

## **Problematising the Dominant Child Rights Discourses: Why We Need a Nuanced Approach to Combat Child Labour**

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### **ABSTRACT**

Three decades have now passed since the promulgation of the United Nations Convention on the Rights of the Child (CRC) in 1989. Despite the almost universal ratification of the CRC, as well as the heightened global awareness of the prevalence of child labour, the phenomenon persists. Following the ratification of the CRC, the rights-based approach to combating child labour became the dominant theoretical perspective. By problematising the dominant child-rights framework, this paper contributes to the discourse on child labour by arguing for a more nuanced approach to addressing the phenomenon. The paper achieves this objective by underscoring the importance of understanding and engaging with the reasons why children work, the socio-economic contexts within which they work, and why policies designed to address child labour should address the structural barriers that directly and indirectly promote child labour.

**Keywords:** child labour, child rights, problematisation, education, work.

### **INTRODUCTION**

Child labour is arguably one of the seemingly intractable and multidimensional human development challenges confronting low-income countries, especially. The complexity of the child labour phenomenon plays out in the varied debates over deconstructing child labour; who a child is; the relationship(s) between poverty and child labour; the nexus between schooling and child labour; the nature of children's agency; and ultimately, the appropriateness of the global campaign to abolish child labour in low-income countries. These disagreements only add layers of complicatedness to an already challenging development problem by making it harder to achieve a consensus on how best to combat child labour. Further, these controversies have polarised the discussions on child labour into what [1, p. 306] refers to as 'absolutist universalists' — those who uncompromisingly want to abolish all child labour; and 'contextualists' — whose main aim is to either tolerate it temporarily or regulate it. The International Labour Organisation [ILO] [2, p.16] defines child labour as:

Work that deprives children of their childhood, their potential and dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school or obliging them to leave school prematurely; or requiring them to combine school attendance with excessively long and heavy work.

Worldwide, the scale and scope of the problem of child labour are enormous. It is estimated that 152 million of the world's children are engaged in various forms of child labour globally, with 73 million of these children trapped in hazardous work [3, p.11]. While these are high numbers by most metrics, research nonetheless shows that up until 2012, there was some progress in reducing the number of child labourers. For example, by the end of 2008, 215 million children were child labourers worldwide [4, p.1], declining to the present 152 million. Although the absolute number of child labourers has reduced recently, this masks essential subtleties.

First, the overall reduction has not been even in all regions, since the rates of decline in Sub-Saharan Africa (SSA) have not been as impressive as in other regions. The Asian and Pacific regions witnessed the most significant decline in child labour rates among 5-17-year-olds between 2008-2012 (from 114 million to 78 million); whereas in SSA for the same age cohorts, child labour rates declined by 6 million [5, p. 5]. Both in the percentage of children in child labour and the absolute number of children in child labour, Africa ranks highest with one-fifth and 72 million children, respectively [3, p. 12]. Hence, SSA continues to be the region with the highest incidence of child labour. Second, and most importantly, globally, between 2012 and 2016, the ILO [3] reports that the rate of decline slowed. The steady decline in the number of child labourers slowed.

Therefore, considering that three decades have passed since the ratification of the CRC, and the current stall in the progress of falling child labour participation rates, this paper explores the weaknesses in the dominant child rights debates on the child labour discourse, arguing for a nuanced approach to tackling the phenomenon. The paper proceeds by briefly highlighting the legal foundations of the global anti-child labour movement, and then discusses the core arguments of the campaign to abolish child labour. Subsequently, these core arguments are problematised, ending the paper with some suggestions about the way forward.

### **Legal Foundations of the Anti-Child Labour Campaign**

The ILO and the United Nations Children's Emergency Fund (UNICEF) advocate a childhood that is devoid of work since child labour, it is argued, negatively affects children's development [6, 7; 8]. Specifically, child labour deprives children of their education, exposes them to violence, reinforces the intergenerational transmission of disadvantage, and ultimately undermines social mobility [9, 10, 6, 11]. Accordingly, the dominant discourse on child labour has been calls to abolish it through rigorously enforcing both compulsory primary education and minimum age legislation [12, 13, 7]. The calls to abolish child labour has been reinforced by media broadcasts of unsettling images of children working in sweatshops, for example.

The CRC (1989), ILO Minimum Age Convention, 1973 (No.138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) are the legal foundations upon which the calls to abolish child labour hinge. First, the CRC (1989) is the seminal convention recognising that children are subjects and not objects of adult control. Children were accorded no legal rights before the 19th century; they were regarded as the 'property of their parents' [15, p. 4]. The parent-child relationship was considered as a private matter, needing no interference or regulation. This notion of childhood changed in the 19<sup>th</sup> century when governments under the doctrine of *parens patriae*<sup>1</sup> [16, 17, 18]

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<sup>1</sup> *Parens patriae* is a legal doctrine that recognises the legitimacy of state intervention in the private lives of the family to hold to account parents who are either negligent and or abusive of their children. when parents abused their parental responsibilities.

admitted that children require special rights, protection and legal recognition due to their vulnerability and the dependent nature [15]. Children were no longer seen as incompetent adults, but people in their own right [19]. However, the move to consolidate the rights of children on a universal scale crystallised in 1989 with the adoption of the CRC. Thus, the adoption of the CRC (1989) was a critical moment in the transformation of how children were perceived in respect of their rights [20]. The CRC (1989) is the most widely and quickly ratified convention in the history of the United Nations [21], perhaps reflecting a universal endorsement at the governmental level, the need for the rights of children to be recognised. Consequently, the CRC has become the bedrock upon which significant national legal reforms relating to child rights are anchored [18, 20]. The CRC recognises, among other things, that children have the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with their education or harmful to their development. Second, the ILO Convention 182 describes the unconditional worst forms of child labour (such as child slavery, bonded labour, and commercial sex exploitation) and demand member states to immediately focus their attention at abolishing them. Third, the ILO Convention 138 calls on member states to abolish child labour by enacting legislation that proscribes work for children below 15 years, while setting a maximum age of not less than 18 for hazardous work. Together, these three legal instruments provide the basis for the global call to abolish child labour.

### **Abolishing Child Labour: A Global Movement**

The discourse on abolishing child labour is predicated on many arguments. In this section, some of these compelling arguments are discussed.

First, the ILO [4] and Bass [22] explain that child labour prevalence rates are comparatively high in low-income countries for an important reason. Poor households often rely on children's labour to either supplement household income or cushion themselves against economic shocks. Therefore, some children engage in economic activities for the very survival of their households [23, 24, 25] in violation of Article 32 of the 1989 CRC which calls for the protection of children from economic activities.

Second, it is argued that child labour interferes with children's education, in violation of Article 28 of the 1989 CRC. UNICEF [23] argues that child labour impedes children's education through several pathways. For example, children either spend too much time working or they get tired from working and are thus unable to attend school or concentrate in class. Further, children are mistreated at work and therefore become timid and less attentive in class. Also, children who work in seasonal agriculture can be taken out of school for days. Education is recognised as having the ability to produce a literate population capable of making informed decisions. For example, through its literacy function, education produces an active and enlightened citizenry as people are able to read and demand their rights [1]. Child labour undermines these benefits as children work instead of going to school. Additionally, child labour is often said to perpetuate the intergenerational transfer of poverty in the sense that children who are denied access to education due to labour force participation, enter adolescence or adulthood with inadequate skills for work. This restricts their future employment prospects and thus consigns them to low paid, temporary, and hazardous jobs [26, 27]. Ultimately, child labourers undergo a life course of poverty and disadvantage, inhibiting social and economic mobility. These children grow up largely as unproductive adults, contributing little to economic growth and relying on welfare (if it exists).

Third, child labour raises moral questions about children's weak agency [1]. Children lack the ability to influence how decisions affecting them are taken due to their dependence on adults and the asymmetrical power relations in the household. This lopsided intra household power relations naturally make children vulnerable to exploitation and abuse. Children in these contexts are treated paternalistically because adults view them as incompetent — without the cognitive capacities to make decisions — and not fully developed into adults yet [1]. Although Article 12 of the CRC calls for children's voice to be heard in matters directly affecting them, the decision to engage children in economic activities is often taken by adults without recourse to children's views [24]. Through this surrogate decision-making, the decision to put children to work is often made without considering the 'best interest' of the child, contrary to Article 3 of the CRC.

Fourth, another argument advanced by the anti-child labour movement has been to focus on the nature of the work children do. The anti-child labour movement argues that the phenomenon must be abolished because some children are put into exploitative and hazardous work. UNICEF [23, p. 24] provides a clear explanation of exploitative work as:

Full-time work at a too early age; too many hours spent working; work that exerts undue physical, social, psychological stress; inadequate pay; too much responsibility; work that undermines the child's dignity, self-esteem (slavery, bonded labour, commercial sex exploitation) and work that hampers access to education.

Child labourers are often exploited as they are willing to accept lower wages without protest and work longer hours in appalling conditions [28]. Also, the prevalence of child labour exerts downward pressures on prevailing adult wages, as employers prefer employing children [29]. Another incentive for abolishing child labour, then, is that the elimination of child labour can raise the level of adult wages, making child labour needless. Hazardous labour, on the other hand, is:

Any activity, which by its nature or type, has or leads to adverse effects on the child's safety, health, or moral development. This includes work done at dangerous heights, underground, underwater or in confined places; work with dangerous machinery, equipment and tools; or which involves the manual handling or transport of heavy loads; working in an unhealthy environment ... [30].

Since 59% of all child labour activities happen in the agricultural sector [5], the hazards child labourers face mainly happen on farms. For instance, children working on farms become exposed to agrochemicals and pesticides. In the long term, becoming exposed to agrochemicals has health problems [31]. Some studies have associated exposure to pesticides to severe neurological problems, causing lower intelligence in later life [30]. It is necessary, therefore, to end child labour in order to protect children from these hazards.

Finally, some child labourers work under dehumanising and degrading slave-like conditions of bonded labour. Bonded labour — a practice prevalent in South Asia and some Latin American countries — involves parents or guardians pledging their labour or the labour of their children in exchange for financial or other forms of assistance [32, 26, 33]. This usually happens to very low-income families without any form of assets or collateral [25]. Bonded labour violates the rights of

children, objectifies and degrades them, and raises important questions such as surrogate decision making and the agency of children.

### **Problematising the anti-Child Labour Discourse**

The above arguments and many other ones, form the theoretical plank of the campaign to abolish child labour. As compelling as these anti-child labour arguments are, they are not without limitations. It is important to note that child labour is not a straightforward problem; it is both complex and heterogeneous [19]. It is a multifaceted problem — as such, proscribing child labour, is no panacea. Debates as to whether or not children should work in low-income countries is unhelpful as these discussions ignore the context and structural barriers which condition or hinder children's life chances. Thus, outlawing child labour is myopic because it assumes that child labour is *the* problem. Prohibiting child labour through the child rights prism obscures the sociocultural and economic realities, as well as intrahousehold power dynamics that underlie child labour [18].

The cultural relativists note that contrary to popular belief, child labour is not always caused by exploitative employers seeking cheap labour or irresponsible parents who take delight in sending their children off to work [35]. Child labour reflects broader problems of poverty, weak educational systems, civil conflicts and inequitable power structures in the household [1]. Therefore, banning child labour will not solve these broader problems. Thus, cultural relativists reject the calls to abolish child labour on several grounds.

First, the CRC (1989) — the legal bedrock of the campaign to abolish child labour — has been variously critiqued. The CRC's notion of childhood and child rights has been described by critics as myopic [17], decontextualized [18], and localised Western ethos [36]. The thrust of the arguments undergirding these unflattering labels is that childhood is a sociocultural construct [16, 37, 15, 38]. Who is, and who is not considered a child is as varied as cultures around the world. In other words, there is no universally accepted idea of who a child is [19]. Nonetheless, the concept of childhood, as reflected in the CRC, is deeply rooted in privileged Western ideas and ideals of childhood [32, 16, 22, 36]. Under Western constructions, a child is defined by their chronological age [36, 39]. Furthermore, Western notions of childhood are an idyllic work-free stage, without care or responsibility, with compulsory education as the dominant preoccupation of the child (Bourdillon, 2006). Constructions of childhoods that are different from this idyllic work-free childhood are considered 'lost' or 'stolen' [37, p.1]. Notwithstanding the vast sociocultural diversity of countries worldwide, the Western-originated romanticised image of childhood [39] has been systematically 'exported from the industrial world to the South' [16] and often held up as the ideal notion of childhood.

The CRC's construction of childhood becomes problematic when universal applicability is tried in Africa and other non-Western contexts [20]. This notion of childhood finds little relevance in non-Western contexts because it ignores the different cultural peculiarities and economic realities in these other contexts [18, 37]. Low-income countries have, therefore, resisted the CRC's attempt to globalise Western constructions of childhood. The African Charter on the Rights and Welfare of the Child (ACRWC), which was adopted in 1990, right after the CRC, perhaps is the most unambiguous indication that African governments believe that the CRC does not sufficiently capture African values [20]. The ACRWC was thus created to 'foreground the culture and historical traditions' in the

conceptualisation of the rights of the child [20, p. 5]. For instance, while the CRC places no responsibility on children, Article 31(a) of the ACRWC confers duties on children [37, 20]. According to the Charter, children have the responsibility *to help* and respect their parents. Therefore, some provisions in the CRC and ACRWC create tensions by pitching the rights of parents against the rights of children.

Another example of these conflicting notions is the very conceptualisation of childhood. Whereas the CRC defines a child by their chronological age, in non-Western contexts, other factors determine the age of children. Defining a child solely based on chronological age raises practical incompatibilities in non-Western contexts as social factors are considered in the construction of childhoods [1]. While children are perceived to be dependent on adults into their teens in Western contexts, children in other contexts are perceived to be independent before their teens [16]. For example, Boyden [16] argues that although it is illegal to leave children and infants in the care of children under 14 years in Britain, elsewhere in Peru (and indeed in several low-income countries), by 14 years, some children are breadwinners or even single-handedly taking care of their younger siblings. In these contexts, therefore, setting a minimum age for children to work, such as the ILO Convention 138,<sup>2</sup> is incompatible with the daily realities of children's lives in non-Western contexts. For the ILO Convention (138) to be effective in creating a work-free childhood, Spittler and Bourdillon [39] argue that it inherently assumes that there are enough working adults to take care of children. Although the demography of Western countries generally supports the enforcement of the minimum age restrictions, it is not so in African contexts. Demographically, there is a high youth dependency in Africa compared to high-income countries. Whereas children under 14 years account for 23% of the population in Eastern Europe and Central Asia, in Western and Central Africa, 43% of the population are less than 14 years old [40, p. 164]. Western countries can, therefore, afford not to allow children to work in part because of their low youth dependency. In other regions such as SSA, a high youth dependency ratio effectively means that there are simply not enough adults to work to take care of children. Furthermore, adult incomes are comparatively lower in SSA [39]. Thus, a high youth dependency and low adult incomes coalesce to hinder the ability of adults to provide for their children adequately.

In terms of its impact on education, it is self-evident that child labour indeed impedes schooling. Thus, around the world, compulsory schooling is regarded as a potent tool in addressing child labour [41]. However, the relationship between child labour and schooling is complex and non-linear. Bhalotra [24] and Kielland and Tovo [42] observe that contrary to popular perceptions, child labour, in reality, is not the inverse of schooling. Many children combine schooling and working [43]. Also, several children neither attend school nor participate in economic activities because none is available. Paradoxically, Mapp [15] and Spittler and Bourdillon [39] contend that many children actually work in order to afford to go to school. Barriers to education, such as school fees, transportation, uniforms, and books, can lead children into economic activities [39].

Indeed, Okyere's [41] study in an artisanal gold mining site in Ghana affirms Spittler and Bourdillon's [39] explanation. Okyere [41, p. 7] found that over 80% of the children in his study had to work in order to fund their education. This shows that in some cases, the desire for education can force children to work. Additionally, the state of education in rural areas is usually of inferior and

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<sup>2</sup> The ILO Convention No 138 sets minimum ages for children to engage in different kinds of work. 15 is the minimum age for ordinary work, 13 for light work and 18 for hazardous work (IPEC, 2011).

substandard quality [22]. Ofosu-Kusi and Mizen [44] show that some schools in rural Ghana usually have unqualified teachers, dilapidated structures, and insufficient reading and writing material. Consequently, they found that children as young as 12 years were resisting schooling and migrating from their communities to the national capital to work as street hawkers. Thus, when schooling is considered irrelevant or of low quality, children prefer learning a trade [42]. This phenomenon demonstrates that supply-side educational constraints can prevent children from attending available schools. When the right to education collides with other rights, such as the right to nutrition and livelihood, Bourdillon [37] believes there is no reason why the right to education should or will take pre-eminence.

If child labour is to be eliminated because it is harmful to children's health and general welfare, Bourdillon [37] and Spittler and Bourdillon [39] contend, under certain situations, education can also be harmful to children — depending on how *harm* is perceived. They argue that schooling can be harmful when children are routinely verbally and physically abused by poorly trained teachers; when school work itself becomes excessive; or when schoolwork and examinations become overly competitive and cause excessive stress. Bachman [45] also notes that poor schooling can also be harmful to children as they can graduate either as illiterate or barely literate. Within this context of 'harmful education', the focus is hardly ever about prohibiting schooling. Instead of calling for a ban on schooling, the spotlight is often on reforming schooling to remove the harm [37, 39]. Similarly, therefore, while child labour can be harmful, the focus should be on addressing the harms working children are exposed to, rather than banning child employment. Child labour bans can worsen the well-being of children and negatively affect household income [25].

Rigid insistence on minimum age legislation for employment in certain situations can undermine child well-being by driving children into worse options. For example, Rahman and colleagues [28] report that the passage of the Child Labour Deterrence Act 1993 in the United States directly contributed to exacerbating the plight of children working in Bangladesh. The Act sought to galvanise a global boycott against goods produced with child labour. As a result of the Act, the Bangladesh Garment Manufacturers and Exporters Association dismissed 50 000 children working in their factories [28]. These children did not automatically enrol in schools; instead, some of them went into more exploitative and hazardous jobs such as prostitution and breaking bricks in extreme weather conditions [45]. Banning child labour was thus counterproductive.

Children resisting school further contradicts the assumption that child labour is a reflection of the weak agency of children. The decision to engage in child labour is usually taken on behalf of children, without their input. Nonetheless, some children themselves, as already shown, decide to engage in economic activities instead of attending school. Contrary to the widespread belief within the anti-child labour discourse, children are not always unwitting pawns being exploited by adults. There is a need to desist from always seeing children as helpless victims in the child labour discourse. Children have a choice, and they exercise it. Emebet Mulugeta's [46] research discusses why children are not always vulnerable victims, but rather sometimes active agents. Data from Mulugeta's [46] study show how children who live in contexts that constraint their life choices in Addis Ababa, decide on their own to help their families by working to save money for school fees and remit money to their families.

It must be noted that not all work done by children is either child labour, or ‘morally objectionable’ [1, p. 304]. Under challenging conditions, some types of child labour may have to be tolerated [37,19, 47]. These commentators argue that in some African households, children working is part of everyday life. Children working is part of the socialisation process [32]. Children from poor and marginalised African households participating in economic activities has its utility. Children working can be beneficial in promoting or enhancing a child’s physical, mental, spiritual-moral and social development — skills needed in future. Also, in the face of badly run, dysfunctional and underfunded schools, child work can provide a better alternative in terms of learning professional skills.

### **The Way Forward**

Following the discussions so far, the natural question is to ask is: what is the way out of this child labour discourse? It is certainly the case that child labour is both complex and multidimensional. The complexity of the child labour phenomenon renders single top-down solutions (such as bans) unworkable. Accordingly, the attempts to combat child labour should be multi-sectoral and interdisciplinary. In combating child labour, it is crucial to understand the socio-economic contexts of child labour. Children work for a variety of reasons — contribution to family income or to fund their education. Non-Western societies generally, and African countries particularly, do not inherently prefer putting their children to work, rather than to school. Child labour practices are usually prevalent within poor and marginalised households in low-income countries. Children from other non-poor households in low-income countries do benefit from quality education (privately provided mostly), enjoy leisure and do not engage in activities that undermine their health, well-being and education. Thus, practical constraints hinder the willingness of parents to send their children to school. The implication of transferring a decontextualised notion of childhood to non-Western societies has been that child labour legislation in these countries has been more about responding to ‘global standard-setting’ and less about tackling the issue from a local context [48]. Understanding the reasons why children work, and then addressing the root causes, is a more holistic approach that is likely to guarantee success in combating child labour.

Comprehensive national policies with strands that promote rural development and the provision of basic social services, access to microcredit schemes to poor households, and the formalisation of social protection programmes are a much more realistic approach of progressively abolishing child labour. Research shows that household economic vulnerability and shocks play a crucial role in determining child labour [4]. This reality provides an important opportunity for addressing the challenge. Social protection programmes can mitigate household vulnerabilities and shocks by preventing the resort to children’s labour as a coping strategy, or indeed, as a boost to household income. Addressing child labour, hence, should have, for example, an income-support component to compensate for the foregone earnings of children. Social protection is not a magic bullet in the struggle against child labour. However, due to the worldwide consensus that social protection can play vital roles in addressing poverty and vulnerability, particularly during shocks [4], social protection can be one of a broader comprehensive national strategy to deal with child labour. Providing income support means increased social investments from the government. There are discussions and debates about the feasibility of social protection in developing countries due to fiscal constraints and austerity. Nonetheless, if universal social protection systems are currently

impractical, a targeted approach that focuses on those households in dire conditions and with working children can be considered as priority cases.

Even though the CRC may be of Western origins, in reality, it is the most widely referenced piece of work concerning child welfare [20]. This shows that the CRC still has some level of universal relevance, notwithstanding the debates. Therefore, dialogue with local communities can challenge and alter old norms that are tolerant of child abuses [21]. Tolerant social attitudes towards child labour can be changed by dialogue, and not by government officials ratifying conventions and treaties. Also, dialoguing with local communities can help create child protection regimes that foreground local values. Finally, the critique of the dominant anti-child labour discourses should be understood within the context of an important caveat; the critics of the anti-child labour discourses neither endorse child labour nor are oblivious to its harms. Child labour is undesirable. However, the argument against banning child labour is that such an approach is counterproductive because it is a simplistic linear solution to a multi-layered development challenge. Addressing the challenge of child labour in developing countries through the rights discourse has not achieved significant results. The majority of child labourers work in the informal sector. Therefore, enforcing child labour laws in informalised economies, as it is the case in many low-income countries, is unrealistic and impractical.

## CONCLUSION

This paper has not been able to comprehensively explore and tease out all the nuances of the child labour discourse. This notwithstanding, the complexity of child labour in Africa is quite apparent from the discussion. Thus, the paper has argued for a need to move away from the binary distinction of 'schooling is good', and 'child labour is bad' to a nuanced approach which recognises and focuses public policies towards addressing the factors and conditions why children work. Considering the intellectual stronghold the dominant Western constructions of childhood has on discussions of child labour, it is essential to realise that the dominant child rights discourse has little relevance in non-Western African contexts where children are perceived differently and they work for a variety of reasons.

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