

Contextual dilemmas for a human rights approach to child labour protections in Malawi

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Abstract

The global commitment to end child labour by 2025 is under threat. Global progress against child labour has stalled for the first time since records began in 2000. Today, one in ten children worldwide is involved in child labour, and nearly half of those engage in hazardous work despite global commitments to protect all children from human rights abuses, including harmful labour practices. This issue is particularly pertinent in sub-Saharan Africa, where most of the global child labour population is found. By analysing the debates on the localised meanings of child labour in Malawi, this chapter explores the contextual factors that may limit the global goal to eliminate child labour by 2025. The chapter argues that local understanding of child labour and associated human rights is necessary for the effective implementation of remedial responses. Specifically, local meanings of childhood, child labour and human rights have the potential to shape how communities endorse recognition of child labour as a problem worthy of elimination and initiate corrective actions. In that regard, implementation of laws, policies and programmes also may rely on how local meanings mobilise consensus. This chapter, therefore, proposes a community-led approach for implementing human rights 'beyond the formalities of law.'

Key words: *Child Labour; Localised Meaning; Malawi; Childhood; Community-led approach*

1 Introduction

It is generally agreed that children must be protected from human rights violations. However, there is a division on which forms of violations should be prohibited. With one in ten children engaged in child labour globally and half of those working in hazardous conditions endangering their lives,¹ there is consensus that child labour is a significant problem to global development, particularly in developing nations. Many studies have attributed child labour to poverty which forces parents and communities to send their children to work in order to supplement their household income.² Most of the work that the children are taking up is labour-intensive ventures including agriculture, forestry, mining or even street begging.³ In some cases, children engage in labour to generate their own income, and some families are forced to send their children out for labour as collateral or repayment for household debt.⁴ In other circumstances, the lack of basic services such as education and other child-related activities render some children vulnerable to labour exploitation.⁵

Although poverty and exploitative labour practices are significant factors, child labour is a complex problem.⁶ For example, in his study entitled *Getting rid of child labour*, Ahmed found that although economies with unequal income distribution and with high dependence in agriculture have higher rates of employment of child labour, poverty

1 International Labour Office and United Nations Children's Fund 'Child Labour: Global estimates 2020, trends and the road forward' (2021) ILO and UNICEF 8.

2 N Nagar & B Roy 'A critical analysis of child labour in India' (2022) 5 *International Journal of Current Research in Multidisciplinary* 13.

3 C Dowuona-Hammond and others 'The child labour quagmire in Ghana: Root causes and ephemeral solutions' (2020) 6 *Business and Human Rights Journal* 169.

4 RB Bernard 'The regional regulation of child labour laws through harmonisation within COMESA, the EAC and SADC' (2023) 23 *African Human Rights Law Journal* 48.

5 S Khan & M Ibrar 'Causes and consequences of child labour on children's health: A case study of Afghan's refugee child labourer in Peshawar' (2023) 2 *Journal of Social Sciences Review* 443-444.

6 M Murshed and others 'Child labour in India: Causes and consequences' (2019) 5 *International Journal of Science and Research*.

is a minor explanatory factor for child labour and ... only one of the many but clearly the least important reason why children work.⁷ In fact, this study ranked poverty last among the seven determinants that were investigated. Various elements of child labour have been explored in other research, including contentions about what child labour is.⁸ In this regard, there are ongoing debates as to what constitutes child labour and what type of work by children is harmful, hazardous or permissible. Recently, Macohanie and others have proposed a holistic approach incorporating what they consider as subjective and objective dimensions of the practice.⁹ They add voice to the view that it is futile to objectively define what is harmful as any perspective is ambiguous, relative and contextual.¹⁰

Although many countries have adopted progressive laws and policies and established institutional measures to address the child labour problem, problems persist. Nhenga-Chakarisa has noted that ratification of international legal instruments, for example, may not necessarily lead to progress in combating child labour as countries ratify for different motives which may include an improvement in their international standing.¹¹ As contexts have unique features, it is necessary that any responses address the ambiguities or pluralities through which child labour manifests. In the same regard, Omorogiuwa has cautioned against singular conceptualisation by arguing that dominant analyses of the exploitative nature of child labour have failed to fully acknowledge the African-centred social and cultural normative frameworks of the (African) peoples as a base to understand the contextual meanings of childhood and children's work experiences on the continent.¹² In other words, analyses of child labour in the African context should be open to

7 I Ahmed 'Getting rid of child labour' (1999) 27 *Economic and Political Weekly* 1819.

8 GK Lieten 'Child Labour in India: Disentangling essence and solutions' (2023) 52 *Economic and Political Weekly* 5190.

9 R Macconachie and others 'Theorising "harm" in relation to children's work' in J Sumberg & R Sabates-Wheeler (eds) *Children's work in African agriculture: The harmful and harmless* (2023) 24.

10 As above.

11 TC Nhenga-Chakarisa 'Who does the law seek to protect and from what? The application of international law on child labour in an African context' (2010) 10 *African Human Rights Law Journal* 161.

12 TBE Omorogiuwa 'Childhood experiences: An Afrocentric perspective on child labour' (2017) 2 *Journal of Nursing, Social Studies, Public Health and Rehabilitation* 55.

the possibility that the concerns about child labour elsewhere may not align with what ought to be the concerns in particular African context. This should, however, not be misunderstood as dismissing global concerns about the (mal)practice, but rather a call for the attention towards context-specific diagnosis in order to arrive at locally resonant solutions.

The starting point is to acknowledge that child labour is a phenomenon that occurs in many contexts across the world and, therefore, potentially a universal problem. It is also important to acknowledge as a minimum standard that all children must be protected from human rights violations. However, it is also necessary to note the tensions between what are considered as its universal elements and the localised particularities manifested in meanings of child labour, ethical considerations of what is acceptable or not, and the constraints of local application of what are considered as global best practices.

This chapter contributes to the debates on child labour by examining the meanings about child labour in the Malawian context as articulated in local policy documents as well as in Chichewa, Malawi's *lingua franca*, in order to consider how such meanings converge or diverge from what are considered universalised meanings as articulated in global child labour blueprints. The focus on local meanings is important for exploring how communities construct social realities that determine the meanings of child labour and its permissibility. This approach has the potential to deepen the understanding on the necessary elements to mobilise societal support for eliminating harmful practices as well as application of law and regulations. Further, this approach has the potential to address some of the barriers to the elimination of child labour as it provides a nuanced understanding to this otherwise intractable human rights problem.

The focus on meanings as social realities contributes to the calls to go beyond the law when considering human rights as framework for realising protection of children from child labour. While the law provides an important framework for codifying the entitlements and sanctions, rights are primarily norms for articulating standards upon which global and local frameworks are adopted, such the Universal Declaration of Human rights (Universal Declaration). Scholars such as Gregg and Plummer converge on the premise that rights are socially constructed

by people.¹³ Plummer claims that rights are a historical process of negotiated actions of interpretation, rationalisation and definition.¹⁴ Socially constructed human rights, therefore, attain cultural legitimacy and are respected and observed by members of a particular culture, presumably because they are assumed to bring benefits (whether real or imagined, tangible or intangible) to the members of that particular culture.¹⁵ This analysis, therefore, contributes to this overlooked blind spot with potential to deepen an understanding of how local meanings may facilitate practical application of human rights.

This chapter considers the social construction of child labour in a low-income setting, Malawi, to argue that localised meanings of child labour and related rights are necessary for local communities to envision child labour as a problem, and human rights protection as a priority worth indulging. It proposes complementing institutional arrangements with efforts embedded in community's everyday lives that internalise gradual, if not incremental, efforts to eliminate the child labour problems. Trade-offs are inevitable, and that problematises the current global goal to eliminate child labour by 2025.

2 Child labour in the Malawian context

Child labour continues to be a widespread global problem. The latest global estimates indicate that there are 160 million children in child labour globally, with nearly half engaging in hazardous work. For the first time in two decades, there is a rise in the child labour population globally, indicating that progress gained so far against child labour has stalled.¹⁶ The population of children in child labour in sub-Saharan Africa surpasses that in the rest of the world.¹⁷ Child labour remains a central feature of economic activity in Africa and the increased reliance

13 B Gregg *Human rights as social construction* (2011); K Plummer *Sexual stigma: An interactionist account* (1975).

14 Plummer (n 13).

15 T Kaime *The African Charter on the Rights and Welfare of the Child – A socio-legal perspective* (2009).

16 International Labour Office and United Nations Children's Fund (n 1).

17 As above.

of children as a source of labour has sustained tensions between the economy, production, and the welfare of children.¹⁸

Malawi is one of the poorest countries in the world, with approximately 70 per cent of the population living below the international poverty line. It is one of the five countries in sub-Saharan Africa where poverty has increased by double digits over the last three decades.¹⁹ The latest poverty estimates have found that at least three out of five people in Malawi are multidimensionally poor, with the highest incidence of poverty comprising children.²⁰ Child labour is a key characteristic of multidimensionally poor households.²¹

According to the 2015 National Child Labour Survey, 38 per cent of children from the age of 5 to 17 were engaged in forms of child labour, out of which 20.9 per cent was hazardous work which included subjecting the children to exposures to extreme cold, heat, humidity, dust and fumes.²² Majority of the children engaging in child labour (72 per cent) were working in the agricultural sector, while 23 per cent were engaged in domestic work and 3 per cent in the wholesale and retail industry.²³ The majority of child labour occurs in the rural areas, with rural children more likely to be involved in child labour than their urban counterparts.²⁴ A follow-up National Child Labour report, currently in draft form, is likely to report an increase in the prevalence of child labour resulting from the recent economic, climatic and health shocks facing the country.²⁵

18 PV Goulart 'Child labour, Africa's colonial system, and coercion: The case of the Portuguese colonies, 1870-1975' (2024) 1 *Economic History of Developing Regions* 82.

19 United Nations Conference on Trade and Development 'Reducing inequality and poverty in Malawi: Policy analyses and options' (2023).

20 Nations Development Programme and Oxford Poverty and Human Development Initiative: Global multidimensional poverty index 'Unpacking deprivation bundles to reduce multidimensional poverty' (2022).

21 As above.

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

23 As above.

24 National Statistical Office 'Malawi Multiple Indicator Cluster Survey 2019-20' (2021).

25 ILO Stepping Forward 2023, <https://www.ilo.org/resource/article/stepping-forward-malawis-deep-dive-child-labour-data-within-tea-and-coffee> (accessed 30 August 2023).

A recent survey on tenant growers in the country's tobacco industry has found that 42,3 per cent of children aged 5 to 13 years and 57,7 per cent aged 14 to 17 years were working under the tenancy system.²⁶ As expected, poverty is the main driver for the children engaging in labour primarily aimed at complementing the household labour output as well as supplementing family income.²⁷ The hazards from child labour include notable school drop-outs,²⁸ tobacco-related health complications,²⁹ personal injury and exploitation. This part discusses the legal, policy and institutional framework and sets the argument that while Malawi has a good framework for addressing child labour (to an extent), there are implementation gaps.

2.1 Legal, policy and institutional framework

Malawi has ratified all key international human rights instruments as well as the key international instruments for child labour protection, including the Convention of the Rights of the Child (CRC), and International Labour Conventions 138 and 182 on minimum age and worst forms of child labour respectively. Chapter IV of the Malawian Constitution guarantees one protection from cruel, inhuman and degrading treatment, torture and violations of dignity.³⁰ Article 23(6), on the rights of children, defines a child as a person under the age of 18, while article 23(4) provides for protection of children from economic exploitation:³¹

Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to –

- (a) be hazardous.
- (b) interfere with their education; or
- (c) be harmful to their health or to their physical, mental or spiritual or social development.

26 International Labour Organisation 'Survey on tenant growers in Malawi's tobacco industry – Summary report' (2024) 25.

27 ILO (n 25) 26.

28 ILO (n 25) 3.

29 ILO (n 25) 32.

30 The Constitution of the Republic of Malawi, 1994 (of citation of the Constitutional Laws Act 20 of 1994).

31 As above.

Further, article 25 provides everyone with the right to education, while section 27 prohibits slavery, servitude and forced labour.³² Importantly, the Bill of Rights provides for the right to remedies through the courts, the ombudsman, the Human Rights Commission and other organs of the government to ensure the promotion, protection and enforcement of those rights and the redress of any grievances in respect of those rights.³³

The enforcement of the protection of children against child labour is further provided for in section 21 of the Employment Act,³⁴ section 82(c) of the Childcare, Protection and Justice Act (2010),³⁵ and the Education Act (2013). Section 21(1) of the Employment Act prohibits any person under the age of 14 years from employment in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof.³⁶ Article 21(2) of the same Act prohibits the employment of children under the age of 18 in any hazardous work that is harmful to their health, safety, education, morals or development, or is prejudicial to school attendance.³⁷ While there is a clear distinction on prohibition of all persons under 14 years of age from any work or employment, its expansion of prohibition of hazardous work to the age of 18 does not clearly make a definitional distinction between a child and young person. The offence includes a fine of MK 20 000 (the equivalent of US \$5) or five years' imprisonment. However, exceptions are made for work done in homes, and in vocation or training schools.

Section 82 of the Child Care, Protection and Justice Act (2010) prohibits pledging a child into labour for the income of parents, guardians or any other person, and the offence carries a penalty of 10 years' imprisonment.³⁸ Further prohibitions of forced labour, trafficking and exploitation are provided for in the Penal Code, while the Education Act makes education for children under 18 years compulsory by providing for free education in all public schools.³⁹

In 2020 the Malawian government adopted a National Action Plan on Child Labour (2020-2025) aimed at implementing the National Child

32 As above.

33 Constitution of the Republic of Malawi (n 30) sec 15(2).

34 Employment Act 6 of 2000.

35 Child Care, Protection and Justice Act 22 of 2010.

36 Constitution of the Republic of Malawi (n 30).

37 Employment Act 6 of 2000 (n 34).

38 As above.

39 Education Act 21 of 2013.

Labour Policy focusing on coordinating a multi stakeholder response to scale up the national efforts aligned to the primary goal to eliminate child labour of the International Labour Organisation (ILO).⁴⁰ Led by the Ministry of Labour, the plan aims to coordinate state actors, non-state actors and the international community towards legislative and policy reform, capacity building, awareness raising, the prevention of child labour, mitigating the health impact of child labour, and management of data and information.⁴¹

In 2023 the government adopted the National Alliance 8.7 strategic roadmap, with support from the ILO, to fast-track eradication of forced labour; ending modern slavery and human trafficking, and eliminating the worst forms of child labour.⁴² The roadmap is Malawi's tool for implementing priorities adopted in the national action plan, focusing on child labour in the period in the first three years, and expanding to human trafficking, modern slavery and forced labour until 2030.⁴³ The National Child labour Policy commits to protecting the youth from child labour through enforcement of child labour laws.⁴⁴ Although Malawi's *Malawi2063* does not explicitly mention child labour as a problem, it commits to protect children from economic exploitation and child marriages.⁴⁵

The myriad legal and policy instruments discussed above are an indication of the complex nature of the challenges brought about by child labour in Malawi. They not only serve to highlight the extent to which the country is desirous of addressing the problems brought about by child labour, but also highlight the varied nature of conceptions of child labour in Malawi and beyond. A closer look at these legal imperatives will reveal that they are influenced, both in content and design, by international standards and practices relating to child labour. Ultimately, and considering that implementation is mostly context

40 Malawi government, National Action Plan on Child Labour, <https://www.ilo.org/publications/national-action-plan-child-labour-2020-2025> (accessed 31 December 2024).

41 Government of Malawi 'National Action Plan on Child Labour 2020-2025'.

42 Government of Malawi 'National Alliance 8.7 Strategic Road Map 2023-2030', <https://www.ilo.org/resource/malawi-national-strategic-87-strategic-road-map-2023-2030> (accessed 31 December 2024).

43 As above.

44 Government of Malawi 'National Youth Policy' (2013).

45 As above.

specific, it is important that we conceptualise child labour in Malawi to establish nuances that will lead to a better understanding of what child labour is to the ordinary citizen.

2.2 Conceptualising child labour in Malawi

2.2.1 *Cultural and social circumstances and child labour*

It is important to note that work or labour involving children is closely associated with the cultural and social circumstances in which it occurs.⁴⁶ This part proposes that success of a response to address the child labour problem in Malawi and, by necessary extension, many African countries, heavily depends on the extent to which the local communities, institutions and structures implement actions that they deem to be locally resonant and legitimate. This does not mean that global standards are not relevant as they can be implemented, but at times though power imbalances which 'force' the local actors to implement actions through soft or hard, negative or positive, coercion. A framework, therefore, is necessary to establish the problem of child labour and any relevant human rights that locate meanings that clarify the phenomena, set the problem areas, and initiate a conversation to negotiate solutions.

Definitions and meanings of child labour and related human rights are crucial in understanding the issue as a problem and development of any responses. Meanings are particularly necessary for clarifying on the terminology through which communities name an issue as a phenomenon or problem. It is in the naming that social reality of a concept is enacted. It is also in the name that communities discover issues, frame the problems, negotiate solutions, set rules, protect the disadvantaged, and hold themselves and institutions to account.⁴⁷

Without localised meanings, there is a possibility of local communities misunderstanding or indeed under-appreciating the relevance and significance of a problem especially where discourses have a global origin.

⁴⁶ O Adonteng-Kissi 'Parental perceptions of the nature of child labour in rural and urban Ghana: Cultural versus economic necessity' (2023) 2 *Child Care in Practice* 118.

⁴⁷ B Ibhawoh 'Between culture and constitution: Evaluating the cultural legitimacy of human rights in the African state' (2002) 22 *Human Rights Quarterly* 838.

This is particularly relevant to child labour whose social construction has strong international origins. It is therefore important to be wary of the possibility of such concept being misaligned to meanings of child labour, child work, and human rights in some local contexts particularly in the Global South. It is against this background that Gayathri called for attention to contextual understanding of the social construction of childhood for a better response to child labour issues in India.⁴⁸ He argued that what was considered as universal conceptualisations of childhood and child labour was based on the idea of a North American/European child with access to protections and rights accorded through the state, family and a formal education system that is not always guaranteed in India.⁴⁹ As such, any rights that such universalised childhood demanded were not attainable in some contexts with varied conceptualisations of childhood and the likelihood of families, state and formal educating enabling attainment of such rights.⁵⁰

The English language adopts the terms *child*, *childhood*, *child labour* and *child work* to distinguish permissible or non-permissible work by children.⁵¹ This conceptualisation has been articulated in international treaties, cited earlier, and operational definitions in national legislation and policies. However, these distinctions can be problematic when applied to another non-Western context. In an analysis of the efforts by India's Labour Commission to legitimise child work in India through the definition of child labour as work done outside domestic settings for a wage, excluding what was considered ordinary domestic chores in Indian settings such as herding cattle, drawing water and looking after other children, Leite supports the view that the concept of child labour should be restricted to production and services that interfere with normative child development, thereby acknowledging that work by children in many contexts play a social or cultural role that may be positive to development.⁵² While herding cattle, for example, is considered by the

48 P Antony & V Gayat 'Child labour: A perspective of locale and context' (2002) 52 *Economic and Political Weekly* 5186.

49 As above.

50 As above.

51 A Bhukuth 'Defining child labour: A controversial debate' (2008) 3 *Development in Practice* 385.

52 Lieten (n 8) 5192.

ILO as potentially hazardous,⁵³ although considered a legitimate part of childhood in many global southern contexts, it is important to note that some work performed by children, whether unpaid or domestic, can be hazardous and detrimental to development. Legislation and policies are that define child labour as any activity that can harm a child's health, educational development or general well-being may accommodate work that is perceived as contentious in other contexts but may be performed only to the extent that it is not harmful or hazardous.⁵⁴

2.2.2 *Conceptions of child labour in Malawi: Between the informal and the formal*

The Malawi National Child Labour Survey draws from international instruments and principles, national legislation and international labour statistical guidelines and defined child labour as all persons aged 5 to 17 years who, during a specified reference period, were engaged in one or more of the following categories of activities:

- engaged in any economic activity for at least one hour during the reference week and aged from 5 to 13 years,
- engaged in hazardous work.⁵⁵

The National Child Labour Action Plan defines child labour as

(a)ny activity that employs a child below the age of 14 or that engages a child between the ages of 14 and 17 and prevents him or her from attending school or concentrating on school, or negatively impacts on the health, social, cultural, psychological, moral, religious and related dimensions of the child's upbringing.⁵⁶

Malawi's National Alliance 8.7 Strategic Roadmap Pathfinder defines child labour as any mentally or physically harmful work that deprives children of their childhood, potential and dignity under the following categories:

53 World Day Against Child Labour 'Hazardous child labour in agriculture What poor health and safety means in practice for child labourers in agriculture' (2007); also see Child labour in Africa, <https://www.ilo.org/africa/areas-of-work/child-labour/lang--en/index.htm>.

54 YM Bah 'Child labour in The Gambia' (2016) 3 *Global Journal of Human Science* 1.

55 ILO (n 22)15.

56 Government of Malawi (n 41) xii.

- work that is mentally, physically, socially or morally dangerous and harmful to children; and/or interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work;
- the worst forms of child labour as defined by article 3 of ILO Convention 182:
 - all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
 - the use, procuring or offering of a child for prostitution, to produce pornography or for pornographic performances;
 - the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
 - work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children ('hazardous child labour').⁵⁷

The roadmap effectively distinguishes child labour from any light work unlikely to be harmful to a child's health, development or participation in education. It therefore implies that there may work by children, including in a domestic setting, which may qualify as child labour if it is hazardous or detrimental. However, the distinction between child labour and 'child work' has a danger of contextual ambiguity and scientific blurriness,⁵⁸ there is a risk of excluding *child workers* from formal child labour protections. As the interpretation of such distinction depends on agency of those who operationalise their applicability, it is useful to understand how language and meanings may influence responses. Language and meanings are not only useful in understanding the formal interpretation or application, but also how ordinary people address the problems of child labour in their everyday lives.

57 Government of Malawi (n 41) v.

58 Nagar & Roy (n 2) 8.

3 Reconstructing the definitions of child labour employing local languages

3.1 Child labour and the culture factor: Perspectives from Chichewa language

I choose Chichewa, being Malawi's *lingua franca*, to (re)construct the definitions of child/childhood, labour, work, child labour, human rights and child labour rights. This is important in understanding how understanding of such concepts may enable people of Malawi to comprehend child labour as a problem, legitimise promotion and protection of rights related to child labour, and deploy responses whether formally or informally. My assumption is that technocrats and non-technocrats alike draw from their (first) local languages their reference points for meanings that guide their understanding and applications for the concepts.

The *Oxford English-Chichewa/Chichewa-English dictionary* has no literal translation for child labour.⁵⁹ A child is defined as *mwana wa zaka zochepa*, which can be translated as 'a child of less years'.⁶⁰ The absence of a cut-off chronological point is no coincidence as childhood or adulthood in the Malawian context is relative to physical strength, mental maturity and levels of responsibility. It is common for Malawian communities to say *mwanayu wakula* ('this child is now mature or grown') when the child has assumed cultural or communal responsibilities ordinarily bestowed on adults. The same may be said of a child who has completed cultural initiation. For example, an oldest child may be considered an adult based on responsibilities that he has over younger siblings. Similarly, a child who has attained a job to supplement household income may ironically be considered to have attained social adulthood. It is not uncommon for poor households to regard mid-level teenagers as adults on the basis that they have started working to supplement household income or indeed taken on work to reduce the household child expenditure. The frequent sighting of children under 18 years in work or as parents is alarmingly common on the Malawian urban and rural scene, particularly among

59 S Paas *Chichewa-English/English-Chichewa dictionary* (2017).

60 As above.

poorer communities. The social foundations in the understanding of childhood or adulthood in the Malawian context must, therefore, be considered a significant basis for the community-based understanding and acceptability of child labour in Malawi. In the same light, its misalignment to the formal definitions must never be underestimated.

Labour and work both refer to *ntchito* (work) that is light or heavy, whether paid or unpaid.⁶¹ However, labour also connotes *ntchito* that is associated with exploitation or servitude. *Ntchito* can therefore also refer to any work that is hazardous or exploitative. However, as there is no Chichewa word to distinguish labour from work, nor a word to qualify hazardous work, the distinction in everyday language is not obvious. The translation of laws, policies and any public awareness materials, therefore, needs to provide a sophisticated translation of the international definitions of child or childhood, work and labour. This will certainly go a long way towards breaking the cultural barriers formed by traditional understandings of labour by Malawian communities. However, *ntchito* may be *yankhanza* (cruel) or *yolemetsa* (a burden or excessive) and, thus, warranting prohibition on the grounds that it is considered unbearable or excessive for children.

In addition to the linguistic ambiguities, it is important to note that whether *ntchito* amounts to labour or work, its acceptability of *ntchito* by children depends on whether communities find it acceptable or indeed if economic circumstances have forced societies to accept. This is particularly relevant in situations where children are forced into work to supplement household income and their families or communities view the situation as necessary for survival.⁶² This may also apply to street children who are usually very poor and require to generate own income for survival.⁶³ Children's work is also considered acceptable in communities to teach the children responsibilities and transition to adulthood.⁶⁴ The definition of

61 Paas (n 59) 892 & 1138.

62 A Bhukuth & J Ballet 'Children of the street: Why are they in the street? How do they live?' (2015) 4 *Economics and Sociology* 134.

63 A Ncube 'Psychosocial needs, stressors and survival strategies of adolescent street children in Mzuzu, Malawi: A human development approach' Master's dissertation, Stellenbosch University, 2016.

64 A Gatsinzi & G Hilson "Age is just a number": Articulating the cultural dimension of child labour in Africa's small-scale mining sector' (2022) *Resources Policy* 78.

human rights in vernacular in Malawian societies is also ambiguous.⁶⁵ The English-Chichewa dictionary translates *ufulu wachibadwidwe wa anthu* or *ufulu wa chilengedwe* as inherent rights or natural rights.⁶⁶ There already is global consensus that children have human rights, and this chapter does not suggest otherwise. However, in as far as work by children is viewed as legitimate or acceptable, communities or households may challenge that some restrictions are limiting their 'economic rights', especially in the absence of public safety nets or incentives. The absence of specific translations for 'child labour' and 'child labour rights' does not, however, imply that Malawians cannot attain consensus of their meanings or responses to human rights violations. The emergence of brutal killings of persons with albinism in 2014 saw an unprecedented national outcry that resulted in a government-wide response hunting the perpetrators and providing measures for protection.⁶⁷ This has resulted in an almost absolute consensus that there are 'rights of persons with albinism' that must be respected, promoted and protected.⁶⁸ This triumph on protection of persons with albinism demonstrates the potential for locally-led discourses to conceptualise, frame, adopt and observe *new* rights.

However, human rights protection in the context of child labour are likely to face resistance because local communities perceive these protections as disadvantageous to communities who are ultra-poor and rely on additional income from the children. The agricultural economy has tended to be slow in eliminating child labour as cheap or exploited labour is perceived as beneficial to revenue accumulation. Further, governments may hesitate to sanction private sector complicit in child labour on fears of losing taxes or private sector investment.

65 H Englund 'Chinyanja and the language of rights' (2001) 3 *Nordic Journal of African Studies* 299; A Sarelin 'Giving meaning to human rights: An analysis of human rights discourse in Malawi' (2014) 2 *Journal of Human Rights Practice* 259; A Msosa 'Chilungamo and the question of LGBTQ+ rights in Malawi' in J Johnson & GH Karekwaivanane (eds) *Pursuing justice in Africa: Competing imaginaries and contested practices* (2018) 93.

66 Paas (n 59) 854.

67 C Baker and others 'We are human, just like you: Albinism in Malawi – Implications for security' (2021) 1 *Journal of Humanities* 57; DM Mwiba 'Medicine killings, abduction of people with albinism, wealth and prosperity in North Malawi: A historical assessment' (2018) 1 *Proceedings of the African Futures Conference* 30.

68 Government of Malawi 'National Action Plan on Persons with Albinism in Malawi 2018-2022' (2018).

Implementation of the national action plan and the strategic roadmap will require building consensus, robust legal and policy framework, political will and resources. This will take time, and its full operationalisation is likely to outlive the global goal to eliminate child labour by 2025. As such, alternatives for realising human rights to address the child labour problem must be explored.

In this exploration, it is paramount to acknowledge that any new efforts to protect children from labour that is hazardous or harmful must relate to ongoing institutional efforts that have shaped the present gains and will inform future roadmaps. Laws, policies and actions have driven the agenda against child labour in Malawi for the last two or three decades. I propose a focus on community agency for a sustainable response towards addressing the systemic factors drive the child labour problem in Malawi.

Drawing from Plummer's social process for negotiating rights, for child labour rights to enjoy local legitimacy and utility, a (de)(re) construction process of interpretation, rationalisation and definition must be pursued. This does not demand reinventing the human rights wheel for the Malawian context, but initiating a conversation, formally and informally, to locate *ufulu wachibadwidwe wa anthu* (freedoms that people are born with) or *ufulu wa chilengedwe* (natural freedoms) within the formal human rights framework or *lingua franca* (Chichewa) in order to coin unified language of 'child labour rights' in singular form or extracted from a comprehensive list of relevant human rights principles.

A careful review of the Bill of Rights is necessary to identify all rights that directly facilitate realisation of child labour rights. Once the right or rights have been framed, it is necessary to negotiate with society which rights are easily attainable, which ones will take longer to achieve, and which ones are unlikely to be attained. As this discussion is particularly interested in the deployment of the rights in everyday living, putting communities at the centre is critical for a localised system for creating favourable conditions for community members to replicate the (de)(re)constructing process. Beyond formal legal or policy processes, community ownership and leadership have potential to internalise realisation of child labour rights for communities to recognise child labour as a legitimate human rights problem, integrate community-based responses within national policies and roadmaps (not the other way around), empower communities for seek formal remedies, and replicate best practices.

3.2 Child labour redefined

Re-defining child labour from a local perspective is not something new as it has been undertaken by some scholarly works.⁶⁹ It is not clear whether the suggestions by these many scholars on how to understand child labour to ensure the effectiveness of child labour laws has been adopted by governments. What is clear though, from these interventions, is the understanding that one of the barriers to the effective implementation of laws that outlaw child labour is the language and conceptualisation of child labour.⁷⁰ Most of these studies similarly advocate a local and cultural informed definition, if not understanding, of child labour. Ibhawoh, speaking on the need for dialogue in communities to advance the better protection of women likely to be subjected to female circumcision, was of the following opinion: ‘To harness the power of cultural legitimacy in support of national human rights standards, African states need to develop techniques for internal cultural discourse and cross-cultural dialogue. In addition, they must work toward establishing general conditions conducive to constructive discourse and dialogue’.⁷¹

Perhaps the greatest challenge, for attempts like this one, is the limitation imposed by the human rights and cultural relativism debate that has raged over the years. Thus, conceptualising and re-defining child labour is likely to be considered part of this school of thought. When one has regard to the intractable nature of child labour, despite the many international and national laws adopted to curb the practice, it makes sense that we locate the challenges within the understanding of the concept of child labour, its origins and, most importantly, its utility. For communities that do not make a distinction between work and child labour, this is certainly problematic and calls on the re-orientation of communities for them to understand that child labour is harmful. Scaring communities into compliance or obedience, through the threat

⁶⁹ KM Butt ‘Conceptualisation of child labour: Theory and practice’ (2008) 26 *Journal of Political Science* 101-126; R Maconachie and others ‘Re-thinking “harm” in relation to children’s work: A “situated”, multi-disciplinary perspective’ (2021) 50 *Oxford Development Studies* 259-271.

⁷⁰ AA Alhassan and others ‘Conceptualisation of child labour: Contemporary understanding and gaps’ (2025) 34 *Child Abuse Review*, indicating that ‘[s]tudies indicate that child labour definitions have not been homogeneous ... as there have been varied definitions across different contexts’.

⁷¹ Ibhawoh (n 47) 855.

of criminal sanctions, is unlikely to yield the results desired explaining the intractability of child labour. Most communities accept what they understand and where it impacts their livelihood the threshold of acceptance is even higher. It is therefore necessary to ensure that communities in Malawi understand the impact of child labour in their everyday lives.⁷² As it is demonstrated below, there exists, therefore, an imperative need for a more nuanced and locally driven understanding of child labour if inroads are to be made in the elimination of the practice in Malawi.

In order to meet the minimum standards for protecting children from any work or labour that is harmful, it is necessary to unpack the *ntchito* (work or labour) that *mwana* (child) should be protected from engaging in on the basis that it is detrimental to their well-being. What should be prohibited, therefore, can be described as *ntchito yolemetsa kwa ana* (work that is a burden or excessive to children) or *ntchito yopweteka ana* (work that is injurious or hurtful to a child). That way, the severity of the work may restrain community members from subjecting children to harm. Further, these meanings are important as resonate with what is prohibited by the formal protection mechanisms articulated in law, policy or international obligations. These localised terminologies therefore enhance the ability of local communities to envision the problem of child labour as a local problem that they have a responsibility as agents for change. If we consider human rights as primarily a social process, localisation empowers victims and other community members to resist exploitation or demand change. It should, however, be noted that such demand for change depends on the extent to which communities find the benefits for change as outweighing the *status quo*. For example, there is a risk of empowered victims or communities to support 'child labour' for the economic benefits. However, such support would be restrained by the former mechanisms implemented through law enforcement, policies implementation, and good institutions. Translation of laws, policies and institutional messaging extend agency beyond formal duty bearers.

72 M Sulemana 'Impacts of small-scale mining on hazardous child labour in the upper west region, Ghana' (2025) 11 *Advances in Sciences and Humanities* 11-20.

4 Conclusion and recommendations

Meanings are also relevant for a better understanding of why of work by children that is permissible (or not) in some of the local contexts misaligns with the global principles.

Child labour remains a significant problem in Malawi despite an enabling legal framework for meeting international human rights obligations, and policies for programmatic responses. Consensus over the importance of protecting children from hazardous or harmful work is constrained by socio-cultural and economic conditions that renders some of the work by children be considered acceptable or inevitable among local communities and households. The constraints are not unique to Malawi. As it is unlikely that current framework and responses will achieve the global goal to eliminate child labour by 2025, it is necessary to consider complementary alternatives. Community agency has potential to go beyond formalities of law and policy, to reimagine human rights as it relates to child labour in a language and meaning that resonate with everyday living or ordinary people in Malawi, particularly the rural communities. This will require a careful review of the Bill of Rights to identify the specific rights that directly contribute towards protection of children from child labour, developing language that is applicable in everyday living, localised processes to negotiate prioritisation and sequencing of rights' protection, and replication of best practices.