Child Labour and the Violation of Child Rights: A Case of Child Workers on Tea and Tobacco Plantations in Malawi

SOA – 3902

By

Simon Mathias Makwinja

A dissertation submitted in partial fulfilment for the degree of

Masters in Human Rights Practice

Department of Social Anthropology, University of Tromso - Norway

School of Global Studies, University of Gothenburg - Sweden

School of Business and Social Sciences, Roehampton University - UK

28 May 2010

Declaration

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed: *Simon Mathias MAKWINJA*   Date: *28 May 2010*

Acknowledgements

I would like to acknowledge and thank the following people for their assistance during the production of this dissertation:

Dedication

I dedicate this work to my late mother, **Tereza Frank Pendame**, who passed away when I was away in London - UK in May 2009. I never had a chance to wave her good bye. Rest in Eternal Peace!

Abstract

The study attempts to determine the extent to which child labour constitutes a violation of child rights. The international documents, especially the CRC, depart from the universal conception of childhood, making children all over the world the same and deserving similar treatment, more so claiming their rights. Using the case of child workers on tea and tobacco estates in Malawi, it examines the notion of childhood which forms the basis to any child rights claims. Employing the cultural politics of childhood, the essay argues that childhood on which child rights are founded is a contested notion. Children are valued differently in all societies across the world.

Additionally, the thesis argues that education proposed as a panacea for child labour is also a contested field as its aims and values vary across societies. The western education system may not be the ideal for the lives of children working on tea and tobacco estates. Thus, the basis on which child rights are based, and the proposition of schooling as solution remain problematic in the abolition of child rights. The thesis concludes by recommending the capability approach which provides an alternative to the understanding and protection human rights, children's rights included. In the capability approach, the end (*substantive opportunities*) must be achieved freely (*freedom of processes*) through the most efficient and available means of sustaining economic life, security and welfare of people. The capability approach treats human rights and education from a holistic perspective.

Key words: *child*, *child labour*, *child work*, *child rights*, *CRC*, *poverty*, *childhood*, *cultural politics of childhood*, *values*, *education*, *capability approach*.

Author: Simon Mathias MAKWINJA

Supervisor: Jennifer HAYS

Abbreviations and Acronyms

ACRWC   :   African Charter on the Rights and Welfare of the Child

AfCHPR   :   African Court on Human and Peoples' Rights

AU   :   African Union

CRC   :   Convention on the Rights of the Child

ECAM   :   Employers Consultative Association of Malawi

GoM   :   Government of Malawi

ICESCR   :   International Convention on Economic, Social and Cultural Rights

ILO   :   International Labour Organisation

ILO C138   :   International Labour Organisation Convention Number 138

ILO C182   :   International Labour Organisation Convention Number 182

IPEC   :   International Programme on the Elimination of Child Labour

IYC   :   International Year of the Child

MHRC   :   Malawi Human Rights Commission

NGO   :   Non-Governmental Organisation

OAU   :   Organisation of African Unity

UN   :   The United Nations

UNICEF   :   United Nations Children's Fund

Table of Contents

Chapter 1

General Introduction and Theoretical Framework

1.1: Introduction and the Problem

In Malawi, tea and tobacco plantations are known to employ child labour. Children as young as 6 work alongside their parents, sometimes in hazardous conditions. These children often do not attend school. The government and numerous organizations are involved in attempts to abolish child labour on these plantations but there are many challenges. This thesis will explore this issue, contextualizing it in a global framework asking questions: What is child labour? What does the concept of "child" imply and how does this differ in different parts of the world? What is the role of education? Is education a solution to child labour?

Child labour is generally defined as employment of children on a sustained and regular basis. It is also often considered as the employment of children who are below a specific legal age (Schrumpf 2004). Usually child labour is considered to be harmful and to have negative impact on the physical as well as mental development of children while interfering with their education (Munthali 2003). Almost all international documents dealing with child rights consider every aspect of child labour undesirable as they consider it either harmful to children's physical, emotional, psychological and social development, or interferes with the children's schooling (ILO 138; ILO 182; CRC 1989). Recognising children's need for special care and protection, state parties to these documents have reflected the desire to eliminate child labour in their legal documents (Breen 2007).

Child labour abolition is mostly premised on the distinction between *child labour* and *child work*. This has been buttressed by the conceptualisations of *child* and *childhood* and their assigned roles in different societies. Child labour is generally considered harmful while child work is considered appropriate. Children's work within the family is considered to be less harmful. Hence, child work normally refers to activities that are light while child labour refers to activities likely to impair children's health and development (James *et al*. 1998). In some societies such a distinction is absent. It has been argued that not all work done by children is "bad" in the sense of harming their health and development. And some suggest the real problem is not whether children work, but rather the conditions in which individual children (Kielland *et al*. 2006).

The UN Convention on the Rights of the Child (CRC 1989) views child labour as a human right violation. Child labour is considered to be damaging, and to violate children's rights as it hampers children's appropriate emotional, physiological, psychological and social development (ILO 182). The CRC aims to free children 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" (Art. 32). Another assumption is that working children rarely attend school and if they do, the attention is minimal. Child labour is then blamed for violating children's right to education (Kielland *et al*. 2006; Munthali 2003).

The social and economic scholars have often attributed the practice of child labour to poverty (Grimsrud 1997; Basu *et al*. 2003); poor countries thus provide an enabling environment for child labour. Although factors like cultural or social structure are occasionally mentioned (see Andvig *et al*. 2001), they do not feature as highly as poverty. This inattention raises questions: Is poverty the most fundamental or the only cause of child labour, especially in third world countries? Is *childhood*, on which child rights are premised, universal? Does education or schooling provide a panacea to the problem of child labour? Such questions and others arise given the continuous rise of cases in child labour and its perpetuation in certain parts of the globe (Grimsrud *et al*. 1997), the introduction of free primary school education in most of these countries at the beginning of the 1990s and the wider perception that schooling is a precondition for preparing children's better living in a modern market economy (Andvig *et al*. 2001).

In many third world nations it is normal for children contribute to the family and household economy. Anthropological studies have considered such contribution by children culturally determined. For example Stenning (1962) shows how the male children of Fulani pastoralists assume huge responsibilities by the age of 7. At that age they are considered competent enough to plan and execute daily cattle grazing schedules. Given circumstances that working children find themselves – financial, social or cultural – do all aspects of child labour violate child rights? Ultimately one asks: does child labour intrinsically violate child rights?

1.2: Aim of the Research and Argument

This research examines the extent to which child labour practices on tea and tobacco estates in Malawi violate child rights. A brief history of anti-child labour movement in America and

Britain is given in order to capture the assumptions and values behind this movement. It discusses child labour on Malawi's tea and tobacco plantations to determine how those activities viewed in light of children's specific situations, may or may not violate children's rights. The identification of poverty as the major cause of child labour, and the compulsory schooling of children as an antidote to the problem of child labour, narrows our perception of child labour. Child labour persists in Malawi even though primary education was made free in 1994. Though considered a panacea to child labour, formal education faces critical challenges as to its relevance to the households whose children are working. Kielland *et al.* (2006) and Lancy (2008) both note that the formal education curriculum has been challenged as it falls short of addressing the needs of people whose life is largely dependent on economic contribution made by all members of the household including children, and parents are desperate to receive child's earnings. Hence making formal education a remedy to child labour becomes unattractive not only because of lack of employment for those educated, but also because it inculcates values different from those propagated by traditional education.

Given the inadequacy within the "poverty discourse" to account for child labour and the prescription of schooling as a panacea for child labour in Malawi, this thesis considers "cultural politics of childhood" an important aspect in understanding child labour and child rights. Malawian society's perception of children is linked to production relations within households. Children work in some societies and not in others. In Malawi, before working on estates, children have already been working in their homes. Most tasks on the plantations are similar to those children often do at home. Plantation work has only exploited the already existing social and production conditions and relations.

Some children consider working is itself their right as it ensures their survival (Kielland *et al.* 2006). In places like Malawi children are expected to contribute to family income. Besides, the distinction between child labour and child work rarely exists in certain languages and cultures. Usually, child labour simply means work done by children without qualifying it as light or dangerous. The local people do not share the motivations behind global elimination of child labour. Given the cultural, economic and social circumstances of children and their families, child labour does not *necessarily* violate child rights, although admittedly certain jobs put children's lives in danger. This thesis will explore these nuances and different cultural perceptions in its analysis of child labour and children's rights to determine the extent to which child labour violates children's rights.

1.3: Methodology

This research uses a case study of child labour on tea and tobacco estates in Malawi to determine the circumstances in which child labour violates children's rights. Paradoxes involved in the effort to eliminate child labour in Malawi are explained, paying particular attention to how child labour falls within the domain of human rights. Secondary data from research reports on child labour on tea and tobacco estates in Malawi and other third world countries are used. International documents especially the human rights conventions, for instance the CRC, have provided direction of this debate. Books and academic journal articles were extensively used. These provided significant academic perspectives with regard to the emergence of human rights in general and child rights in particular. These sources have been supplemented by a fruitful dialogue I had with Wiseman Chijere Chirwa, professor of History at the University of Malawi, in the summer of 2009. Chirwa has published on child labour. His works trace the problems labour in general and child labour in particular in Malawi to the colonial period. He has also argued that tenancy system promotes child labour. Under this system the whole family, including children, is employed (Chirwa 1992; Chirwa 1993).

A significant proportion of literature consulted calls for immediate elimination of child labour. Often, arguments advanced for the elimination of child labour are too simplistic. For instance, it has been widely and simply assumed that child labour results from abject poverty and that the only solution is compulsory primary schooling. However, merely outlawing of child labour and introduction of compulsory schooling for children may not be enough. Kielland *et al* (2006) consider this approach problematic because most legal regulations against child labour are initiated in the international organisations that debate and design programmes at a distance, both physically and culturally, from the intended users. Given that culture is acknowledged, albeit in passing, it must be considered seriously for once, especially establishing children's place within family structures. Additionally, the solution of formal education is challenged by its visible lack of employment opportunities for those graduating from the university and those who complete secondary school education. Therefore, it is unlikely that it will appeal to people who have to survive economic hardships.

1.4: Analytical Framework

In dealing with the problems of child labour and human rights several questions come to mind: Is poverty the ultimate cause of child labour? Is compulsory schooling a panacea to

child labour? What does the "child's best interest" consist of? It is assumed that poverty leads to child labour and this can be solved by sending children to school and that it is in the best interest of the children. Exploring these questions can help answer the much bigger and ultimate puzzle: whether child labour fundamentally violates child rights. This thesis examines whether tasks which children perform pose real danger to their lives. Clarifying these issues will help assess the claim that child labour violates children's right to education and good life. Additionally, it is relevant to discuss the effectiveness and practicability of formal education. This will be approached through a discussion of various approaches to education and child labour namely: education as human rights, capability and economic approaches. As an entitlement, education should promote substantive opportunities and boost human capabilities through freedom of processes (Ballet *et al*. 2006).

The questions may also be addressed by considering human rights institutionalisation as an emergent arrangement reflecting the prevailing balances of political interests. A case in point is the globalisation process which has facilitated the spread of human rights as a moral as well as a political theory. Globalization was initially presented as a process of "simple" homogenization of the market economy. Initially, only economic and political dimensions were underlined, but later a growing number of scholars have considered its cultural dimension as an important phenomenon as well (Nawojczy 2006). This thesis considers the cultural dimension indispensable for understanding the persistence of child labour in third world countries. Essentially, human rights require cultural as well as historical relevance and adequacy in order to be meaningful. This helps to determine whether child labour practices, viewed elsewhere as interfering with children's proper development, violate children's rights, given the circumstances surrounding the working children.

In its analysis, the paper uses a combination of analytical tools namely, *conceptual analysis* as a variety of content analysis, some aspects of *discourse analysis* and *deconstruction* of such concepts as *childhood*, *work* and *child labour*. These tools help to determine how a particular image of childhood or work influences the way children are treated in different societies. For instance, a puritan discourse or conceptualisation of childhood implies adult absolute authority whereby children should be carefully controlled, regulated and disciplined. The assumption is that adults act in the child's long term best interests even if this makes a child unhappy for just a while (Rogers 2001). Such an analysis provides us with valuable historical and cultural insights into how child labour relates to child rights. Deconstruction

and conceptualisation of childhood and child labour help us to determine why despite powerful instruments being used at both local and international levels, child labour thrives, not least in the third world countries. With *cultural politics of childhood* which discusses how childhood is constructed and valued in different societies, we cannot immediately conclude working children have their rights violated.

1.5: Theorising Childhood, Child labour and Children's Rights

Central to the argument advanced here is the notion of *cultural politics of childhood*. Issues of childhood are highly contentious. Although the desire is to promote and safeguard the welfare of children in society, children's best interests become controversial and contested, for 'childhoods' lack common locale. Childhoods are shaped by a range of factors which include "race, class, religion, gender and to a certain extent disability" (Foley *et al*. 2001:3). Today it is often argued that the Euro-American values have come to define all that is good, beautiful and true. This includes even our scientific and pragmatic understanding of the nature of children. However, as I will argue, it is important to recognise the complexity arising in understanding the concept of childhood. Childhood, which has different underlying forces shaping it, is used to justify different aspects of child welfare. In some cases people will use biological fitness, and in others, subsistence systems (Lancy 2008). Supporting this position, James *et al*. argue that childhood today has become "popularised, politicised, scrutinised and analysed in a series of interlocking spaces in which the traditional confidence and certainty about children and children's social status are being radically challenged" (1998:3). Hence, there exists a variety of approaches to childhood corresponding to different fields in which childhood is of particular interest.

Given the variations in the perception and conceptualisation of child and childhood, there is need to take into account these radically different ways of viewing and thinking about children if their plight is to be addressed appropriately within concrete social, cultural, historical and economic situations. An anthropological lens, although widely criticised by scholars and activists promoting universal human rights (Tilly 2000), helps determine the extent to which we appreciate children's relative value. The tasks undertaken by children particularly in the third world countries have for a long time been explained in terms of "socialisation, education, training and play" (Nieuwenhuys 1996:237). Despite an avalanche of academic challenges to the importance anthropological perspectives on human issues, it

will be argued that what one may consider as a violation of child rights will vary significantly because the object of interest – in this case the child or childhood – is not a settled concept.

1.6: Thesis Structure

This study has six chapters. *Chapter 1* introduces the problem of child labour and identifies methods of enquiry and analytical approach. It clarifies the question whether child labour on Malawi's tea and tobacco estates violates child rights given the children's economic as well as cultural conditions that are responsible for children's involvement in paid work. *Chapter 2* outlines global and historical development in the abolition of child labour focussing on United States of America and Britain as these countries are known to have initiated calls to abolish child labour. Reasons for the growth of such movements are highlighted. *Chapter 3* discusses child labour on Malawi's tobacco and tea estates. Children working on tea and tobacco estates have attracted international attention. This relates to the current debates on child labour which have turned to the role of trade sanctions, international labour standards and minimum wages (Bhlatora 2003). Trade sanctions in Malawi mostly target commercial entities like tobacco and tea estates. The case of child labour on tea and tobacco estates provides insight by which to determine existing violation of child rights.

Chapter 4 provides the paper's main thrust of analysis. I have argued that historical and cultural conditions are important in understanding values that different societies attach to their children and childhood. This framework provides insights into why different societies treat children differently thereby affecting child rights. The chapter also reviews the challenge to the *universalisation* of childhood on which child rights are founded. Such a stance casts doubts as to whether child labour is a violation of child rights. *Chapter 5* combines insights developed in chapters 3 and 4. Cultural politics of childhood helps determine the extent to which child labour on tea and tobacco estates in Malawi violates child rights. The study concludes in *chapter 6* arguing that incidents of child labour on tea and tobacco estates cannot *a priori* be considered a violation of child rights. However violation of child rights may occur if children and their families are provided with practical alternatives which not only drive children out of wage employment, but also assist them in meeting their daily needs. The analysis on children working on tea and tobacco estates in Malawi provides an insight into how similar cases can be handled elsewhere in the world. The conclusion recommends the *capability approach* as a realistic model to human and children's rights.

Chapter 2

The Global Development of Anti-child Labour Movement

2.1: Introduction

This chapter discusses the global historical development of anti-child labour movement around the world, especially the growth, motivations, values and assumptions embedded in such movement. Such motivations help in determining the extent to which child labour "intrinsically" violates child rights. The chapter also considers tasks that children performed, and the reasoning behind it. These provide necessary pointers for understanding the complexity and challenges faced in determining the extent to which child labour violates children's rights.

The chapter specifically dwells on the events which took place in Britain and the United States at the beginning of 19th century through the 20th century until when the CRC was drawn up in 1989. It is widely held that the worldwide movement against child labour has its roots in national movements that emerged in the industrialised nations in the 19th century (Fyfe 2007). The international efforts against child labour led to the founding of the ILO in 1919 when it developed the first Minimum Age Convention regulating the age at which children were considered responsible (UNICEF 2001). However, the actual coordinated efforts emerged in the 1980s when new actors such as non-governmental organisations (NGOs) began to work with the ILO framework, tackling child labour from multi-dimensional perspectives. In Africa, attention to the child labour problem is relatively new as serious attempts to abolish child labour became visible thanks to the 1989 CRC.

2.2: Historical Context and Perception of Child Labour

Perspectives on child labour can be understood by examining the history from which they draw meaning. "Child labour", in terms of harmful activities, as opposed to "child work", in terms of friendly activities for children, can be traced to the rise in industrial production and capitalism. For Shahrokhi (1996), records show that child labour appeared in the earlier stages in agricultural societies. However the practice became more conspicuous in the 18th century Britain, and this is when people began to be opposed to it. Boys as young as 10 were employed in factories and mines whose activities were deemed dangerous to children's health. By 1880, the English Education Act had decreed that all children between 5 and 10

years should attend school hoping that they would eventually be excluded from workplace considered to be adult sphere (James *et al*. 2004).

The term "child labour" was coined in Britain during the 19th century and it implied that the children were not supposed to work at all. Today, in the developed world, child labour is considered inappropriate for children below a certain age. Activities defined as child labour exclude household and school-related for these are considered not hazardous for children's health. However, the minimum age by which children should work varies from country to country and is sometimes dependent on the type of work that children do. Besides, languages in some countries lack phrases forbidding children to work. The most common expression used is the one similar to "child work" (Dottridge *et al*. 2005). Many countries as well as international organisations consider child labour exploitative and have made it illegal (Pakhare 2007).

During the Industrial Revolution, children as young as 4, were employed in production factories. At that time, the conditions of work in factories were dangerous and often fatal. Children worked with cotton milling machines; they also worked in coal mines where they crawled through tunnels which were too narrow for adults. Some children worked as domestic servants while others worked as prostitutes (Pakhare 2007). Children worked as assistants or apprentices in the lodging industries. Girls learned how to sew, knit, and plait straw while boys learned how to soften leather, shape cast iron, and weave warp and weft. Tuttle (2006) argues that the industry preferred children to adults because children provided cheap labour as they were "submissive, uneducated and nimble" (Tuttle 2006:143). Children, mainly from poor families, were expected to help towards the family livelihood. Apart from wage employment, children also worked on the family farm where they pulled weeds, planted seeds and harvested crops. Such economic forces and stereotyping coupled with child vulnerability became so strong that neither child labour laws nor mandatory schooling legislation were an effective means to stop child labour.

The period of industrialisation in Great Britain and other European countries saw children's work shift from home and farm and into mills, factories and mines. The nature of child labour changed dramatically with changes from the informal to the formal production during the British Industrial Revolution, to bring them in line with new demands by industries. Unlike the pre-industrial era when children worked at home with their families, children began to

work outside the home – in factories and mines for strangers – for a wage, creating a rare opportunity for children to become independent wage earners. Children worked long hours in hot stuffy factories and in cold damp coal and metal mines, with only a few short recesses. It is claimed that children could work as much as 16 hours for a day (Tuttle 2006).

2.3: Child Labour Elimination in Britain and the United States

The crusade against child labour in most Western countries began in the late 19th century. Specifically this can be traced back to 1833 when Robert Peel's Factories Act was passed in Great Britain. Since then, many societies have engaged themselves seriously and systematically to eliminate child labour (Basu *et al*. 2003). Despite the progress in world economic development and the presence of prohibitive acts such as the Factories Act, the world output of child labour continued to grow. However the period of activism and economic progress (19th and early 20th centuries) saw sharp reductions in child labour in industrialised nations (Basu *et al*. 2003). It has been argued that this reduction was due the shifting of child labour to the developing world which had also its own child labour problems. Indeed child labour was almost completely eliminated from the developed world while it migrated to the developing world which provided favourable social, cultural and economic climate.

In Britain the first meaningful investigation into issues of child labour took place in the 1830s when the English parliament set up a commission (Pakhare 2007). The commission found that children as young as 8 worked about 16 hours daily. Some children were being sold to mill owners and others were reportedly being locked up in the mill day and night working. Some children who lived with their parents supplemented family income with their hard-earned wages (Shahrokhi 1996). When the Factory Act was passed in 1833 it banned work for persons less than 9 years old and restricted the working day to 8 hours for those less than 14 years. Such activities changed people's perception on child labour. Child labour was being likened to slavery, and this change in its perception helped the campaign. This change led into children being treated as persons whose rights mattered (Fyfe 2007).

In the US child labour became an issue in the 1850s especially in large cities like New York. Child labour worsened with increased industrialisation. Parents sent out children as young as 6, to earn something with which to contribute to the household economy. The jobs that children did were considered risky, endangering to children's lives, and low-paying. Children

worked in dark textile mills and coal mines. Efforts to deal with child labour in the US have remained unsuccessful to the present day; children from migrant farming families still work in the US (Shahrokhi 1996).

Exploitation of working children in developing countries has been reported since the 1800s. However, political awareness concerning the effects of child labour has gained substantial momentum in the international community only since the start of the 1990s more specifically in 1999 with the adoption of the ILO Convention 182 which focuses on the worst forms of child labour (Law 2005). Even with this awareness and political intervention, child labour remains business as usual.

2.4: The UN Convention on the Rights of the Child (CRC 1989)

Calls to eliminate child labour resulted in the production of important documents used as global model of the rights of children and perhaps of childhood itself and have since been used in this fight (James *et al*. 2004). It was not until the 1990s and specifically with the ratification of the CRC in 1989, and through factors such as globalisation, that the world became aware of the persistence of child labour, and that the situation had not become much better than it had been during the industrial revolution. The only difference was that most developing countries had not industrialised much. The revelation of the magnitude and intensity of child labour presence gave rise to unprecedented levels of research with the hope of arriving at a sustainable global solution. However, two decades after the CRC, the problem seems to have defied best available means to its eradication or alleviation as provided for in the convention.

The fuller understanding of child labour and global commitment to its abolition have been summarised by the adoption and ratification of the 1989 CRC (UNICEF 2001). All countries but Somalia and the US became signatories of the convention. The US failure to ratify the treaty is partly due to potential conflicts with the constitution and opposition by some political and religious conservatives, arguing that the nation already has in place everything the treaty espouses. However, Somalia signed in 2002.The CRC provides the strongest possible international legal language prohibiting child labour practices although it does not explicitly make child labour illegal as it only expresses the desire for a child labour free global society (Gainborough *et al*. 2008). ILO Programme on the Elimination of Child Labour (IPEC) was launched in 1992 with the overall goal of the progressive elimination of

child labour in the world. This would be done by strengthening the capacity of countries to deal with the problem promoting world-wide movement to combat child labour (Pakhare 2007).

Human rights ideals or principles have been presented in ways that portray the evil side of child labour. The CRC conceives child labour in a damaging sense: a human rights violation which needs correction. Such violation can only be addressed through a wide range of measures from the enactment of laws to policies and mechanisms enforcing minimum working age regulations. It also advances the need to free children 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" (CRC art. 32). ILO (1996) reports that by 1995 many children of the ages between 5 and 14, estimated at 120million, did full-time paid job under hazardous and unhygienic conditions for more than 10 hours a day (Basu 1999). As well as attracting many to this cause, the UN has managed to get financial assistance mainly from the developed world to run its programmes.

2.5: Motivations and Problems in Combating Child Labour

The UN CRC also became a landmark development in international law, enhancing and underlining the commitment to assisting working children. Child rights are also mentioned, albeit in passing, in the major UN Human Rights Treaties. For example, the International Convention on Economic, Social and Cultural Rights (ICESCR 1996) obliges state parties to criminalise employment of children under conditions deemed "harmful to their morals or health" (Art.10). However, the CRC was framed specifically to address children's concerns. Together with the ICESCR, it demands protection of the child against economic and social exploitation (Art. 32).

The CRC included novel aspects of child protection against sexual abuse and other forms of exploitation and against the recruitment of children to participate in any form of war activities (Art. 34; 36; 38). The ILO C182 also included aspects of child protection, prohibiting and demanding immediate elimination of the worst forms of child abuse such as slavery and forced labour, child trafficking, forced recruitment for armed conflict, child prostitution and pornography, production and trafficking of drugs (Law 2005). This categorisation, which reflects the global consensus to eliminate child labour, was unanimously agreed at the 1999

ILO Conference. The Convention mandates national governments to determine the exact types of work to be prohibited as hazardous work. It also requires ratifying States to design and implement programmes of action to eliminate existing child labour and to prevent emerging instances (C182 Art. 1). Such measures should include the rehabilitation and free education or vocational training for the children concerned. The ILO C138 has its ultimate objective as the effective abolition of child labour, using minimum age as an instrument to that end.

The CRC (Art. 28) provides for compulsory and free primary education to all children. Long before the convention, those people with keen interest realised there was a symbiotic relationship between child labour and compulsory education. As Stambler notes, "…compulsory education laws were buttressed by child labour laws. The enforcement of these laws kept children in school longer and limited their job opportunities during school hours" (Stambler 1968:189). However, the first Compulsory Education Act which the New York State passed in 1874 lacked enforcement because it lacked funds. Child labour was also considered as a culture lag or an institutional carry-over from agrarian society into the new industrial framework, while the movement for compulsory education resulted from a growing technological society aiming at guaranteeing its manpower needs for survival for such a society. Thus, from the earliest efforts to eliminate child labour, legislation and compulsory education were logically interwoven. The enforcement of one would inevitably influence the other as a consequence (Stambler 1968).

Child labour legislation in the US was spearheaded by three groups of people identified by Stambler (1968) as: (1) those primarily interested in limiting competitive child labour, (2) educators and reformers interested in compulsory education and, (3) philanthropists who were interested in the moral issues surrounding child labour practices. Although these groups, had varying interests, they worked together in collaboration to see their interests carried out. Educators and those interested in lessening competition from child labourers cooperated along pragmatic lines (Stambler 1968). By sending children to school, the compulsory Education Act lessened competition from child labourers while creating jobs for adults.

The enforcement of compulsory education as a replacement for child labour had, according to Stambler, two major problems. First, the statistics provided for claiming effectiveness in the programme could not match the reality. A significant number of children still worked and

were unaccounted for. Secondly, the courts' attitude towards compulsory school attendance was indifferent as they supported the traditional parental right to wield authority over children. The courts sympathised with poor parents who depended on children's income, finding it even extremely difficult to fine parents found in breach of child labour legislation (Stambler 1968). Compulsory schooling was considered unfavourable for family survival. Failure to impose these compulsory school regulations in New York was also partly blamed on the general public's and parents' lack of conviction that school attendance was a valuable thing. Nonetheless, in enforcing compulsory education, they insisted on children securing papers which usually attested to their age and attendance at school, before children could be employed (Stambler 1968).

Although the desire for a child labour free global society gathered momentum at the end of the 1990s around the adoption of the ILO C182 in 1999, there are signs this momentum has subsided. A case in point is the rise in incidences of child labour practices in the third world countries. This is contrary to the international community's expectations of immediate improvement. Perhaps there is too much attention to the economic explanation at the expense of other equally important factors contributing to the occurrence of the phenomenon. There is need to consider alternative explanations to child labour so that cases of child labour in violation of child rights are isolated. For this reason, the next chapter discusses child labour in Malawi. It focuses on factors responsible for its occurrence on tea and tobacco estates in order to determine possible violation of child rights.

Chapter 3

Child Labour in Malawi: Working Children on Tea and Tobacco Estates

3.1: Introduction

This chapter discusses child labour on tea and tobacco estates in Malawi. In their attempts to eliminate child labour, most international as well as national or local organisations dealing with child labour issues have focussed their attention on commercial farms. Domestic child labour is deliberately left out as it is often considered to be part and parcel of children's socialisation and education, so it does not attract as much controversy. For Bhalotra (2003), household employment among children has been neglected in popular discussion on policy interventions targeted at child labour. This she attributes to the role played by media coverage, which concentrates its debates on commercial and export sectors and the role of trade sanctions, international labour standards and minimum wages in the abolition of child labour. Although monitoring is concentrated on commercial agriculture, household child labour appears to be of equal enormity only that it is difficult to tell its magnitude (Andvig *et al*. 2001).

This chapter examines Malawi's efforts to eliminate child labour in the global context. Malawi has been identified as one of the developing countries in sub-Saharan Africa with a high incidence of child labour occurring specifically on tea and tobacco estates (Eldring *et al*. 2000). This chapter also identifies specific activities performed by children on the tea and tobacco plantations. Identification of these activities will help determine the extent to which child labour violates child rights. The chapter also enquires into the reasons advanced for children's involvement in tea and tobacco production. Importantly, the chapter explains how historical and cultural perspectives have contributed to the occurrence of child labour in Malawi. Such perspectives provide insights by which to determine whether child labour and its rationale constitute a violation of child rights, given the cultural and historical contexts within which children live.

3.2: Malawi within the Global Context

Malawi is a country in the sub-Saharan Africa and is considered to have one of the highest incidences of child labour in the world (Bhlatora 2003; Eldring *et al*. 2001). Even though child labour is found in virtually all sectors of economy, formal and informal, including

commercial farms, smallholdings, domestic work and micro-industries, Malawi's effort to deal with it is directed towards the formal sector especially commercial agriculture. Commercial agriculture is important for the country's economy. Tobacco alone accounts for almost 70 percent of the county's foreign exchange (Plan 2009). Tea is an equally important crop for Malawi's economy as it is considered second major foreign exchange earner (ECAM 2005). While accurate data on the magnitude of child labour are lacking, there are clear indications that child labour in Malawi is widespread and on the rise. The ILO has classified child labour on tobacco estates as one of the "worst forms of child labour" (Kayange 2003).

The Malawi Government ratified several child rights conventions on child labour related issues such as the 1989 CRC which effectively made children rights holders, the 1973 ILO C138 (Minimum Age Convention is 18), and the most critical 1999 ILO C182 (Worst Forms of Child Labour Convention). 1979 was proclaimed by the General Assembly as the International Year of the Child (IYC) aimed at promoting the well-being of children (Fyfe 2007). The IYC helped raise the profile of child labour incidences and inspired UN agencies and NGOs.

Various countries world-over adopted comprehensive national policies and programmes on child labour around the 1980s (Bhalotra 2003). Under the African Union (AU), then the Organisation of African Unity (OAU), the African continent established a human rights regime through the African Charter on Human and Peoples' Rights in 1981. This indicates efforts by African states to unite in the promotion of human and peoples' rights. These efforts were complemented by the establishment of the African Court on Human and People's Rights (AfCHPR) whose duty has been to assist member states in determining norms applicable to African experience as a whole (Allain *et al*. 2002).

3.3: Child Workers on Tea and Tobacco Estates in Malawi

The claim that ratification of conventions is one thing and its implementation quite another, makes sense within the Malawian context. The case in point is the conflict between some convention and traditional customs and norms, rendering the conventions either not ratified or partially ratified, accompanied by a list of reservations. Such reservations absolve states from their non-compliance and non-implementation of a specific treaty. Malawi has ratified both the ILO C138 and C182, arguably the major treaties on children's welfare. This ratification obliges Malawi to take necessary steps to implement the conventions. Even

though Malawi has taken these relevant and necessary steps to abolish child labour, there is significant child labour taking place in Malawi, and it is more evident on tea and tobacco estates.

To appreciate the significance of the problem child labour and the seriousness with which it has been presented in most literature, it is important to consider the kinds of activities which children on tea and tobacco estates do. On tobacco estates children perform a number of activities. Some activities have been branded "hazardous" because they involve the use of dangerous chemicals harmful to children's health. Chemicals can affect their respiratory systems. Children also carry heavy loads of tobacco and work for long hours. The 2009 Plan Malawi report indicates that children work as much as 12 hours or more for just US$0.17 a day (Munthali 2003). The report also indicates that on humid days, during the cultivation and harvesting of tobacco, the average field worker may be exposed to as much as 54mg of dissolved nicotine – equivalent to more than 50 average cigarettes, leading to Green Tobacco Sickness – GTS (Plan 2009).

Tobacco not only exposes child workers to health hazards involved in its production, but also subjects children to long hours of work with little or no rest at all in order to make more money. Some children help in operating heavy machinery when preparing tobacco bales. Eldring *et al*. (2000) claim that some girls become vulnerable to sexual exploitation by their supervisors and their risk of contracting HIV/AIDS is higher. Generally, tobacco production process is considered as much an unhealthy enterprise as its product is dangerous for those who consume it, even though the employers and employees have justifiable interests in it (Eldring *et al*. 2000). Tobacco production is also physically demanding on the children. Children as young as 9 are involved in what are called "light tasks" such as

> "clearing fields, making nursery beds and watering nurseries during the first phase of tobacco production; uprooting, transporting and transplanting seedlings and weeding during the second phase; picking, transporting, tying/sowing the leaf, picking down the dried tobacco and bundling during the last phase" (Eldring *et al*. 2000:41).

Plan Malawi has listed almost similar activities on tobacco estates. Children do almost every job that adults do. Their activities chiefly involve clearing the fields in preparation for planting, working in the nurseries, harvesting and grading the final product. The report

mentions other activities deemed hazardous like the spraying of pesticides (Plan Malawi 2009).

Children's work is also significant on tea estates. Children's work here is seasonal and demand for labour is higher during rainy season. Children normally perform such tasks as

> "'hoeing, weeding, tending nurseries, watering, pruning, stripping and stemming, and picking and tying of leaves' in the field, and in the factories children are involved in such menial jobs as 'sweeping floors, running errands, and packing and unpacking of tea and tobacco leaves'" (Chirwa 1993:627).

Just like the tobacco industry, employers on tea estates see nothing wrong employing children to perform such tasks as they are 'light and suitable for children and young persons'. Many African traditional communities highly value children's work at home or on the family farm. This work is not perceived as harmful, but rather as socially necessary occupation, which is also of great benefit to children's experience. Household activities are carried over to the tea and tobacco estates as they are perceived helpful to both the parents and the children besides earning some money.

3.4: Reasons for Children Working on Tea and Tobacco Estates

The most commonly cited reasons for child labour are poverty, failure of the education system and lack of legislative enforcement agencies (Eldring *et al*. 2000). Children work for a wage on tobacco estates as this seems the only "survival strategy" available to them and their families whose lives are characterised by constant struggle for survival. Additionally, parents are unable to pay for their children's education which has been considered as the substitute for child labour. Thus, as long as household income is too low to meet the basic needs, it is inconceivable that a household will financially support education activities. Child work remains the only realistic way to survive their economic condition. Hence, child labour is not necessarily a result of poverty, but there is a strong relationship between the two as "child labour is often found in socially and economically marginalised communities" (Eldring *et al*. 2000:10).

Another reason for child labour prevalence is that children provide cheap labour which is on high demand. Jobs which children do are seasonal while adults work almost on a permanent basis. Job security is hugely compromised by child labour illegality. This illegality augments

employers' power to hire and fire as labour laws do not protect working children. The other factor which has often been denied space or simply ignored in most child labour researches is the influence of certain cultural practices on child labour practices. For instance most parents' attitude towards child labour is indifferent believing it provides public space for socialisation and character development. Children also feel they have an obligation to help their parents in many ways possible (ECAM 2005:27).

Although child labour is largely attributed to poverty, which in turn forces children out of school, the truth of this claim is contestable. In Malawi, primary school education has been free since 1994, and child labour continues to thrive. One would expect levels of child labour cases to drop significantly. Hence, although poverty plays an important role in accounting for child labour, it does not do so exclusively and exhaustively. As pointed out earlier, in some cases human rights programmes are justified in condemning certain cultural practices that prevent positive change. However, it is a contradiction by "human rights regime" to deny people their cultural rights to do things their own way, as is the case with the value of child labour.

On the importance of cultural values Cook writes: "almost all human rights challenges involve aspects of culture, and this could not be more important than today when most of our great social challenges involve disputes based on culture, ethnicity and identity" (Cook 2003:2). Although culture is considered as having a harmful influence on the violations of human rights, it has also been argued that the "human rights age" is responsible for the erosion of many important cultural practices which have been identified as harmful, together with the bad ones. A great deal of literature with an activist stand has overwhelmingly deplored culture as having contributed tremendously to violation of a number of rights besides child rights. That is, culture is only acknowledged for negative reasons as, for example, the Malawi Human Rights Commission (MHRC) study has considered women subordination in most African states, for example, to be rooted in cultural practices. Child rights are just among so many important rights that culture is said to have violated.

Often cultural practices are cited for negative reasons as they are considered harmful. In its newsletter *Mfulu* of March 2003, the MHRC has listed a number of cultural practices considered harmful. It has dedicated this edition to the theme of eradicating harmful cultural practices. However the same cultural practices remain the only way to unravel the puzzle of

their persistence even though they have been outlawed. The MHRC acknowledges that these practices have formed part of the socialisation process that Malawian children have had to undergo (MHRC Mfulu 2006). It is precisely for this reason that this research considers the cultural and historical dimensions of child labour necessary for determining whether child labour intrinsically violates child rights.

3.5: Response to Child Labour on Tea and Tobacco Estates in Malawi

The movement against child labour in Africa, and Malawi in particular did not begin to gain momentum until the mid 1990s. This was facilitated by the development of the CRC which recognised children as rights holders. The convergence of concerns with human rights, and child rights as part of that, with responses aimed at intensified globalization, propelled child labour up the international agenda, bringing it unprecedented attention ever (Fyfe 2007).

Since Malawi became a signatory to most of the anti-child labour treaties, a series of studies have been conducted largely aimed at creating an awareness of the evils of child labour practices in these industries and assessing the levels of child labour cases. Spurred by ILO's (1996) revelation that over 211 million children aged between 5 and 14 world-wide are engaged in economic activities and 48 million of these live in the sub-Saharan Africa, Line Eldring *et al*. (2003) conducted a pilot survey on *Child Labour in the Tea Sector in Malawi*. This study aimed at first getting an overview of the existing information and research on child labour in the tea sector in Malawi and secondly, exploring the needs and possibilities for further research on child labour in the tea sector. During interviews, they registered that very many people were aware of the illegality of child labour, but there was lack of transparency with regard to issues surrounding child labour. The researchers were surprised that even parents, who should be concerned about their children, were ready to conceal their children's involvement in any child labour practices (Eldring *et al.* 2003). Such an attitude only underscored the fact that child labour talk was a sensitive issue as it bordered on their survival.

Several other organisations have been involved in child labour eradication. One such organisation, ILO-IPEC, conducted a baseline survey in 4 districts of Malawi concentrating on tobacco growing areas. In 2000 ILO-IPEC launched a three year regional project (including Kenya, Malawi, Tanzania, Uganda and Zambia) to build institutional capacity and prevent children from entering employment in commercial agriculture. The project was

designed to rehabilitate thousands of children engaged in exploitative labour and to prevent further children from engaging such work (Bhalotra 2003). UNICEF too has been documenting issues surrounding child labour in Malawi. In 2001/2002 the *Eye of the Child*, a local NGO, conducted a 3-day workshop in the tea growing district of Thyolo where all participants unanimously agreed that child labour was rampant in the tea sector.

The Government of Malawi (GoM) has also undertaken steps to abolish child labour. The Constitution of Malawi sets the minimum age for employment at 14 years (Section 23). Exceptions are made to certain work in vocational technical schools, other training institutions and in homes. The Malawi Employment Act (2000) also prohibits children aged between 14 and 18 from doing any type of work that could harm their health, safety, development, education, or morals, or in work that could interfere with children's attendance at school or any vocational or training programme. Employers are required to keep a register of all employees under the age of 18. For the first time the GoM included in its 2007 budget funds for the exclusive purpose of combating child labour in Malawi.

While it is acknowledged that child labour is on the decline in Asia and Latin America, the African situation is different. Such variation may be accounted for by causes of child labour. Some causes of child labour in Africa have been identified as economic decline, war, famine, and HIV and AIDS (Bhalotra 2003). Often, studies have identified poverty as the main cause of child labour. Bhalotra claims that it appears poverty in Africa has been aggravated by other factors such as war, famine and HIV and AIDS. She observes that most orphans often end up living with relatives of extended family. As management of large families blotted by a huge number of orphaned dependants proves an uphill task, children are forced to engage in economic activities to support themselves and their families. Hence, most children take up hazardous jobs. These jobs prevent children from attending school at an early age.

A more important observation has been that the enforcement of restrictions on child labour does not necessarily eliminate child labour if it is only associated with poor economic conditions (Augeraud-Veron *et al*. 2004). One should be mindful of the fact that some cultural practices play an important role of sustaining the social fabric. In many African cultural settings for instance, boys are expected to work hard especially helping their fathers within the household. They are also expected to assist elderly people carry their load (MHRC

Mfulu 2003). The role of a child in a family or society, which permeates social networks, may be an important factor.

The problem of universal human rights' applicability in concrete cultural and social settings is important. We cannot simply gloss over this problem and proceed with human rights implementation as if it were long resolved. Augeraud-Veron *et al*. (2004) also observe that despite all the provisions that restrict child employment which include laws at both national and international levels, the determinants of child labour remain complex and difficult to evaluate. For this reason, the following chapter considers the *cultural politics of childhood*, which when examined together with the case of Malawi presented in this chapter, helps in determining whether the practice violates child rights.

Chapter 4

Conceptualisation and Cultural Politics of Childhood

4.1: Introduction

The *cultural politics of childhood*, under consideration in this chapter, shows how the concept of childhood is understood, constructed and lived across cultures which fundamentally differ on the values placed on childhood. It also examines cultural determinants of childhood as well as the social status or worth that children have within societies (Lancy 2008. Factors such as family structure, the nature of kin and gender relations, the structure of school system, conceptions of education process and of the child's health and welfare, secular and religious discourses about what children are or should be are important. Economic and political discourses exclude children from the adult world of work, and instead confine them in the school room in the role of non-producers. These depend on cultural settings (James *et al*. 2004). Often efforts to abolish child labour are focussed on activities which not only prevent children from attending school, but are also perceived dangerous to their lives. However, the cultural politics of childhood questions and faults some of these assumptions used in child labour abolition as they fall short of universal acceptance. This has significant implications for child rights.

The previous chapter considered child labour in Malawi, while placing Malawi within the global context in its fight against child labour, and describing tasks which children perform on tea and tobacco estates. Mostly, such activities match those that children perform in their households. At home parents supervise their children while on plantations there is "an impersonal relationship between children and employers, and this relationship is structured along capitalist lines forming part of the employer's labour mobilising strategy" (Chirwa 1992:348). The reasons offered for children's involvement in child labour were also considered. In this section I will discuss compulsory schooling as a strategy to end child labour, and an alternative to child labour.

While primary school education has been free in Malawi since 1994, child labour still persists. Sceptical of the adequacy of strategies for abolishing child labour and the criteria used to determine the occurrence of abusive child labour, an approach based in the cultural politics of childhood presents an unorthodox and important perspective in understanding children and child labour. Children and their childhood are understood as constructed by their cultural and historical conditions. That is, 'child' and 'childhood' are not given concepts, but their essence and meaning necessarily derive from the environment in which the children are born and raised.

Adult perception and experience of childhood are ubiquitous in the childhood discourse. The responsibility of deciding the best interest of the child falls within adult domain (CRC art. 3). Adult capability to deliberate issues empowers them to make choices on behalf of children, as children are generally considered incapable of making sound decisions by themselves. This is generally the assumption from western societies who dominate childhood discourse. In addition, families in which these children are raised are perceived to be private entities and therefore not directly accessible to public world (Archard 2003). Haider (2008) also notes the complexity created by the tension between the official international and national laws, and the actual reality on the ground, or what he terms "living laws" regarding working children, and states that the issue is far from solved. Challenging assumptions of the "best interest" principle, he argues that the *essentialisation* of the best interests of the child is quite detrimental to the actual welfare and interests of the child. He suggests considering cultural specifics of working children. He challenges the foundation of models of child labour elimination, arguing that such models need to reflect the contextual problems faced by individual working children. This will entail resorting to the socio-cultural normative orders existing in societies "if we are to minimise the ongoing suffering by working children" (Haider 2008:49).

An analysis of childhood as a social and historical construction highlights differences in childhood conception across societies (Goldson 2001). Anthropological research on childhood has also fundamentally developed from the assumption that "childhood is socially constructed and it changes depending on the historical and cultural setting" (Montgomery 2009:51). This includes analysis of such notions as personhood, morality and social order in order to locate where and how children fit within the social fabric. What one considers a child right in one context may not be in another. Such understanding of childhood has implications on the implementation of child rights. This chapter will explore these issues and their implications for the international children's rights movement.

4.2: Contextualising Definition and Conceptualisation of "Child" and "Childhood"

Highlighting some varying conceptualisations of 'child' and 'childhood', originating from their varying meanings and values, enhances our understanding of how childhood is constructed within different societies and influenced by the kind of values held about the child. This in turn helps determine whether child labour intrinsically violates child rights. Ike *et al*. (1999) argue that for definitions of child abuse and child labour to be meaningful, they should be culturally relevant. In the context of many traditional African value systems, for example, a child is the most treasured object and constitutes the focal point in life. For Haider (2008) such a cross-cultural analysis unveils a variety of conceptualisations of childhood rather than a single or universal phenomenon. The meanings and values attached to childhood vary enormously within and between cultures.

In general, the term "child" is relational and implies that one person is the child of another. This in turn implies a kind of mutual support and care throughout life. There is also a continuum between children and adults. Any distinction between them is merely conceptual. In many areas, Euro-American values are considered to dominate definitions and conceptions of what is good, beautiful and true, including our scientific and pragmatic understanding of the nature of children (Lancy 2008). Children's values developed from the West are often considered "universal".

Generally, ages at which different societies assign different competencies to children vary enormously (Montgomery 2009). The definition premised on age is largely political. 18 years is considered as the age at which an individual can fully pursue civil, political and economic rights. For instance in English, the concept child normally will refer to anyone who is below the age of 18. As Montgomery (2009) explains, within the bracket age between 0 and 18 we find different scales of children distinguished by specific ages such as baby, infant, toddler or teenager. Generally such name tags refer to any young person who is yet to reach adulthood or social maturity. The stages are also demarcated by a bureaucracy prescribing when a child can start school or attain legal rights like voting.

In some parts of the world a person's passage through stages is marked by gradual assumption of responsibilities rather than rigid chronological age. Thus, to move from one stage to another, one only needs to undergo rites of passage as prescribed by the society in which one is born and raised. Some societies expect a 6 year girl to have acquired skills befitting an adult woman. She has to assist her mother in a variety of household chores like looking after her younger siblings, cooking and doing any other women activities in general (Montgomery 2008). In Thailand for example, female maturity is measured not by marriage, but by motherhood, giving women an increased social status. In this case age is inconsequential in marking off the end of childhood and the commencement of adulthood.

In some places 18 is the age at which one is liable for criminal responsibilities. This age varies from one country to another. In Spain, it is at 16, while in Norway it is at 15 and, 14 in Germany. In modern Britain, the age of criminal responsibility stands at 10. Thus, in the British legal system, a 10 year old can be treated as an adult (Grittins 1998). In some societies girl children as young as 5 look after their younger siblings while young boys aged 6 or 7 are entrusted with livestock management, especially tending to cattle or goats on their own for long periods. For instance, at 7 the pastoral Fulani boys effectively become herdboys competent enough to plan and execute daily cattle grazing schedules (Stenning 1962). Hence, children may be incompetent in certain areas but they are able to carry out certain tasks, a thing a child brought up in the West would not be considered capable of doing for many years.

In the West, children are considered economically dependent and are not expected to contribute anything to the family's finances. Even when they work, that money is spent by the children themselves on personal basis (Montgomery 2009). This conception of childhood is what the CRC adopted for ideal, hence universal, shielding children from all sorts of work which support the family. Outside the western world children are often seen as an *economic investment*. Within this consideration, children are expected to work as soon as they are able to contribute to family income. Children are also expected to take care of their parents in their old age.

Children are also defined as human *beings* and human *becomings* (Montgomery 2009). They are considered as beings whose patterns of becoming or development vary correspondingly with different child rearing practices. Whether children play or work depends on the society they are born and raised. Societies all over the world have in mind what kind of individuals they want their children to be, and this affects the way of raising children. Such values and behaviours are communicated to children early on and throughout the entire process of childrearing. For example, some communities would value independent behaviour more than interdependence or harmonious social relationships (Montgomery 2009). Such child-rearing practices and child socialisation are carried over to the wider community and enable children grow up effectively understanding and internalising the norms of their society.

Understanding childhood requires attention to the entire cycle of child life and ways in which children become adults, as well as the interdependence between children and adults. This explains why certain beliefs are more easily accepted in some societies, and how socially appropriate behaviours are inculcated. Montgomery claims that a number of scholars in anthropology and sociology have argued that "childhood must be understood as a culturally constructed, social phenomenon which changes over time and place, and that it should not necessarily be seen as a time of universal dependence and powerlessness, although this is often how children experience it" (Montgomery 2009:43). Thus, childhood has no more to do with physical immaturity than a social construction and way of ordering culture.

Children are also viewed from a *proprietarian* perspective (Archard 2003), which departs from the premise that everyone is entitled to own what they produce. Parents, who head families, which are viewed as private and sacred space, are considered rightful "owners" of children – especially those they have given birth to. Based on the ancient Roman law, parents are effectively legitimate owners of children. In ancient times this had devastating implications on children's lives, as parents could do whatever they wanted with their children. Children could even be killed or sold to slave traders or whoever wanted their services in exchange for items they so wanted (Archard 2003). At the same time parents' right to the exclusive ownership of children is constrained morally by parental duty to care

for their children, which means parents' obligation to provide for their children. Such duty is accompanied by the right to exercise a degree of autonomous choice in the way parents desire to raise their children (Archard 2003).

The relationship between children and their parents is important in determining the value of children. For instance, in societies practising primogeniture, "it is the firstborn, usually the firstborn son, who inherits from his parents and may well have a totally different childhood from his siblings" (Montgomery 2009:54). Montgomery discusses further the special relationships that exist between parents and the lastborn of the family. This child may also have a special place within the family. Under the systems of ultimo-genitor, the lastborn may inherit land and all property. Relationships between parents and their children are significant when it comes to the appropriation of children's rights. Given this kind of tradition, some children within the same family have more rights than others. Siblings belonging to different generations have different roles within the community and the family. This challenges the idea that 'child' is a specific stage of life which is separated from adult life. Montgomery argues this claim "does not hold true in many places where there are many stages of social immaturity that last well beyond puberty and even marriage" (Montgomery 2009:54). It is therefore difficult to talk of a generic concept of childhood. For Haider (2008), the concept of the "official child" explained merely in terms of age specificity fails to recognise the highly heterogeneous character of different groups of children and their life situations in specific social, historical and cultural settings. Such differences affect the observance or violation of child rights.

In the *Invention of Childhood* (2006), Cunningham has defined childhood as simply a stage on the road to adulthood, and he considers it the prevailing notion whereby it has usually been adults who define childhood. They do so by "negating it or exploiting it, and sometimes to idealising it" (Cunningham 2006:14). Cunningham further argues that the history of childhood has sometimes been written as part of the history of parenthood. That is, discourse about parenthood is necessarily accompanied by childhood discourse, as children make one a parent. Thus, the relation between parents and children, often the one of dependence is important and reinforces parent's authority over their children. In his earlier work *Children and Childhood in Western Society Since 1500* (1995), Cunningham has explained that being a child is not simply a matter of belonging to an age group of between birth and 14. One becomes a real child if he or she has "childhood" (Cunningham 1995:1).

Cunningham's work (1995) highlights the distinction between children as human beings and childhood as a shifting set of ideas. This distinction necessitates an easier way to discuss childhood than children themselves. The immense availability of literature and images of childhood constructed in a wide range of media such as advice books and fiction, especially in western societies, is helpful in childhood discourse. Such images help to put together the dominant ideas about childhood prevalent

among particular social groups at a particular time. Most importantly, our view of the child is mediated through the perceptions of the adult. It is not easy for children to articulate their own sense of being a child, apart from the usual guessing that people get caught up into as to what children are or think. Usually, children emulate adults and adults want to do what they perceive to be in relation to children's world (Cunningham 1995).

4.3: Models of Childhood

To appreciate problems in the conceptualisation of "childhood", used for claiming child rights, it is necessary to consider here models of childhood. Theorists of childhood are preoccupied by the social and historical contexts surrounding children's lives (James *et al*. 1998). This means theories of childhood are buttressed by particular interests, traditions and ideologies. Hence, childhood remains a highly contentious issue conceived from a number of angles such as social, political, moral positions.

In analysing childhood James *et al*. (1998) indentify three models of child construction namely, *pre-sociological*, *sociological* and *social structural* models of childhood. In the pre-sociological model, a child is considered to be first the *evil child*. This image assumes that evil, corruption and baseness are the primary elements in the construction of 'the child'. Education is meant to correct this evil image. Second within this model is *innocent child* image. This is directly set against the evil image. It mostly constitutes the modern western conception in which children are considered to be angelic and uncorrupted by the world they have just entered through birth. This image serves as the foundation of the child-centred education where a whole host of adaptive child rearing strategies are tailored to the needs of the individual (James *et al*. 1998; James *et al*. 2004). The third image under this model is the *immanent child*. Adapting from John Locke's idea of the *tabula rasa*, children are viewed as having intrinsically nothing in terms of categories of understanding. Children only have potential as future citizens and their capacity to reason like adults will develop within a given environment (James *et al*. 1998).

The *sociological model of childhood* begins with the established concept of society and works back to the inculcation of its future members. A child is portrayed as belonging to a tribe or social world. Through socialisation, desired social values are inculcated into the society's young members. This involves the transmission of aspects of culture from one generation to another and such transmission starts within childhood stages (James *et al*. 1998). Through socialisation, children learn to conform to social norms, and societies reproduce themselves to ensure survival.

In the *social structural model of childhood* children are considered as a necessary component in the social structure. Children are neither pathological nor incomplete as presented within pre-sociological and sociological models of childhood. Rather, children form a group, a body of social actors, and as

citizens, they have needs and rights. Children within the social structure have certain universal characteristics which are specifically related to the institutional structure of societies in general (James *et al*. 1998).

Each model is based on values about children within societies and during a particular historical milieu. Each of the models is meant to achieve a particular aim, which is of highest value in each one of the societies. Thus childhood becomes even more complicated as all models are important. For example in the pre-sociological model, children need parental guidance to achieve their potential. The sociological model presents children people living in space at a particular time which will have an impact in their lives. The social structural model conceives children as an important segment of any society. It is this third model which is used by the international child rights movement, using it especially to claim children's rights.

4.4: Deconstructing Childhood

In trying to answer the question "what does the child mean to adults?" contradictions abound. For Grittins, such contradictions lead to the term embracing different layers of meaning, for instance, "the child is a myth, a fiction, an adult construction" (Grittins 1998:2). The postmodernist model of child and childhood conceptualisation is persuasive, that is, it is reasonably compelling to argue that our lives, including those of children, are created through narratives and language. Everything is defined through social meanings created by discourse and narrative. Such narratives vary markedly across different societies which experience things differently (Grittins 1998). Space and time are important categories through which we deconstruct the universal childhoods. Although the post-modernist conception is such important, other models complement it. For instance it cannot be entirely true that a child remains at the level of ideas. The biological as well historical and cultural perspectives are important.

Generally, children's worlds are characterised by a separated-*ness* from adult world of laws and politics. Children live in their own worlds and their emergence into the adult world is an accident, a privilege or part of the gradualist rite of passage (James *et al*. 1998). Even though common sense compels us to see children as united in the universal biology with regard to the human physical development of their bodies and cognitive competence, the form that they take in different cultures is constrained, and to a great extent "influenced by factors of age, generation and time" (James *et al*. 1998:58). In turn, childhood is radically differentiated by the varied social and historical contexts in which growth is culturally directed and enacted in the life course.

In industrialised societies it is not difficult to see why children's place is not usually regarded as 'at work' because members are convinced that what children are supposed to do is play and learn and

these are not considered as work. Hence, when a child works for payment or in domestic household, it is considered unacceptable. The immediate reflex is to look at this as an aberration, a social problem premised on children's vulnerability and their constant need for protection. Children are seen as victims of super-exploitation (James *et al*. 1998). School is not considered as work, but a preparation for it. Here the problematic becomes the definition of work and how it can be distinguished from labour because in other societies the distinction between work and labour is fluid and almost non-existent. Some of what children do as their exact activities turn out to be work or forms of work. In this case, school may also be considered work. Thus, children and work constitute some of the most complex problems within sociological analysis.

In societies outside the industrialised North, children's participation in productive work is commonplace, considered normal and significant. Children are involved in a number of activities such as cleaning the house, food preparation, tending to their younger siblings, working on agricultural plantations and in factories for money. It is important to note that the situation between nation states is remarkably different given this social and economic divide. What is true and good for the rich people may not true or good for the poorer or the poorest whether in short or long term consideration (James *et al*. 1998). Problems with the concept of childhood make it difficult to move in and abolish child labour, especially when it is premised on ideals irrelevant to people's social, historical, economic and cultural contexts.

Although most people understandably consider biological development as common to children, there lacks a universal agreement as to when children should assume adult roles. As Grittins (1998) has argued, whatever a universal definition of childhood is, it disguises differences and inequalities at different levels. For example, children in the third world do not have anything like the life chances that western children have, and this affects their rights. Hence the following chapter will use the specific example of child labour Malawi to illustrate theoretical problems raised in this chapter.

Chapter 5

Child Labour and the Violation of Child Rights in Malawi: An Analysis

5.1: Introduction

This chapter builds on insights developed in chapters 3 and 4. Chapter 3 discussed child labour on tea and tobacco estates in Malawi, emphasising on the activities that children do and the reasons for doing that. Chapter 4 dealt with the cultural politics of childhood, which provides a platform for determining whether child labour on tea and tobacco estates violates child rights. Cultural politics of childhood becomes a critical paradigm in theorising childhood and child labour. Rogers argues that this "poses a fundamental challenge to universalistic conceptualisations of childhood" (2001:31). This challenge makes it difficult to arrive at a moral consensus of what constitutes child abuse. This thesis aims to establish the extent to which child labour on tea and tobacco plantations in Malawi violates child rights, considered from various perspectives and including considerations such as the motivations for abolishing child labour, children's best interests, cultural politics of childhood, the nature of child labour activities, and poverty and survival.

5.2: Child Labour in the Third World Today

Understanding child labour begins with documenting the number of working children, locating children's work places and identifying tasks which children perform. Reasons for children's involvement in labour are also important as they provide useful insights in finding a solution (Tuttle 2006). In the third world countries, child labour takes place mostly in agricultural sector where children either work with their families on small farms or with strangers on large farms or plantations. Most of these countries, found in South America, Asia and Africa, especially the sub-Saharan region, have large populations living in rural areas. In Asia children work in factories and small scale agriculture while in Africa child labourers work on commercial plantations and in the informal sector of the economy as servants, vendors (Hutchinson 1996). In these less developed and poorer countries, agriculture remains the primary source of employment for adults as well as children (Tuttle 2006). As a global trend, poorer countries tend to have higher rates of child labour because parents cannot afford the cost of schooling, and sometimes the schools are simply not there (Kielland *et al*. 2006).

Generally these countries have large numbers of children relative to adults. The proportionately large numbers of children have partly been pushed up by HIV/AIDS which accounts for high mortality rates in the third world nations. Orphaned children are forced to assume adult roles. Besides, there is such a high demand for workers and a low supply of jobs that children are pulled into the labour market to take up vacant positions. The high demand for work in the third world countries also pulls down the wages that companies must pay to their employees. Children are even worse off and cheaper

because they are so easily controlled and they lack the platform to negotiate for better pay. The fact that child workers will not usually rally to form unions or stage a strike is the reason that child labour persists while employers conveniently exploit this condition by maintaining the *status quo* (Forster 2007).

5.3: Economic and Sociological Explanations of Child Labour

Most economists as well as sociologists explain child labour in terms of poverty, arguing that children from poor families must work in order to contribute to the family's livelihood, buying the necessities for survival especially food, clothing and housing (Tuttle 2006). Unable to provide for the family on their low wages, poor families have to send their children to work (Basu *et al*. 1999; 2003). Furthermore, it has been customary for children to assist with the daily activities around the house, or on the family farm. Hence, children in the majority of third world countries are considered both as an "investment", and as "partners" by their parents, and must contribute to the family economy. Sending a child to school is considered a luxury which the poor and working-class simply cannot afford (Basu *et al*. 2003; Tuttle 2006).

Child labour is also linked to the profiteering aspects of modern capitalist economy. As child labour is explained by children's or their families' economic status, it is argued that most children that are 'forced' to work are economically disadvantaged. Either their country as a whole is disadvantaged, or just their family. These conditions conveniently favour business enterprises that are eager to exploit people in difficult circumstances. It is important to note that in a capitalist economy, exploitation of the abundant cheap labour available in developing nations increases profits for business owners. Children specifically become hapless victims of big businesses (Forster 1996).

Although children are still productive in commercial agriculture today, child labour laws force most compliant employers to hire older children, still younger than the recommended age, or to subcontract in the informal sector where enforcement is especially difficult. Aware that the services they provide are illegal, most of these children lie about their age, or hide from authorities during inspections (Tuttle 2006). Some children work on small farms or large plantations where violations of the law are overlooked. Others work in small privately owned businesses, in private homes as domestic servants, and in brothels as prostitutes. These sites are hidden from the law and invisible to society (Forster 2006).

5.4: Motivations for Abolishing Child Labour

Child labour abolition is meant to protect children's rights, including the rights to education and to good health (CRC 1989). In modern times these two rights are combined in the sense that one leads to

another. The general perception is that education prepares children for a better future; hence it becomes the foundation of good life. For children to concentrate on education, they need to be freed from all kinds of work. Furthermore, it is considered difficult for children to combine both schooling and working as one will suffer inadequate attention.

The motivation behind the 19the century anti-Child Labour Movements was multifaceted. Stambler (1968) identifies three initial groups behind this movement, each of which had different motives. These groups included those primarily interested in limiting competitive child labour, educators and reformers interested in compulsory education and philanthropists who were interested in the morality surrounding child labour practices. Educators and those interested in lessening competition from child labourers cooperated along pragmatic lines. Schooling was not a solution to child labour but the only practical solution to get children "out of the way". In lessening competition from child labourers, they created jobs for adults while the children went to school. The motivation to lessen competition was also discussed by Klepper (1996), who argued that compulsory schooling reduced competition for jobs from unskilled children and youth who were willing to work cheaply. This helped in the negotiations for better wages. So, they had to keep children away from work and find something for them to do like sending them to school. The philanthropists, who were concerned with the morality surrounding child labour and the public good, arguably the philosophy behind modern anti-child labour movement, led the initiative in the campaign for effective child labour legislation.

These motives were adult-generated and more ulterior than child-centred. Even if some children's interests had been incorporated in the process, they did not originate from children. Similarly, child labour in Africa is a complex issue intertwined with society, culture and economy. The exact nature of these linkages significantly differs between countries as child labour plays different social and economic role in different societies and among ethnic groups in Africa. This makes its abolition problematic.

5.5: The Best Interests of Children

The motive behind child labour abolition signals a more controversial issue – the child's best interest. Given the spirit advanced in the human rights documents, especially that children's interest "shall be a primary consideration" (CRC, Art. 3), and the actual lived experience of the children whose rights are to be respected, it is difficult to consider such interests as primarily children's. As children are usually considered from the family point of view, it is obvious children do not define who or what they are, or should be. Generally, adults define who or what children are or should be. The problem of conceiving children in the adult way makes it even more difficult to arrive at the universal definition of a child which can be applied to all children all over the world. For this reason, the basis on which children's rights can be claimed remains shaky.

The influence of parents or guardians in children's life and behaviour has been recognised and underscored in the African Charter on the Rights and Welfare of the Child (ACRWC 1990). While the CRC presents children's rights as unconditionally absolute, the ACRWC could be interpreted as making them relative, depending on the performance of duties by the child. For example, children who do not perform according to their assigned duties risk losing their rights indirectly through denial of parental care (Kielland *et al*. 2006).

5.6: Cultural Politics of Childhood and Child Rights

In the previous section I argued that the "best interests" principle is itself not child-centred. Essentially, children's interests are what parents perceive to be best for children in their opinion (Grittins 1998). This leads us to consider what parents think about their children in terms of perceived values. The CRC is clear from the introduction that it attempts to create for the first time an international vision of childhood. Such an attempt fails to make a case for universal childhood precisely because 'child' has been constructed quite differently in different economic, political and cultural contexts. Though, it acknowledges the family as the fundamental group of society which provides "natural environment for the growth and well-being of all its members and particularly children" (CRC 1989 Art. 5). Nonetheless the CRC articulates the rights associated with childhood as a single and undifferentiated collective social status (James *et al*. 2004).

While the CRC might just offer a global model of the rights of children and perhaps a model of childhood itself, the development and application of that model will be largely dependent upon the operation of domestic policies and law, both of which are heavily bound by the parameters of culture and are meaningful within a cultural context (James *et al*. 2004). Additionally, such processes are adult-driven while children themselves have little or nothing at all to say. The problem is that the diversity in childhood experiences is not publicly accepted and readily acknowledged. This corresponds to what Lancy names the 'worth' of children, which varies widely across social classes, and even within a single family (Lancy 2008). Every society has its way of conceptualising children. In its introduction, the ACRWC (1990) duly recognises the uniqueness with which the rights of children in Africa have to be treated, attributing it to children's socio-economic, cultural, traditional and developmental circumstances, among other things.

Central to cultural politics of childhood is the idea that childhood as a social space is culturally determined by a range of social institutions and mechanisms including law, social policy and the family. As objects and subjects, children are structurally and culturally determined (James *et al* 2004). As childhood is constructed for children, their potential agency is rendered insignificant as they are ultimately considered passive recipients of specific education process. This compromises the supposed commonality of childhood on which claims made about child rights are founded.

The denial of childhood differences paraded in the universal documents is itself a prime example of 'invisible' power relations where inequality has been labelled as 'difference', thus effectively politicising the idea of inequality and its long association with ideas of social justice and oppression (Grittins 1998). The simplified notions of the 'child' and 'childhood' disguise differences and inequality at different levels. For example, children in the third world countries do not have anything like the life chances that their western counterparts have (Grittins 1998). In some western societies, children are valued for their contribution to parents' emotional well being rather than to their material comfort (Lancy 2008). While parents in the developing world are accused of showing little love for their children by sending them to work at an early age, Lancy (2008) observes that American and European mothers cannot sacrifice their careers for their children while Asian and Africa mothers do so, spending more time with their children.

In order to develop a more realistic way of looking at the child and childhood, there is need to consider children from concrete situations such as history, culture or economics. Grittins (1998) strongly suggests that understanding 'child' and 'childhood' requires thinking of them as existing at least at three levels. First children are embodied girls and boys whose life chances vary markedly according to the material circumstances into which they are born. Secondly a 'child' exists in various representations in both imagery and texts; representations only simplify what they represent and they can never be real in any material sense. Representations are merely symbolic because they are de-contextualised – taken out of their material, historical circumstances. Gradual beliefs in such representations greatly affect our ideas about the 'child'. Thirdly, every adult has once been a child, and adults inevitably harbour some memories, associations and ideas relating to their own childhood experiences and arguably shape their ideas about the 'child' and 'childhood' (Grittins 1998). Nonetheless, such experiences are often too personal to represent accurately the general understanding of childhood. Such experiences have also been influenced by how parents in different societies treat their children. Hence such memories will not provide a truly accurate representation of common childhood.

5.7: The Nature of Child Activities: Child Labour and Child Work

The nature of activities which children do is widely used as benchmark to mark off certain activities as violating child rights especially in the Euro-American societies. This is important in determining whether child labour violates child rights. In African societies, much of the children's work, especially when they are quite young, takes place within the household. Activities may include gardening, washing clothes and food preparation. Some children even own a small garden where they work on their own, and any produce from that is kept separately in the family's storehouse. These

activities are generally similar to the activities that adults do; hence they are inherently developmental (Lancy 2008).

In many sub-Saharan states children are usually treated as mini-adults. From an early age, children will perform tasks in the home, such as sweeping or fetching water. Some children work in shops or on the streets vending various commodities or helping shoppers carry their commodities. Through extended family relationship, poor families will often send their children to well-off relations in the village, another village or in urban centres, as a housemaids or houseboys, in the hope that they will get an education. In the course of pursuing education and better living, such children are subjected to most of the household work.

Related to activities is how children themselves view working life. From some studies conducted (Kielland *et al.* 2006; Lancy 2008; Montgomery 2009), it seems unambiguous that children feel the obligation to contribute to their families' livelihoods. Most children in the developing world are quite eager for opportunities to assume adult responsibilities in which case some children reach the extent of owning a small garden where they work on their own and produce something. In most African societies, children's work is considered as perfectly natural and appropriate whereas in the western societies, schooling is the child's job (Lancy 2008).

Previous research on child labour in Africa has been weakened by the definition of child labour itself (Kielland *et al*. 2006). Clearly the difference between "child labour" and "child work" is far from settled as evidenced by researchers' questionnaires. The definition of child labour varies from survey to survey: some consider it a remunerated work; others simply ask if a child has worked for at least one hour during the past seven days or two weeks. Some ask whether the child's main activity is school or work. Some concentrate on school drop-outs as working children, which is not always the case. These discrepancies have generated quite contradictory sets of statistics from country to country. The problem of definition and conceptualisation of child labour cannot be over-emphasised. In some African languages and dialects the concept of labour does not necessarily convey negative perceptions. The closest meaning would be "the type of work that children do, or work suitable for children" (Kielland *et al*. 2006:53). Such categorisation heavily compromises and prejudices the validity of research findings which in turn frustrates efforts to determine whether child labour violates child rights.

ILO's definitions of child labour and child work are considered problematic and they affect efforts to abolish child labour. Vaknin (2002) notes that the ILO distinction between "child labour" and "child work" conveniently targets impoverished countries, while letting off its budget contributors, the developed nations in the West, which are the main beneficiaries of child labour. Although it has been forcefully argued that child labour decreases with an increase in economic growth especially per

capita income, per capita income in the third world countries remains the lowest to-date. This has implications on efforts to abolish child labour. Grittins thinks the ban on child labour in third world countries led by industrialised nations is "hypocritical" (Grittins 1998:57). Preventing under age children from working so that they attend school discriminates against their survival opportunities in such harsh economic realities. It is important, as some feel (Dottridge 2005), to provide alternatives, as removal of children from work is not adequate. That is why in some communities employing children full-time is perceived normal and positive as it benefits both the employer and the child.

The abolition of child labour may also have negative effects on the governments' economy. Although most governments have in principle shown the desire to end child labour, they are unwilling or simply unable to stop the practices. Sometimes child labour forms an important part of a country's economy, especially within commercial agriculture. Sometimes the governments simply turn a blind eye to the practice (Foster 1996). Cutting down on the practice implies some companies may operate at a loss and may be forced to move to other countries. Such economic threats allow child labour to be considered as business-as-usual.

5.8: Child Labour, Poverty, Survival and Schooling

A significant proportion of literature on child labour discusses child labour from the economic point of view. The view that child labour is caused by poverty assumes a linear relationship between child labour and poverty although it is not always the case (Kielland *et al*. 2006). Poor parents are desperate to earn a pittance from the child's work for the survival of the households (Lancy 2008). Parents are caught up in a dilemma between sending their children to school and sending them to work for their survival. Eventually, children are allowed to work in order to contribute to the immediate household provisions such as food, clothing and shelter. This means the right to education becomes secondary to the right to survival.

Given that schooling remains the central policy instrument for overcoming child labour in Africa, one must note that school serves a variety of purposes as it is also a system for cultural reproduction. There are particular sets of values and patterns of thought transmitted through school and these belong to the state enabling it to maintain its 'cultural' hegemony. Schooling then can be seen as an essentially conservative rather than a liberating force, which works simply to reproduce and preserve the *status quo* (James *et al*. 2004). This conception of schooling is a challenge to the idea that compulsory formal schooling will serve as an antidote to child labour.

Although it is generally agreed that basic skills taught in primary schools can empower children and improve their opportunities later in life, it has been argued that the quality of schooling and the relevance of the curriculum are often questionable (Kielland *et al*. 2006). Hence many parents

consider investing children's time more fruitfully elsewhere. The skills acquired from formal schooling system are more suited to employment in the formal sector, which itself faces the challenge of employing only a small fraction of the qualified labour force. Hence most parents still prefer an apprenticeship arrangement with local craftsmen, in the hope that their children acquire more immediate and useful skills (Kielland *et al*. 2006). Apart from providing useful skills, children's work is a valued form of socialisation.

Prior to the modern era, 'education' was not confined to a classroom or textbook alone. Education happened everywhere and children learned by observing and emulating more proficient members of the community. This kind of education continues in modern times in most traditional societies (Lancy 2008). For this and other reasons outlined above, formal education does not seem to be the antidote to child labour. Hence it remains problematic to consider child labour a violation of child rights when its abolition often creates further problems for children. Although the CRC provides principles which act as guides in the promotion of child rights, concrete situations informed by motivations, history and cultural politics of childhood are necessarily in implementing children's rights.

Chapter 6

Recommendations and Concluding Remarks

6.1: Introduction

The previous chapters have examined the extent to which child labour on tea and tobacco plantations in Malawi violates child rights. Central to the consideration were the development of the anti-child labour movement, child workers in Malawi and the cultural politics of childhood. Motivations, activities children do, reasons for children working and values attached to children across the globe were identified. From the discussion it was concluded that, although the abolition of child labour is generally desirable, setting a minimum age at which children may work may have devastating effects on children's lives – especially when child labour constitutes the family's economic base. Thus abolition of child labour may not necessarily be in the best interest of children's welfare or the whole society.

Activities performed by children on tobacco and tea estates in Malawi may not necessarily violate child rights when they form part of the socialisation process, or when they help children to survive in a harsh economic environment. In that way, schooling may not be the best alternative to child labour for several reasons. It does not address immediate needs like hunger. Additionally, the values inculcated by formal schooling may not be relevant to the people it is intended to serve. Lack of job opportunities promised after completing formal schooling forces people to look elsewhere for their livelihoods.

Through an examination of the cultural politics of childhood, the previous chapters have argued that the concept of "childhood" on which child rights claims are based, is not the same for all children, as its construction varies between peoples, cultures and societies across the world. This variation makes compliance with child labour legislation problematic in certain societies or regions. Additionally, education, which is considered a panacea to child labour, is often irrelevant to the immediate needs of the children concerned. These issues have been explored through examination of a Malawian case study. The extent to which child labour violates child rights as exemplified by child workers on tea and tobacco estates in Malawi remains a complex question. The thesis considers the *Capability Approach* to provide a more realistic and holistic approach to contradictions and controversies within child labour and children's rights discourses and practice.

6.2: Capability Approach: Child Labour, Education and Human Rights

The *capability approach*, pioneered by Amartya Sen (1985; 1999; 2005) as an approach to welfare economics, provides an alternative to the understanding and protection of general human rights as well as child rights. The capability approach deals with issues of global justice, emphasising policies meant to benefit people. It also advances the need to allow human diversity flourish. In this case, diverse child experiences and needs are important for promoting children's inherent capabilities or potentials (Berges 2007).

Sen has argued that "…human rights are best seen as rights to certain specific freedoms, and that the correlate obligation to consider the associated duties must also be centred around what others can do to safeguard and expand these freedoms" (Sen 2005:152). Freedom is central to the very idea and project of human rights. For Sen the opportunity to have something is substantially different from the actual having of it. Sen's capability approach, a "species" of human rights approach, helps people function in a variety of areas of central importance while developing their numerous capabilities such as health, reason, leisure and many others (Nussbaum 2007). The actualisation of human capabilities requires material and institutional support. Thus, all rights understood as entitlements to *capabilities*, require material and social preconditions without which claims are meaningless. This approach emphasises the heterogeneity of the human species, observance of which lessens wild comparison of extreme cases with different potential.

Ballet *et al*. (2006) apply the capability approach to child labour issue, focussing on Sen's concepts of *substantive opportunities* and *freedom of processes*, which state that the end must be achieved through the most efficient and available means of sustaining economic life, security and welfare of people. They stress the view that, in order to be meaningful, the concept of *freedom* underlining the opportunity to education should be complemented by other capabilities such as *emotional capability*. As a substantive opportunity, the right to education should not be violent by forcing it on children, but children should act freely in exercising their right towards opportunities (Ballet *et al*. 2006). The form which an education system takes must permit children to make free choices about whether or not to pursue it (although children's ability to choose remains controversial). For example, a higher enrolment rate is not an automatic indication of positive attitude towards an education which is not freely accepted by children or society. It could eventually turn out to be violent and a

violation of basic human rights. Hence freedom of choice is necessary to actualise opportunities.

The aims of education also contribute to our understanding of whether schooling is a panacea to child labour problem. Robeyns (2006) offers three models of education developed from education's different roles, namely *human capital approach*, a *rights-based approach* and a *capability approach*. From a human capital approach, education emphasises the econonomistic and instrumentalist nature, aiming at boosting people's income-generating abilities. The problem with this approach is that although it enables an individual to acquire economic competitiveness, it fails to recognise the intrinsic value of education, as well as its non-material roles.

Secondly, education can be seen as a *right* guaranteed to all. This approach prioritises the intrinsic value of education whereby education prepares one for effective citizenship through informed political participation. Human beings are seen as the ultimate end of moral and political life. Thus, everyone is entitled to education regardless of the economic benefits education will offer. Although this approach appears more appealing, it is criticised by Robeyns for being too *rhetorical* and too general to implement. Furthermore, the approach is so legalistic and exclusively government-oriented that one wonders whether rights are merely legalistic or are also moral precepts. Other factors constraining child learning social normal and cultural beliefs need to be integrated.

Thirdly, education as a *capability approach*, critiques the understanding of rights as legal precepts while emphasising a range of skills that would help an individual function well. Capabilities are real opportunities required to achieve the desired functioning of human well-being. The capability approach advances both intrinsic and instrumental values for education. Knowledge allows one to flourish and it is a valuable capability. To be well-educated is instrumentally important for the expansion of other capabilities. However people should act freely in satisfying human functions. For instance, people should be given the opportunity to get jobs, but it should entirely rest on an individual to actually get that job or not.

Although it has been argued that the capability approach lacks a degree of operationalisation, it remains a stronger option as it integrates both human capital and right-based approaches to education. Stressing freedom of human choices to development, the capability approach enhances both the intrinsic and instrumental aims of education. As well as widening one's

choices, education expands one's economic opportunities (Robeyns 2006). More importantly, education enhances various capabilities even those for claiming one's rights, in particular, children's rights.

6.3: Recommendations to Children's Rights

Child labour, and violations of child rights, cannot only be considered from an economic point of view. National human rights provisions have not had full effect on African societies because cultural practices persist, and set great limitations on constitutional human rights guarantees. There is need for a better understanding of cultural practices and other factors, such as economic status, which play an important role in perpetuating child labour. Such an understanding helps in the formulation of realistic approaches to child labour problem. Hence, there is urgent need to consider relevant cultural factors in children's rights implementation, using documents such as the CRC to provide ideals in the direction of children's rights protection.

In the case of working children on Malawi's tea and tobacco plantations, as well as in other sectors, the minimum age as set within the CRC and other local legal documents remain important in the protection of child rights. However, such documents should allow for occasional employment of children, so that their survival is prioritised given the economic situations. Such occasional employment should be able to satisfy the need for socialisation as required by local traditions. Although this thesis has underscored the complexities in the abolition of child labour, it is obvious that some activities are indeed inimical to children's health. However, such concerns often become less relevant than the immediate needs of the working children, as well the place they occupy within their respective households. Improvement in working conditions for both children and adults other than total abolition of child labour reduces anxiety about health hazard. For example, increasing adult worker's wages reduces reliance on children's financial contribution, and this would facilitate children's commitment for school. Complete abolition of child labour, as required by international standards, limits the attention and possibility of improving children's working conditions. Allowing moderate child labour will inevitably include improved working conditions which should protect working children from economic exploitation, hazardous activities and provide them with an opportunity to attend school.

Discourse on education differs across societies. It is therefore important to adopt educational instruments useful in particular social, cultural, historical or economic contexts. Given that education is considered as an antidote to child labour problem while simultaneously offering children their right to education, it is important to devise a system of education that serves the various and specific needs of children in question. An education system that has worked elsewhere may not necessarily work for a Malawian child.

6.4: Conclusion

Persistent conflict between constitutional and legal provisions on the one hand, and traditional cultural definitions and practices on the other, is sometimes explained as resulting from the fact that the concept of "rights" is not grounded in existing African cultural traditions. For Haider (2008) international human rights law can only be meaningful if it is rebuilt from the bottom up, with the foundations firmly rooted in the entire world's cultures. Additionally, it is not adequate to consider child labour as exclusively linked to poverty in the sense of material deprivation, whose solution lies in formal education.

There is need to seek further explanations in the continent's history, including colonial settings in order to understand the current social and political dynamics of the human rights experience in Africa. It is within these political and social contexts that the contemporary idea of legal rights as entitlements which individuals hold is based. Similarly, claims to children's rights should also be based on historical and cultural contexts. It is for this reason that the thesis has argued that child labour in Malawi should not be limited to the economic realm, but should also be understood from the social as well as the cultural contexts.

Bibliography

Allain, J. and A. O'Shea (2002) "African Disunity: Comparing Human Rights Law and Practice of North and South African States," *Human Rights Quarterly* 24 (86–125).

Andvig, J. Chr., S. Canagarajah and A. Kielland (2001), "Issues in Child Labor in Africa," *Africa Region Human Development Working Paper Series*, The World Bank, Human Development Sector Africa Region.

Archard, D. W. (2003), *Children, Family and the State*, Hampshire: Ashgate Publishing Limited.

Ba, C. (2003), "Child Labour rages on in Malawi," *News from Africa*, January, http://www.newsfromafrica.org/newsfromafrica/articles/art_522.html, (accessed 02/01/ 2010).

Ballet, J., A. Bhukuth and K. Radja (2006), *Child Labour, Human Rights and the Capability Approach*, http://www.capabilityapproach.com/pubs/3_5_Child_Ballet_Bhukuth_Radja.pdf, (Accessed 20/01/2010).

Basu, K. (1999), "Child Labour: Cause, Consequence, and Cure, with Remarks on International Labour Standards," *Journal of Economic Literature*, September 1083 – 1119.

Basu, K. (1999), "The Intriguing Relation between Adult Minimum Wage and Child Labour," *Policy Research Working Paper Series* 2173, The World Bank.

Basu, K. and Z. Tzannatos (2003), "The Global Child Labor Problem: What Do We Know and What can We Do?" *The World Bank Economic Review*, Vol. 17, No. 2, 147 – 173.

Berges, S. (2007), "Why the Capability Approach is Justified," *Journal of Applied Philosophy*, vol.24, No.1, 16 – 25.

Bhalotra, S. (2003), "Child Labour in Africa", *OECD Social Employment and Migration Working Papers*, No. 4, OECD Publishing.

Breen, C. (2007), "When is a Child not a Child? Child Soldiers in International Law," *Human Rights Review*, January – March, 71-103.

Chirwa, W. C. (1992), "Theba is Power: Rural Labour, Migrancy and Fishing in Malawi 1 890s – 1985," *PhD Dissertation*, Ontario, Canada: Queens University, Kingston.

Chirwa, W. C. (1993), "Child and Youth Labour on the Nyasaland Plantations, 1890 – 1953," *Journal of Southern African Studies*, vol. 19 no. 4, 662 – 680.

Cunningham, H. (1995), *Children and Childhood in Western Society Since 1500*, London and New York: Longman.

Cunningham, H. (2006), *The Invention of Childhood*, London: BBC Books, BBC Worldwide.

Dottridge, M. and L. Stuart (2005), *Child labour today*, UNICEF: Hobbs the Printers Ltd.

Eldring, L., S. Nakanyane and M. Tshoaedi (2000), "'Defending the vulnerable group': Child labour in the tobacco-growing sector in Malawi". *Child Labour in the Tobacco Growing Sector in Africa*, Report prepared for the IUF/ITGA/BAT Conference on the Elimination of Child Labour, Nairobi 8-9th October 2000, Fafo-2000:21.

Employers Consultative Association of Malawi (ACAM) (2005), *Report on the Baseline Study on Child Labour conducted in the tea sector – Malawi*, Geneva: ILO, Bureau for Employers' Activities (ACT EMP).

Foley, P., J. Roche and S. Tucker (eds) (2001), *Children in Society: Contemporary Theory, Policy and Practice*, New York: Palgrave, The Open University.

Foster J. (1996), *Why does Child Labor occur?* http://www.earlham.edu/~pols/globalprobs/children/Amye.html, (accessed 02/01/2010.

Fyfe, A. (2007), *The Worldwide Movement against Child Labour – Progress and Future Directions*, Geneva: International Labour Office.

Gainborough, J. and E. Lean (2008), "Convention on the Rights of the Child and Juvenile Justice", *The Link*, *Child Welfare League of America*, Vol 7, No. 1.

Ghandhi, S. (2008), *Blackstone's International Human Rights Documents*, 6th edition, Oxford: Oxford University Press.

Goldson, B. (2001) "The Demonisation of Children: From the Symbolic to the Institutional," in Pam Foley, Jeremy Roche and Stanley Tucker (Eds), *Children in Society: Contemporary Theory, Policy and Practice*, New York: Palgrave, The Open University.

Grimsrud, B. and L. J. Stokke (1997), "Child Labour in Africa: Poverty or Institutional Failures? The Cases of Egypt and Zimbabwe," *Fafo Report* 233, Fafo Institute for Applied Social Science.

Grittins, D. (1998), *The Child in Question*, London: MacMillan Press Ltd.

Haider, M. (2008), "Recognising Complexity, Embracing Diversity: Working Children in Bangladesh," *South Asia Research*, Vol. 28, No.1, 49 -72.

Hutchinson, J. (1996), *What is Child Labor?* http://www.earlham.edu/~pols/globalprobs/children/Janet.html, (Accessed02/01/2010).

Ibhawoh, B. (2000), "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State," *Human Rights Quarterly* 22, 838–860.

Ike, C. A. and K. Twumasi-Ankrah (1999), "Child Abuse and Child Labour across Culture: Implications for Research, Prevention and Policy Implementation," *Journal of Social Development in Africa*, Vol. 142, No.2, 109 – 118.

ILO (1996), *Child Labour: targeting the intolerable*, ILO, Geneva.

James, A. and A. L. James (2004), *Constructing Childhood: Theory, Policy and Social Practice*, New York: Palgrave MacMillan.

James, A., C. Jenks and A. Prout (1998), *Theorising Childhood*, Cambridge: Polity Press.

Kayange, G. (2003), "Child Labour in Malawi," *Child Labour News Service*, Global March against Child Labour – India, http://www.cridoc.globalmarch.de/child_labour.html, (Accessed 10/01/2010).

Kelland, A. and M. Tovo (2006), *Children at Work: Child Labour Practices in Africa*, London: Lynne Rienner Publishers.

Klepper, H. (1996), "Mandatory Rights and Compulsory Education," *Law and Philosophy*, Vol. 15, No. 2, 149 – 158.

Lancy, D. F. (2008), *The Anthropology of Childhood: Cherubs, Chattel, Changelings*, Cambridge: Cambridge University Press.

Law, Steven J. (2005), "Ending Child Labour: A Global Priority," *Journal of Economic Perspectives*, U.S. Department of State, Vol. 10, No.2, 5 – 9.

Malawi Human Rights Resource Centre (2000), *Source Book on Child Rights*, Lilongwe: Capital Printing Press.

Markie, P. (2008), "Rationalism vs. Empiricism," *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/rationalism-empiricism/. (Accessed 20/01/2010.

Michael G. S. and M. Bochenek (2008), "Working to Eliminate Human Rights Abuses of Children: A Cross-National Comparative Study," *Human Rights Quarterly*, Vol. 30, 579–606.

Montgomery, H. (2009), *An Introduction to Childhood: Anthropological Perspectives on Children's Lives*, Oxford: Willey-Blackwell.

Munthali, A. (2003), *Hunger, Public Policy and Child Labour: Case Study of Malawi*, Lilongwe: IPEC Programme Final Report.

Nader, L. (2006), "Human Rights and Moral Imperialism," *Anthropology News: Anthropology and Human Rights*, September Issue.

Nawojczy, M. (2006), "Universalism versus Particularism through the European Social Survey Lenses," *Acta Physica Polonica B*, Vol. 37, No. 11, 3059 – 3069.

Neumayer, E. and I. De Soysa (2005), *Trade Openness, Foreign Direct Investment and Child Labour*, London: LSE research online.

Nieuwenhuys, O. (1996), "The Paradox of Child Labour and Anthropology," *Annual Review Anthropology*, Vol. 25, 237 – 251.

Nussbaum, M. (2007), "Human Rights and Human Capabilities," *Harvard Human Rights Journal* , Vol. 20, .21 – 24.

Oloka-Onyango, J. (2005), "Who's Watching 'Big Brother'? Globalization and the Protection of Cultural Rights in Present Day Africa," *Human Rights Quarterly*, Vol. 27, 1245–1273.

Plan Malawi (2009), *Hard work, long hours and little pay: Research with children working on tobacco farms in Malawi*, Auckland Park, South Africa: Clacherty & Associates, Education and Social Development (Pty) Ltd.

Reichert, E. (2006), "Human Rights: An Examination of Universalism and Cultural Relativism," *Journal of Comparative Social Welfare*, Vol. 22, No. 1, 23–36.

Robeyns, I. (2006), "Three models of education: Rights, capabilities and human Capital," *Theory and Research in Education*, Vol. 4, 69 – 84.

Rogers, W. S. (2001), "Constructing Childhood, Constructing Child Concern," in P. Foley, J. Roche and S. Tucker (Eds), *Children in Society: Contemporary Theory, Policy and Practice*, New York: Palgrave, the Open University.

Scrumpf, E. (2004), "Child Labour in the West," *Encyclopedia of Children and Childhood History in History and Society*, http://www.faqs.org/childhood/Bo- Ch/Child-Labor-in-   the-West.html, (Accessed 02/01/2010.

Sen, A. (1985), *Commodities and Capabilities*, Oxford: Oxford University Press.

Sen, A. (1999), *Development as Freedom*, Oxford, Oxford University Press.

Sen, A. (2005), "Human Rights and Capabilities," *Journal of Human Development*, Vol. 6, No. 2, 151 – 166.

Shahrokhi, L. (1996), *History of Child Labour*, http://www.earlham.edu/~pols/globalprobs/children/Laila.html, (Accessed: 31/12/2009).

Stambler, M. (1968), "The Effect of Compulsory Education and Child Labour Laws on High School Attendance in New York City, 1898 – 1917," *History of Education Quarterly*, Vol. 8, No. 2, 189 – 214.

Stenning, D.J. (1962) "Household viability among pastoral Fulani", in *The Developmental Cycle in Domestic Groups*, in J.R. Goody, (Ed.), Cambridge: Cambridge University Press.

The United Nations (2000), *The UN Global Compact*, New York: UN Global Compact Office.

Tilley, J.J. (2000), "Cultural Relativism," *Human Rights Quarterly* Vol. 22, 501–547.

Tuttle, C. (2006), "History Repeats Itself: Child Labor in Latin America," *Employee Responsibilities and Rights Journal*, Volume 18, No. 2, 143 – 154.

UNICEF (2001), *Beyond Child Labour: Affirming Rights*, New York: UNICEF Division of Communication.

Vaknin, S. (2002), *The Morality of Child Labor*, http://www.buzzle.com/editorials/10-21-2002-28610.asp, (Accessed 02/01/2010).