional leaders, government officials, and other public service duty bearers work together to further develop the community where children are protected.