CHILD LABOUR IN INTERNATIONAL HUMAN RIGHTS LAW: THE CASE OF MATHIRA CONSTITUENCY, NYERI COUNTY, KENYA, 1979-2015

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JULY 2018
DECLARATION

This research thesis is my original work and has not been presented for the award of any degree in any university.

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To my daughter and all children
ACKNOWLEDGEMENT

I am grateful to God for His divine providence and for His strength that enabled me to push on even when things seemed so thick.

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To my siblings, family and friends who inspired me to push myself further and never gave up on me, your words of encouragement are etched in my heart.
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GLOSSARY OF TERMS

‘Baraza’ is Kiswahili word meaning a high-level group of people but in this study, it was a forum for a chief, his assistant chiefs and elders to discuss the residents’ concerns and resolve them.

‘Bodaboda’ is colloquial word for commercial motor bike or bicycle.

‘Kamukunji’ means a communal meeting to discuss communal issues.

‘Kibarua’ is Kiswahili word meaning casual employment.

‘Makanga’ in loose local language means a conductor for public service vehicles.

‘Matatu’ in loose local language means a public service vehicle.

‘Mukoloni’ is coined from Kiswahili to mean colonial government.

‘Mjengo’ is a Kiswahili word meaning construction site.

‘Mzungu’ is Kiswahili word meaning the Europeans.

‘Nyumba kumi’ is a type of community policing system in Kenya using ten houses in a neighbourhood to monitor.

‘Squad’ is informal for brief casual work as a matatu or bodaboda driver.

‘Ukoloni mamboleo’ is a Kiswahili word meaning economic and political control of developed western nations over developing nations.

‘Unga’ informally means a day’s earning even when it was not enough to buy flour.

‘Wanjiku’ mean ordinary citizens in Kenya.
DEFINITIONS OF TERMS

**Child controlled labour:** paid work done by a child at his or her own will, without the knowledge of the parents or control of how the money paid is spent.

**Child labour** is work done by a child in exchange of payment, or harms the child or hinders the child from attending school.

**Child participation:** involving children in decisions about child labour.

**Community Justice System** means localised ways of attaining justice and may be used synonymously with traditional dispute resolutions mechanism.

**Family work** is work done by children in their homes.

**Light work** is paid work by children which is not harmful and does not hinder them from attending school.

**Parent controlled labour** is paid work done by a child with the knowledge of the parent and the parent controls how the money paid is spent.
<table>
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<td>AACs</td>
<td>Area Advisory Councils</td>
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<tr>
<td>ADR</td>
<td>Alternative Disputes Resolution</td>
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<td>AIDS</td>
<td>Acquired Immunodeficiency Syndrome</td>
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<tr>
<td>AJS/ IJS/CJS</td>
<td>Alternative Justice System or Informal Justice System or Community Justice System</td>
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<td>AU</td>
<td>African Union</td>
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<td>Convention 138</td>
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<td>Convention 182</td>
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<td>CLFC</td>
<td>Child Labour Free Certification</td>
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<td>CLFZs</td>
<td>Child Labour Free Zones</td>
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<tr>
<td>CBOs</td>
<td>Community Based Organisations</td>
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<tr>
<td>COTU</td>
<td>Confederation of Trade Unions of Kenya</td>
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<td>CRC</td>
<td>Child Rights Club</td>
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<td>CT</td>
<td>Cash Transfer</td>
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<td>Faith Based Organisations</td>
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<td>FKE</td>
<td>Federation of Kenya Employers</td>
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<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>IGO</td>
<td>Intergovernmental Organization</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>IPEC</td>
<td>International Programme on the Elimination of Child Labour, ILO</td>
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<tr>
<td>KIHBS</td>
<td>Kenya Integrated Household Budget Survey</td>
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<td>LCLC</td>
<td>Local Child Labour Committee</td>
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<td>MDGs</td>
<td>Millennium Development Goals</td>
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<td>MLSSS</td>
<td>Ministry of Labour, Social Security and Services</td>
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<td>NCLC</td>
<td>National Child Labour Committee</td>
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<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<td>NSNP</td>
<td>National Safety Net Programme</td>
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<td>OSH</td>
<td>Occupational Safety and Health</td>
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<td>RBA</td>
<td>Rights Based Approach</td>
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<td>RoK</td>
<td>Republic of Kenya</td>
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<td>SIMPOC</td>
<td>Statistical Information and Monitoring Programme on Child Labour, ILO</td>
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<tr>
<td>TDRM</td>
<td>Traditional Dispute Resolution Mechanism</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>WFCL</td>
<td>Worst Forms of Child Labour</td>
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ABSTRACT

Kenya has ratified and domesticated international human rights instruments on elimination of child labour by enacting local laws, drafting policies and launching programmes to reduce the phenomenon. Empirical data shows that children in Kenya and most countries around the world engage in child labour. This study set out by questioning why child labour continues despite the existence of international human rights instruments, local laws, policies and programmes in Kenya. As such, the study investigated the prevalence of child labour in Kenya and critically analysed the extent to which child labour conventions are effective in Kenya. Further, the study explored the factors influencing the child labour phenomenon in Kenya. The findings of this study contributed to the constructivism theory of international relations, which holds that social reality is socially constructed and that international law's real force is in its ability to reshape the discourse of states’ conceptions about what is possible or desirable in international relations. This was done through collecting perspectives on child labour and child labour laws from the local communities in Kenya and analysing how this affect implementation of international human rights instruments. In total, 148 participants were purposively sampled from the target population in Mathira Constituency within Nyeri County in Kenya to provide the data. The study used questionnaires to collect quantitative data from children with informed consent of the parents. To collect qualitative data, interview guides were used for children with consent from parents, parents, teachers, chiefs and senior public administrators, children’s officers, labour officers, police officers, judicial officers, employers, senior staff of employers organisations, officials of employees’ trade unions, staff of Non-Governmental Organizations (NGOs) dealing with children’s rights in the area, members of parliament, a local area advisory council (AAC) and a local child labour committee (LCLC) individually or in focus group discussions. Data from the two sources was merged for authenticity and validity. The researcher also used her observations. Guided by the research questions and objectives, the research findings were that there was a high prevalence of child labour and that child labour conventions were less effective. The local communities’ views on child labour laws as criminalizing their way of life affected the implementation of conventions, so was children’s independence and dwindling parental control. The academic and policy insights given on harmonization and enactment of child labour laws and implementation of child labour laws using traditional dispute resolution mechanisms (TDRMs) will help reduce exploitative employment and Kenya will fulfil her international human rights obligations. The study recommended that further research be carried out on labour migration of children and how religion fuels child labour.
CHAPTER ONE: INTRODUCTION

1.1 Background to the Problem

Child labour is one of the major global issues affecting the welfare of children. The Children Act defines a child as any human being below eighteen years in age (Republic of Kenya (ROK), 2001). The International Labour organisation (ILO) estimates that globally, 168 million children are engaged in child labour (ILO, 2013). According to ILO, Sub Saharan Africa has the highest number of child employees globally standing at 21 percent. The 2005-2006 report by Kenya Integrated Household Budget Survey (KIHBS) estimated that there were 773, 696 child labourers aged 5 to 17 years in Kenya. This represents 6% of the entire Kenyan population (ROK and ILO, 2008, p. 49).

Based on the foregoing, one is inclined to ask: what is child labour? Child labour has been defined variously by a number of scholars. For instance, Bachmann (2000) observes that the definition of child labour is full of anomalies or contradictions; a tangle of international standards, national laws, cultural practices and social expectations. She defines child labour as work done by children in conditions that are harmful or potentially harmful to the child. In Kenya, the Employment Act does not define child labour but refers to unlawful employment of children and also defines worst forms of child labour (ROK, 2008). Accordingly, ILO (2004) reports that there is no universal definition of child labour. In 2010, ILO defined child labour as any work which is mentally, physically, socially or morally dangerous and harmful to children as it affects their schooling, and
that it the type of work that children should not be doing because they are too young to work, or is dangerous to them (ILO, 2010).

Conceptualizing child labour is significant for scholarship because any intervention to deal with the phenomenon requires a good understanding of it. It is critical to ask, which child is too young to work and which work is acceptable and which one is dangerous. Conceptual contestations distinguish child labour from light work. Bhukuth (2008) defines light work as labour that does not interfere with the child’s schooling or harm the child’s overall development. The Employment Act in Kenya allows employment in specified light work for children between thirteen and sixteen years (ROK, 2007). The Employment Act does not consider family work as child labour. In most societies, light work gradually evolves to child labour where there are no effective measures to contain it (ILO, 2010). The challenge is that understanding of light work varies across cultures and societies (Abernethie, 1998). It is on the basis of this problematic context that this research explored how the local communities in Kenya understood child labour and its consequences on the child and society, what constitutes light work and their perspectives on dealing with child labour.

The causes of child labour are also contested by scholars ranging from the socio-economic to cultural factors and the politics of international conventions. Some consider poverty as the main cause of child labour (Cockburn, 2001; Harsch, 2001; Suda, 2001; Delap, 2001; Admassie, 2002; Basu and Tzannatos, 2003; Edmonds, 2007; Bhalotra, 2007; Odongo, 2012). Others delink poverty from child labour (Nielsen, 1998; Ray, 2000;
Edmonds and Turk, 2002; Bhalotra and Heady, 2003; Nguyen and Quan, 2003; Ganglmair, 2006 and Shafiq, 2007). This study shall be guided by the World Bank’s view of poverty as a household’s inability to meet their basic needs, living on less than 1.90 dollars a day (World Bank, 2016). This is because poverty plays a significant role in child labour for households that barely survive.

Lack of schools is also cited as a main cause of child labour. Siddiqi and Patrinos (1999) point out that lack of schools and sub-standard quality of schooling is the main trajectory of child labour. In explaining the vicious cycle that child labourers find themselves in vis a vis schooling, Heady (2003) and Patrinos and Psacharopoulos (1995) observe that child labourers may be unable to complete schooling because they are working and second because all their hard work and hard-earned monies will have been wasted as a result. Bonnet (1993) does not see lack of schools as the main problem but the failure to provide vocational courses that can prepare the children for the future. Bonnet argues that some children in Africa drop out of school and start working not mainly because they need the income but because the school does not provide vocational skills or prepare them for the life they will face outside the school. On cultural factors, Lord (2011) thinks the African way of building skills through practical exposure pushes child labour in Africa. Schwartz-Kenney, McCauley and Epstein (2001), Punch (2003), Bass (2004), White (2009) and Okyere (2013) do not link the instilling of life skills to child labour, arguing the real issue is ignoring the realities causing some children to work solely for survival. Seiichi, Kana and Phoumin (2013), Black (2003), Bachmann (2000) and Miljeteig (2000) hold a neutral view about pursuit of life skills as a cause of child labour.
Apart from the definition and causes of child labour, there also has been a focus on the effects of child labour. Wazir (2002) observes that child labour is harmful to the country’s long-term human development agenda. This is because children are the necessary human resources for any country that has development at heart. Consequently, child labour impacts the education sector negatively. On this, ILO (2010), states that child labour harms the development of children and interferes with their education. Education is a key component of development and also a source of knowledge that is likely to positively impact people’s outlook of life. As such, if the young who are supposed to be in school engage in work, then the goals of a sound country are interfered with.

Weiner (1991), Blanchet (1996), Ravallion and Wodon (1999), Admassie (2002) and Heady (2003) argue that child labour deprives children of their childhood and negatively impacts their welfare, development and dignity. Childhood is the process and time between infancy and adulthood. This is a crucial developmental stage as it is here that children develop physically, mentally, emotionally and socially (UNICEF, 2005). By denying children to be children and develop appropriately is recipe for a malfunctioned society. This is because the stages are key in wholistic development of an individual. Any stage that is interfered with in childhood will come to haunt the individual and society later in life.

UNICEF (2011), states that child labour reinforces inter-generational cycles of poverty and slows achievement of the Millennium Development Goals (MDGs). Some scholars
argue that child labour can be useful because basic survival for some children is possible only if they are working (Myers, 2001; Levison, 2009; Grier, 2004; Connolly and Ennew, 1996; Boyden and Myers, 1994; Myers, 2001; Dessy and Pallage, 2005 and Anyango-Kivuva, 2006). The above studies helped me to critically assess the consequences and motivation for children waged work in the area of study.

Though there is no consensus on its definition, causes, effects, harmfulness or usefulness, there have been concerted global interventions in eliminating child labour through the ILO. Pease (2003) elaborates that ILO was established in 1919, in part, to help member states meet their duties regarding fair conditions of work under the 1918 Covenant of the League of Nations and to set international labour standards. Swepston (2009) lists ILO as one of the oldest United Nations’ (UN) organization dealing with human rights by creating an international regime on labour rights as human rights. The universal declaration of human rights (UDHR) states that a human being is born unrestricted and that a child is born with full rights. Human rights are legally enforceable expectations on how duty bearers should act towards the right holders; creating the rights-based approach (RBA) of solving global concerns (Woodiwiss, 2005).

RBA emphasizes accountability of the state as the principal duty bearer, policy makers and other actors whose actions affect the rights of the people as rights holders (Jonsson, 2003). Jonsson contrasts how, in securing children’s rights, RBA gives priority to severe rights’ violations even if only a few children are affected, while other approaches justify a focus on less severe rights violations that affect children. RBA empowers citizens to
claim their rights and enables the duty bearers to fulfil their duties (Eyben, 2003). This study explored the prevalence of child labour, why the phenomenon persists and sought views on how the duty bearers can fulfil their obligations. International regimes are principles, norms, rules and procedures in which actors’ expectations converge in a given area of international relations (Krasner, 1983). How then does child labour fit in the international regime? Finkelstein (1995) defines global governance as governing internationally without sovereign authority. Rosenau (1995) conceives global governance to be that what is done at the smallest level yet attracts transnational repercussions. The Commission of Global Governance (1995), Barnett and Duvall (2005) and Jackson (2013) explore the uniqueness of the UN in global governance, that it is not a global government but offers global representation of governments and enforces global governance principles.

Child labour as a global human rights issue has elicited global interventions. The UN and the ILO as key global governance organisations have created various conventions on child labour. These Conventions have informed Kenya’s labour laws, policies and programmes. Kenya joined the ILO in 1964 but ratified the first child labour convention that is, ILO convention on minimum age in 1979 (Convention 138). Other instruments include the United Nations convention on the rights of the child, ratified 1979; UNCRC, 1989; the African charter on the rights and welfare of the child, 1990; ACRWC, 1999; in 2000 and the ILO convention on worst forms of child labour, 1999 (Convention 182) in 2001. The Children Act was adopted in 2001 to give effect the principles in the UNCRC and the ACRWC. In 2007, the Employment Act was adopted to give effect to the ILO’s
Convention 138 and Convention 182. In 2010, Kenya adopted a constitution allowing general rules of international law and any convention ratified by Kenya to form part of her laws.

There are also general debates on child labour caused by developing states not having a good representation while negotiating the international conventions (Swepston, 1982; Smolin, 2000; Lloyd, 2002 and Celek, 2004). Twum-Danso, 2009; Kaim, 2009; Nhenga-Chakarisa, 2010 and Grugel, 2013 dismiss these conventions for not considering the social-economic realities of all its members. Hoffmann (1995) dissents and argues that governments hide human rights violations behind their cultures which do not resonate well with international law. Universality has been seen as a factor in child labour due to diversity of childhood, various domestic settings and lack of a global government (Himonga, 2002; White, 2002; Dessy and Pallage, 2005; Twum-Danso, 2009; and Grugel, 2013). This study questions presumption of universality in implementing the conventions and explores how various cultures understand child labour and how they view international conventions that Kenya is party to.

Historically, child labour in Kenya dates back to pre-independence, where children worked in plantations, cotton ginneries, mines, railway lines and in European households as apprentices, cooks and houseboys (Onyango, 2014). Onyango further points out that the post-independence era witnessed the stubborn nature of child labour. Though Kenya ratified the first main ILO convention on child labour in 1979, which is the convention on minimum age (Convention 138) it seems the phenomenon is rife and alive. For
instance, in 1982, the World Health Organization (WHO) reported rampant child labour in Kenya, with some children as young as five years working in domestic service and many children in agriculture (Onyango & Kayongo-Male, 1983).

In 1989 and for the first time in the history of Kenya, labour force data was collected and the report showed that 30.1 per cent of those aged 10-14 years were economically active, that is 9.6 per cent of the total labour force in Kenya (KNBS, 1996). By 1998, the KIHBS report showed that 1.3 million children aged 5–17 years were working, majority aged between 10 and 14 years (KNBS, 2001). The KIHBS of 2005/2006 reported that child labour had declined from 1.3 million to 773,696, or 6% of the population for children aged between 5 and 17 years (ROK & ILO, 2008). This historical overview is significant as this study probes why the conventions have not reduced child labour in Kenya since 1979, when the first ILO convention was introduced into Kenya.

Previous scholarships have focused on socio economic causes of child labour, cultural factors and the international politics of child labour conventions. This study has looked at child labour from global governance’s viewpoint and analysed the contestations between principles of global governance and the local perspectives (culture), from Mathira constituency, Nyeri County. The area of study is located in Central Kenya region, a rural agricultural region. According to the 2005/06 KIHBS report, 88% of all working children were from rural areas and the largest employer was the agricultural sector, which absorbed 79.5 per cent of the working children (ROK & ILO, 2008).
Small scale agricultural production of mainly tea and coffee is dominant in Mathira Constituency and for the export market as commercial crops. Therefore, the study area was predicted to have a high occurrence of child labour that has a global effect because of the foreign income earned and international trade. This study assessed the local understanding of child labour and the related conventions. Consequently, the study critically analysed whether child labour has implications in implementation of the international child labour conventions.
1.2 Statement of the Problem
Child labour is a persistent human rights issue across the world. Kenya is one of the countries in the world where the phenomenon is still persistent. Researchers have delved into various aspects of child labour with varying conclusions. They have focused attention on the socio-economic and cultural factors pertaining to child labour. There have also been disagreements between universal and local conceptions of child labour. There are also debates on harmfulness or usefulness of child labour. This, notwithstanding, Kenya has adopted a number of international instruments relevant to the elimination of child labour, but seemingly with little effect. It is critical to assess if these varying conceptions could have implication on the effectiveness of international standards in eliminating child labour in Kenya. The extent to which these understandings could have influence implementation of international obligations in Kenya is understudied. This research, therefore, explores the possible nexus between perspectives of the local community in Kenya on child labour on the one hand and effectiveness of international instruments relevant to the fight against child labour on the other. The context of the study is Mathira Constituency. Mathira Constituency being a rural agricultural zone in Central region of Kenya is predicted to be an area with high child labour prevalence. In addition, being a small scale commercial agricultural zone, it is a key player in the global trade and international relations as it produces export crops mainly tea and coffee. Using data from Mathira Constituency, the research investigated the prevalence of child labour, critically analysed the effectiveness and application of international instruments in child labour and also examined why child labour exists even with these conventions.
1.3 Research Questions
   (i) What is the prevalence of child labour in Kenya?
   (ii) To what extent are the child labour conventions effective in Kenya?
   (iii) What are the factors influencing implementation of international child labour instruments in Kenya?

1.4 Objectives of the Study
   (i) To investigate the prevalence of child labour in Kenya.
   (ii) To critically analyse the extent to which child labour conventions are effective in Kenya.
   (iii) To examine the factors influencing implementation of the international instruments on child labour in Kenya.

1.5 Assumptions
   (i) There exists a high prevalence of child labour in Kenya.
   (ii) The child labour conventions are less effective in Kenya.
   (iii) Perspectives of the local communities about child labour and laws, dwindling parental control and children’s independence influence implementation of international instruments on child labour in Kenya.
1.6 Justification and Significance of the Study

The last child labour survey by the Government of Kenya was carried out in 2005/2006, over a decade ago (ILO, 2013). This duration gap justifies current survey and research on the issue. Kenya joined the ILO in 1964 but ratified the first child labour convention, that is ILO convention on minimum age 1973 (Convention 138) in 1979. This therefore justifying the period of this study from 1979 to 2015.

Previous studies have focused on socio-economic and cultural factors causing child labour. This study contributes to the body of knowledge by looking at child labour from global governance’s viewpoint and the possible contestations between principles of global governance and the local communities’ perspectives, culture, values and interests. The findings of this research are beneficial to researchers and academia by analysing the effectiveness of international laws and factors affecting elimination of child labour in Kenya. As such, this study opens up grounds for further research on child labour in Kenya.

Mathira Constituency was selected because it hosts small scale commercial agriculture, a less studied sector but also with a good agricultural base. Mathira is located in a region that has had a high prevalence of child labour in Kenya and there was need to assess if it still had a high prevalence. Tea and coffee produced in the area is a major contributor to the export market thus having implications in international trade- the international political economy.
The findings of this study identified gaps in implementation of the international instruments on child labour which will inform the child labour policy and interventions of the Government of Kenya, Inter Governmental Organizations (IGOs), Non-Governmental Organizations (NGOs) and other key stakeholders in children’s matters. Based on the outcome, the elimination of child labour as a human rights and global governance issue will be supported in more practical ways. The findings contribute to the theory of international relations especially constructivism in showing how local interventions interact with enforcement of human rights.

1.7 Delimitation and Limitation of the Study

The scope of this work is child labour within the framework of international human rights law and global governance. The work is a survey of the global issue but had to be located within a definite research area, which is Mathira Constituency in Nyeri County, Kenya. The researcher made the sample to be as representative as possible.

Researching on children and obtaining data from them is highly sensitive as they are vulnerable by virtue of their childhood. Informed consent was obtained from each parent. Child labour is a highly sensitive subject and participants were not willing to be interviewed. To handle this, the researcher ethically assured the participants that the research was academic and that confidentiality would be guaranteed. Non-generalization of data was likely to be a problem due to limited location and sample size. To overcome this, the researcher ensured that there were participants from each ward and households were evenly distributed.
1.8 Literature Review and Theoretical Framework

1.8.1 Introduction

This sub-chapter reviews literature on child labour within the international law regime. The review focuses on certain themes which have occupied the attention of scholars. Dominantly, existing literature focuses on social, economic, cultural factors in child labour and the international politics of child labour conventions. The section ends by providing the theoretical framework for the study.

1.8.2 Socio-economic Factors and Child Labour

Scholarships have dominantly focused on causes of child labour as a reason for its prevalence. For instance, some scholars (Cockburn, 2001; Harsch, 2001; Delap, 2001; Basu and Tzannatos, 2003; Edmonds, 2007; Bhalotra, 2007; Bacolod and Ranjan, 2008) consider poverty as the main cause of child labour in society. Admassie’s (2002) study focuses on sub Saharan Africa and considers poverty as one of the reasons for child labour in the region. On her part, Suda (2001) and Odongo (2012) study focus on Kenya and they argue that poverty is the underlying cause and consequence of child labour. According to them, child labour leads to the violation of children’s rights in Kenya. In addition, Suda points out that poverty interplays with a host of factors such as inadequate legislation, inadequate capacity of the labour inspection unit, culture and lack of public awareness to escalate child labour.

ILO and ROK (2008) also hold that poverty is the greatest cause of child labour in Kenya but reinforced by cultural practices. Despite the above, some scholars such as Ray, 2000;
Andvig, Canagarajah and Kielland, 2001; Edmonds and Turk, 2002; Bhalotra and Heady, 2003; Ganglmair, 2006 and Shafiq, 2007) delink poverty from child labour by arguing that child labour is a multifaceted issue that involves many other things. In their study, Nguyen and Quan (2003) analysed child work in London and observed that children from both wealthy and poor households engage in child labour. Their finding therefore negates poverty as a contributing factor in child labour.

Apart from poverty, HIV/AIDS pandemic has been identified as one of the factors contributing to child labour in Kenya (Oyuga, Suda &Mugambi, 1997; ILO, 2007). Otele (2011) pointed out that orphans whose parents had died of AIDS were denied education since the adults taking care of them preferred them working to fund their meals. However, I make haste to add that children can be orphaned by other reasons other than HIV. Despite this, whether children are orphaned by HIV/AIDS or any other cause, the situation affects children in one way or the other. As such, this study looked at orphans and vulnerable children generally and how that affected their working patterns, rather than focusing only on HIV/AIDS.

Other debates on child labour and poverty focus on whether the practice should be eliminated. However, Myers (2001) and Levison (2009) are of the view that work is necessary for the survival of some children. Some children see labour as the only solution to their poor economic situation and not a problem (Grier, 2004). Connolly and Ènnew (1996) think denying these children access to work may not necessarily improve their lives but may get worse as they become vulnerable to a host of problems and vices. For instance, in an empirical study of child workers, who were laid off from a garment factory in Bangladesh for violating child labour laws, Boyden and Myers (1994) found out that this pushed them to work in harsher conditions than what the company provided for them. This therefore leaves them exposed to environments that not only violate their
rights as children but also endangers them. In criticizing the ILO’s Convention 182, Dessy and Pallage (2005) caution banning WFCL without putting socioeconomic cushions since this may adversely affect families.

Child labour is also considered as a product of global capital structures associated with trade liberalisation (Krugman, 1995). Factors such as globalisation, market imperfection, and quest for profit maximisation are associated with increased child labour (Myers, 1999; Grote, Basu and Weinhold, 1998; Basu, 1999 and Srinivasan, 1998). However, Bachman (2000) dismisses the role of international trade in child labour. Edmonds (2007) uses cross country data to illustrate that international trade does not directly or significantly perpetuate child labour. Cigno, Rosati and Guarcello (2002) do not find empirical evidence that trade exposure _per se_ increases child labour, except for countries with a largely uneducated workforce. Neumayer and Soysa (2005) hold a moderate view that globalisation can have both positive and negative effects on child labour in developing countries. Data from developing countries point to the fact that the more globalized developing countries have a lower incidences of child labour.

In an empirical research to find out the connection between schooling and child labour, Siddiqi and Patrinos (1999) found out that lack of schools and sub-standard quality of schooling are the main cause of child labour. Bonnet (1993) argues that some children in Africa drop out of school to work, not because of lack of schools but that schools do not provide vocational qualifications or prepare them for the future. The United States Department of Labour, USDOL (2011) explores how lack of schooling opportunities ties with poverty as major causes of child labour in Kenya. Other scholars link child labour with family size and structure. The overriding argument is that the higher the number of children in a family, the greater the probability of children engaging in
labour (Patrinos & Psacharopoulos, 1997; Andvig, Canagarajah & Kielland, 2001; Edmonds, 2006; Vimefall, 2011).

Other related arguments are that presence of younger siblings will most likely cause an older sibling to work. Vimefall (2011) analysed data from Kenya where he concluded that the probability of working increases with age of the child as the productivity increases. Patrinos and Psacharopoulos (1997) found that having younger siblings increases a child’s probability of working in Peru. On his part, Edmonds (2006) uses data from Nepal to show that older siblings work more than younger ones and that the rate increases with family size and the difference is larger for girls than for boys. Lyod and Brandon (1994) assert that each additional younger sibling significantly increases the probability that an elder girl will drop out of school to take care of that additional child.

Other scholars link child labour to educational status, aspirations and characteristics of their parents (Vimefall, 2011; Emerson & Souza, 2002; Bhalotra & Tzannatos, 2003 and Action for Children in Conflict, 2012). These scholars argue that parents with higher levels of education are more likely to offer their children good education, creating virtuous cycles of economic power. On the other hand, children of parents with lower levels of education are likely to receive poor education, predisposing them to child labour earlier thus creating vicious cycles of poverty. The vicious cycles of poverty are what UNICEF (2011) refers to as ‘... intergenerational cycles of poverty.’

In a study to find out perceptions of parents regarding the job market, Buchmann (2000) found that daughters of parents who think job opportunities are more limited for women have a lower probability of being enrolled in school in Kenya. Andvig, Canagarajah and Kielland (2001),
Kilbride and Kilbride (1993) and Siddiqi and Patrinos (1995) assert that a weakening of family authority structure makes children less willing to stay at home predisposing them to child labour. Despite this information, this study takes a different angle as it does not preoccupy itself with children who elope from home totally instead, it looks at children who work without the consent of parents but return to their homes after work.

1.8.3 Cultural Factors and Child Labour

Child labour has also been analysed as a cultural issue. Seiichi, Kana and Phoumin (2013), Black (2003), Bachmann (2000) and Miljeteig (2000) hold that interventions in child labour should fit within the socio-cultural realities in which children live. For instance, empirical studies by Bass (2004) and Punch (2003) found that whereas having children in farming and weaving may be abhorrent in some dwellings, elsewhere like Africa and Asia, they are integral parts of a child’s proper upbringing and education since this is part of the culture.

Lord (2011) argues that this culture increases the prevalence of child labour in Africa. According to Schwartz-Kenney, McCauley and Epstein (2001), it is difficult to define child labour as child abuse in the global south because it is part of growing up. Okyere (2013) and White (2009) view the boundary between harmless “child work” and harmful “child labour” as problematic and blurry. The challenge, they argue, is ignoring the realities causing child labour since the African socio-cultural concept of childhood and the conflict from viewing children as universal rights bearers and not victims is at the mercy of their caregivers.

Within cultural analysis of child labour, other scholarships have considered child work as a gendered issue. Vimefall (2011) found out that having a working mother increases the probability of a girl working in Kenya with no impact on boys because the girls stand in the gap left by their
mothers at home. Boys seemed more likely to work when the family lives in the rural parts of the country, than urban set up. From a research carried out in Zambia, Reynolds (1991) found out that during the farming season, girls aged 4-8 years spent 56 percent of their waking time working, whilst boys in the same age group worked only 26 percent. However, this view of child labour as only girls’ labour is challenged. The 2005/2006 KIHBS report indicated that out of the working children recorded, 52.9 per cent were boys and 47.1 per cent were girls (ROK and ILO, 2008). On the average working hours per week, the KIHBS reported that boys worked longer hours than girls, 34 and 31 hours respectively. As such, the findings point to the fact that child labour is both a boys and girls’ issue except for domestic work which has more girls.

Generally, the literature reviewed above focuses on social economic and cultural factors that cause or sustain child labour. However, the studies have not focused on the ability of legal instruments to work in relation to child labour. The present study explores child labour as a global governance issue and how effective the child labour conventions are. This is the basis in which the researcher explored literature on global governance and politics of child labour.

1.8.4 Global Governance and International Politics of Child Labour

Other researchers have focused on global governance and the international politics of child labour. Child labour is a human rights issue (Swepston, 2009). The 1948 Universal Declaration of Human Rights (UDHR) states that a human being is born unrestricted and that a child is born with full rights. Protection from unallowed child labour as children’s rights concern therefore needs global protection like any other human right.

The challenge is that human rights conventions, including those enacted for the benefit of children and for protection from child labour have been criticised by some scholars, that they were drafted
with a Western doctrine and imposed on developing nations without their participation. Oestreich (1998) observes that the UN charter and some human rights documents were prepared without developing countries participation, which may have led to lack of cooperation in implementing the same. Dessy and Pallage (2005) and Grugel (2013) assert that universal consensus on the elimination of child labour is seen as easy to reach ‘in paper’ but the universality in enforcing remains a challenge. White (1996) dismisses the strategies adopted in elimination of child labour as out of touch with the realities of life in the global south. Grugel and Piper (2009) argue that human rights are global in paper but enforced in diverse domestic environments which then make one to question the practicality in enforcement especially when there is no global government to enforce them.

In is also important to underscore that there is a link between the enforcement of child labour laws to cultural biases on child labour. Thompson (1992), Himonga (2002), Sloth-Nielsen (2008) and Dana (2014) assert that culture is part of the legal framework in which children’s rights are enforced and cannot be ignored. In the global South, the perceptions of the roles and duties of a child differ from those in the West (White, 2002; Twum-Danso, 2009; Mavunga, 2013) just as concepts and sizes of families differ. James and Prout (1997) have proposed that attempts to eliminate child labour must be sensitive to the diversity of childhood. Himonga (2002) explores how culture acts as a major obstacle to enforcement of children’s rights in Africa. Hoffmann (1995) challenges the cultural bias and supports international regimes, stating that governments hide human rights violations behind their different orientations that do not relate with international law in their countries. For instance, the United States Department of Labour (USDOL) questions the commitment of the Kenyan governments in implementing the instruments up to the grassroots, citing the government’s reliance on volunteers to set up
programmes to eliminate child labour as counterproductive apathy (USDOL, 2011). The question here is whether human rights are universal or particular.

It is against the background of these debates that scholars have analysed the ILO conventions, which are convention on minimum wage (Convention 138) and convention on worst forms of child labour (Convention 182), the United Nations convention on the rights of the child (UNCRC) and the African charter on the rights and welfare of the child (ACRWC). This research looked beyond cultural biases and explored the communities’ views about effectiveness of these conventions and how these communal views affected implementation of the same at the grassroots. Some scholars praise Convention 138 as the convention specifically limiting minimum working age and addressing all sectors since what existed before was a minimum age convention for the main economic sectors (Creighton, 1997). Smolin (2000) and Swepston (1982) criticize Convention 138 for not defining child labour or light work, leaving it to individual countries to define yet what constitutes child labour is not standard due to the cultural deviations. This vagueness may affect implementation as most African cultures view child labour as instilling values and skills over generations (Lloyd, 2002; Celek, 2004; Nhenga-Chakarisa, 2010; Kaime, 2005 and Kaime, 2009).

In contrast, some scholarships criticize ILO’s convention on minimum wage (Convention 138) as having been drafted with a Western mind set and history, ignoring the cultural deviations of the global south (Abernethie, 1998). Related to this is the concern that the African nations were not adequately represented during the treaty making process for Convention 138, bringing what Abernethie refers to as non-inclusiveness. Bourdillion, White and Myers (2009) dismiss Convention 138 as ‘[...]exploring] romantic notions of childhood dominant in developed countries’. Swepston (1982) argues that article 5, which excludes application of the convention
from family and small-scale holdings production for local consumption and not regularly employing hired workers creates more problems for the developing nations because agriculture is considered to be their main economic activity and child labour is prevalent in that industry, a view supported by Borzaga (2008). This is particularly relevant to this work because this research is located in a predominantly small scale agricultural production area. Efforts at eliminating child labour have reported gains in the large scale agricultural sector but less focus is laid on small scale agricultural sector yet both have reported child labour prevalence (ILO, 2007). This gap justifies this research within Mathira Constituency in Nyeri County which has mainly small scale agricultural production as its major economic activity (ROK and ILO, 2008). Small scale agriculture is a less studied sector yet it is a major contributor to the export market and international trade. This sector has had a high prevalence of child labour in Kenya and justifies the study’s site. This background helped me investigate whether the domestic situations, culture and perspectives of the local communities in Kenya affect implementation of Convention 138 and other conventions.

On the other hand, some scholarships applaud ILO convention 182 on worst forms of child labour for being all inclusive. This justifies that the consensus is evident in its unanimous ratification (Myers, 2001; Noguchi, 2010). The fact that this convention bans activities instead of bracket sectors makes it popular and clear (Davidson, 2001). Noguchi (2010) also praises Convention 182 for laying emphasis on action beyond policy and legislation to measures and actions, which breaks it down to respective achievable activities. Myers (2001) asserts that Convention 182 came closer to expressing a genuinely global consensus on child labour than Convention 138 because it draws the inference between tolerable and intolerable child work. Some criticize Convention 182 as unnecessary and that there is nothing new it added to the existing labour norms of international law (Hanson & Vandaele, 2003; Mavunga, 2013). Mavunga is of the view that
the ILO delved into criminal law, which it has little experience of, suggesting it should focus on tolerable child work so as to supplement the failure by ILO convention on minimum wage (Convention 138) in defining child labour and light work. This is important for the present study because it sought perspectives on how the community understood and distinguished tolerable from the intolerable child labour.

Concerning the United Nations convention on the rights of the child (UNCRC), O’Donnell and Seymour (2004) observe that historically, it is the most ratified human rights document globally. Detrick (1999) traces the proponent of the UNCRC as Poland, which had singlehandedly drafted the UNCRC in 1978 raising the question on participation of nations as stakeholders in the convention making. Grugel (2013) and Bentley (2005) recognize the seminal importance of rights charters but also criticized the UNCRC as a relatively weak instrument in changing the material realities of vulnerable children’s lives, especially in the global south, distracting attention away from the underlying social, economic, political and cultural structures that shape them.

These observations help raise a critical question about applicability of the UNCRC in the global south. However, the fact that child labour exists even in developed countries distances child labour from being a merely socio-economic issue since developed nations like Britain had child labour against strong welfare cushions (McKechnie & Hobbs 1999). Article 5 of the UNCRC urges state parties to respect the responsibilities, rights and duties of the members of the community as provided for by local customs in the exercise of children’s rights in the convention. These observations are relevant insofar as they inform the researcher’s exploration of the effectiveness of these instruments and the perspectives of the local communities in Kenya about child labour.
The participation of children in the formulation of child labour laws, policies and implementation is a crucial principle in enforcement of children’s rights. Okyere (2013) observes that the children’s viewpoint has been largely ignored by children’s rights’ policy makers instead of deriving solutions from them as important stakeholders. Odongo (2012) is of the view that child participation requires profound changes since the prevailing socio-cultural attitudes limit the full consideration of children’s views. This study sought to find out whether Kenyan communities recognise child participation and generally rights of children as ‘free standing’ individuals rather than ‘victims of their parents’.

Scholars have also analysed the African Charter on the Rights and Welfare of the Child (ACRWC) and child labour. The ACRWC was adopted in 1990, a year after the United Nations convention on the rights of the child (UNCRC) and came into force in 1999. In its preamble, the ACRWC is aimed at reaffirming the principles of the rights and welfare of the child as stated in the UNCRC. Ncube (1998), Olowu (2002) and Kaime (2009) applaud the ACRWC as introducing an African fingerprint, alienating negative cultural practices while seeking to preserve positive traditional values. Viljoen (2007) and Keetharuth (2009) dismiss the ACRWC as a reaction to the UNCRC that is meant to demonstrate that Africa can also develop their own instruments. This observation is relevant because it helps in interrogating commitments by African governments to eliminate child labour because even after the adoption of the ACRWC, child labour persists.

The above focus on socioeconomic, cultural factors of child labour and international politics of child labour. The literature informed my thoughts about the gap on how enforceable international instruments are. My major concern was whether the local communities’ views on effectiveness of conventions and local understanding of child labour rights affect implementation of these
conventions. As such, the present study generally questioned why child labour exists in Kenya even with the conventions and local laws in place.

1.8.5 Theoretical Framework

The literature above helped and guided this study’s theoretical framework by exploring theories of international relations as its analytical tools. This section explores the various theories of international relations and analyses them as to demonstrate why constructivism theory was selected as the framework for this study. This study investigated the prevalence of child labour in Kenya and Mathira Constituent in particular. The study also critically analysed the extent to which conventions on child labour are effective in Kenya and examined the factors influencing the implementation of these conventions in Kenya.

The realism theory of international relations presupposes that states are the main actors in the global arena and that it is all about the states’ military and economic power. The limitation in this theory is that child labour is far from states’ and military power as most of it is obscured and enforcement is at the grassroots involving a web of stakeholders other than the state. On that basis, this work could not fit in realism theory. This then led the researcher to look at liberalism theory which postulates that human nature is peaceful, that freedoms are critical and should be guaranteed through collective normative values and standards set by IGOs such as the ILO. The lack of a global government hinders the effectiveness of international organizations in enforcing standards due to state sovereignty. Child labour persists even with existence of ILO, showing that the existence
of IGOs is not enough to eliminate child labour. This study could not fit in the liberal institutionalism theory because child labour exists despite the international regime.

The Marxist theory emphasizes the economic class between the owners of capital (bourgeoisie) and workers (proletarian). In this way, the theory implies that only children from the poor ‘lower’ class families work for wage. In Marxism, materialism drives the world. This notwithstanding, available literature extensively discussed in the literature review section indicates that child labour persists even in the ‘upper’ economic classes and that children of the wealthy also work for gain, alienating this work from Marxism. Close to this is the feminism theory which associates global issues on gendered perspectives. Feminists elaborate on gender role and see patriarchy as a feature of capitalism which presupposes that child labour is a girls’ issue. Literature has shown that even boys work therefore removing primary focus of this study from the feminism theory.

Constructivism theory generally holds that social reality such as the international system does not exist objectively outside a social setting. Instead, it is socially constructed and that it exists in so far as people have a shared understanding of it (Walt, 1998). Constructivism argues that identities and interests in international politics are not stable; they have no pre-given nature but are socially constructed. The identity of the sovereign state just as identity and interest of international anarchy is socially constructed- it is what states make it. These identities are made or produced in and through specific international interactions (Onuf, 1989; Wendt, 1992). It focuses on the building of social norms and how these norms influence actors. Constructivists view international law's real force as
its ability to reshape the discourse of states’ conception about what is possible and desirable in international relations. The constructivists view asserts that international law is most effective when it ceases to be part of the calculation, when the rules of international law become so deeply internalized that they are followed simply as a matter of course (Cohen, 2009). This research contributed to the constructivism theory of international relations. Constructivism helped the researcher’s understanding of international law and the manner in which this theory could be domesticated in particular specific situations. Constructivism is relevant in interrogating the implementation of conventions because conventions are presented as universal standards or laws applied in local situations but have not succeeded to eliminate child labour. This is because the local conception of these standards may not necessarily agree with global understanding of the same. This study investigated how the local communities in Kenya perceive child labour and how that influences the implementation of international instruments.

1.9 Research Methodology

1.9.1 Introduction

This sub-chapter explains the phases, procedures, techniques and research methods used in data collection, analysis and interpretation in order to complete the study.

1.9.2 Research Design

The study adopted an exploratory and descriptive design because the research is both quantitative and qualitative. This research obtained empirical data from heads of households and children found in the surveyed homes to assess the extent of child labour in Mathira Constituency in Nyeri County. In order to understand the perceptions of the
local communities about child labour laws and also factors affecting implementation of these laws, the researcher also obtained qualitative data using interviews from children, parents, teachers, chiefs, senior public administrators, children’s officers, labour officers, police officers, judicial officers, employers, senior staff of employers’ organisations, officials from employees’ trade unions, senior staff of Non-Governmental Organizations (NGOs) dealing with children’s rights in the area, an area advisory council (AAC), a local child labour committee (LCLC) and Members of Parliament.

1.9.3 Variables/Categories of Analysis

The dependent variable was child labour. The independent variables were international instruments on child labour and perspectives on child labour and laws.

1.9.4 Site of the Study

The research was a survey of child labour as a global issue, therefore difficult to locate a site of study. Mathira Constituency within Nyeri County was purposively sampled due to the economic activities- small scale commercial agriculture and its accessibility to the researcher. Mathira being an agricultural county offered an ideal environment for research because the export income from tea, coffee and horticultural crops create global capital interests in international trade. While previous studies in this area focused on commercial large scale agricultural holdings, the present study focused on a small scale agricultural zone. Appended to this work is a map of Kenya zooming in Nyeri County and a map of Mathira constituency.
1.9.5 Study Population

Kenya has a population of 38, 610, 097 people (ROK, 2012). The accessible population of 148, 847 from Mathira Constituency (ROK, 2012) was targeted in this study out of which a sample size of 148 participants was selected.

1.9.6 Inclusion and Exclusion Criteria

The participants included in the study were children and the heads of the households they lived in. Additional data was collected from children and those who have a duty under the Constitution, the Basic Education Act, the Children Act and the Employment Act to reduce child labour (duty bearers). The duty bearers were parents, teachers, chiefs, senior public administrators, children’s officers, labour officers, police officers, judicial officers, employers, employers’ organisations, employees trade unions, Non-Governmental Organizations (NGOs) dealing with children’s rights in the area, Members of Parliament, members of the Area Advisory Committee (AAC) and members of a Local Child Labour Committee (LCLC). Participants outside Mathira Constituency, except selected national officers and those who declined to participate were excluded.

1.9.7 Sampling Techniques and Sample Size

1.9.7.1 Sampling Techniques

The sample was purposively selected from the target population using non-probability sampling method and snowballing technique for both qualitative and quantitative data. After clearing with the Nyeri county commissioner and county director of education, the research team proceeded to Mathira Constituency. Mathira Constituency has 2 sub counties so the team cleared with the 2 sub county commissioners and sub county
education officers and was authorised to proceed to the field. Mathira constituency has 6 wards. To achieve the desired representation from all the wards and to make the sample as representative as possible, participants were drawn from each ward. The entry point was the chiefs’ offices of the various locations. The elders and chiefs found at chiefs’ offices in the study site helped identify the children and parents for the study sample. After that, the researcher reached out to other participants using the snowballing technique. The researcher traced most of the key informants through the county and sub county offices. For the few national officers, clearance was sought from the Nairobi county commissioner and county director of education only and contacted the officers directly.

1.9.7.2 Sample Size.

148 participants were purposively sampled from Mathira Constituency though a few key informants were national officers. For the household survey, 78 children were sampled through the consent of their heads of households. For the in-depth interviews, 70 participants consisting of 12 children, 12 parents, 6 teachers, 6 chiefs, 2 senior public administrators, 2 children’s officers, 2 labour officers, 2 police officers, 2 judicial officers, 4 employers, 2 senior staff of employers’ organisations, 2 officials of trade unions -employee organisations, 2 senior staff of NGOs dealing with children’s rights in the area, 2 Members of Parliament, 6 members of the AAC and 6 members of the LCLC.

1.9.8 Construction of Research Instruments

I drafted two instruments to collect data. These were a questionnaire which was used to collect empirical data from the children through their households’ heads and an interview
guide which was used to collect qualitative data from children, parents and key informants. The instruments had both open ended and closed questions. The researcher ensured that the instruments were brief and clear, guided by research questions, objectives and variables.

1.9.9 Pilot Study
A pre-test of the research instruments was done in order to identify their reliability and potential problems for improvement ahead of the actual study.

1.9.10 Validity
The researcher ensured that objective questions were used in the research instruments based on the research objectives and variables. I analysed instruments and removed subjective, ambiguous, awkward or inappropriate questions.

1.9.11 Reliability
The researcher ensured the questions were accurate, brief and clear. She also ensured they collected quality data, guided by the three research objectives, variables and indicators.

1.9.12 Data Collection Techniques
I collected quantitative data on prevalence of child labour using questionnaires. The researcher hired a research assistant to assist in distributing the questionnaires. At the end of each day, all the questionnaires were checked for feedback. The questionnaire was in English and was coded. The researcher tried a hand delivery and collection on the same day method but where it was impossible, the questionnaires were collected the following day. Qualitative data on communities’ perspectives was collected using semi structured interview guide and researcher’s observation.
I did not use a research assistant for the interviews. I interviewed ‘live’ and did a voice recording to ensure accuracy and reliability. For the convenience of the respondents, I at times discussed in mother tongue to get accurate responses related to the scope of the research. Each day, I did a transcript of the voice records and processed the photographs taken for the day.

1.9.13 Data Analysis
The quantitative data from questionnaires was summarized, coded and tabulated to give the statistics on prevalence of child labour. The qualitative data from interviews was analysed to identify perspectives on child labour and categorise themes. The concurrent mixed analysis method was used to merge the quantitative and qualitative data. I blended secondary data with primary data to compare and contrast the two. Quantitative data was presented in pie charts, bar charts and pictures, percentages, frequency tables. I used voices and themes for the qualitative data in order to capture the interviews well.

1.9.14 Data Management and Ethical Considerations
I sought approval from Kenyatta University and obtained a research permit from the National Commission for Science, Technology and Innovation (NACOSTI). I also explained to the participants about the study and sought their informed consent beforehand. Participants were allowed to discontinue without any penalty, if they wished. I assured them of confidentiality and kept the filled instruments under lock and key. I coded the instruments to protect the identity of the participants. No payment or incentives were given or promised to participants.
1.10 Structure of Thesis

The study is divided into six chapters. Chapter 1 covers the background of the study; statement of the problem; objectives of the study; research questions; research assumptions; justification and significance and scope and limitation of the study. Chapter one also reviewed relevant literature, justified the theoretical framework that guided the study and explored the research methods used for the study. Chapter 2 will assess the prevalence of child labour in the area; present the profile of the participants and the data on child labour, from Kenya and down to Mathira constituency, the site of study.

Chapter 3 critically analyses the effectiveness of international instruments on child labour, explores child labour as an international human rights issue and later assesses domestication of conventions and explores the politics of their enforcement. Chapter 4 will examine the factors influencing implementation of international instruments, looking at both the factors causing or sustaining child labour and factors influencing implementation of child labour conventions. In this chapter, I shall also assess the expectations of children, the parents, other duty bearers and the local communities in which human rights are enforced in at the lowest level. Chapter 5 deals with the discussion of the findings of the study; systematically revisiting the objectives of the study, answering the research questions. The chapter also either proves or nullifies the assumptions of the study and properly places this work various theories of international relations, putting into perspective my choice of theory for this research. Chapter 6 is a conclusion of the study as it provides summaries of findings, conclusions and recommendations.
CHAPTER TWO: PREVALENCE OF CHILD LABOUR

2.1 Introduction

This chapter investigates the prevalence of child labour in Kenya with specific focus on Mathira Constituency. Child labour continues despite existence of international human rights instruments regulating it. To understand the phenomenon, I first assessed the number of children involved in child labour (prevalence) from Mathira Constituency, Nyeri County, indicators and the consequences of the same.

In the research, I used the description ‘waged work for children’ and ‘child employment’ for the study, rather than ‘child labour’ to avoid being judgemental or offensive because child labour generally describes a criminal offence. From the onset, of critical note that neither the ILO nor the local laws in Kenya conceptualise family work as child labour, yet some family work causes absenteeism or harm to children (Swepston, 1982; Borzaga, 2008, Seiichi, Kana & Phoumin, 2013). This overview helped to present the characteristics of households in which child labour was prevalent, incidence of child labour, forms of child labour, nature of the work done by children, hours of work compared to age and the consequences of children’s work compared to local, regional and global trends.

2.2 Profile of Sampled Households

Literature in chapter 1 showed that some of the factors causing child labour are poverty, educational opportunities, family structure or parents’ attitudes (all socio-economic) and
cultural factors such as gendered labour roles. In the current research, biographical profiling of the sampled household heads by sex, age, education levels and income provided data that helped probe and analyze the factors causing child labour in the area. I also obtained data on the distribution of all sampled children by age, sex and school attendance, amongst other indicators.

2.2.1 Distribution of Bread Winners by Sex

The study assessed the distribution of the breadwinners found in the households by their sex. Figure 2.1 below shows the findings.

![Figure 2.1](image)

**Figure 2.1**

*Distribution of bread winners by sex*

(Source: Field Survey, 2016)

The findings were that 53%, which is majority of the families in the study had both mother and father as the bread winners, 33 % had mothers and 14 % had fathers as breadwinners. This shows that there were much more homes with female breadwinners compared to
those that had fathers, actually more than double. The report of the Kenya Integrated Household Budget Survey (KIHBS) indicated that 32.5 per cent of the working children were from female-headed households, a factor contributing to child labour because there was no second parent to supplement income (ROK & ILO, 2008). The data compares with the KIHBS, at 33 per cent for female breadwinners and likely to increase the number of working children in the locality.

2.2.2 Distribution of the Heads of Household by Age

I also sought to know the age of the heads of households in order to assess if there were children heading households. Table 2.1 below summarizes the findings.

Table 2.1 Distribution of heads of households by age

<table>
<thead>
<tr>
<th>Age Bracket (years)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 18</td>
<td>0</td>
</tr>
<tr>
<td>18- 35</td>
<td>17</td>
</tr>
<tr>
<td>36-45</td>
<td>29</td>
</tr>
<tr>
<td>46-55</td>
<td>38</td>
</tr>
<tr>
<td>Over 55</td>
<td>16</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

What emerged is that no head of household was less than 18 years. 17 % of the heads of households were aged between 18 and 35 years. 29% were aged between 36 and 45 years.
38% were aged between 46 and 55 years. 16% were over 55 years. From the interviews, I found some orphaned children who worked for wage to supplement their relatives’ income but lived with their relatives (Personal Interviews, 6th -13th August 2016). This varied from the KIHBS report which had children as heads of households who were mainly orphaned children whose only method for survival was child labour (ROK & ILO, 2008).

2.2.3 Distribution of the Household Heads by Education Level

I also sought out information on the level of education attained by the heads of households in order to assess whether the level of education or attitude contributed to child labour. The findings are presented in table 2.2 below.

Table 2.2 Education Levels of Heads of Households

<table>
<thead>
<tr>
<th>Education Level</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below Standard 8</td>
<td>27</td>
<td>34.5</td>
</tr>
<tr>
<td>Primary education (KCPE)</td>
<td>33</td>
<td>41.9</td>
</tr>
<tr>
<td>Secondary Education (KCSE)</td>
<td>16</td>
<td>21</td>
</tr>
<tr>
<td>College</td>
<td>2</td>
<td>2.6</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

I found that 34.5 per cent of the heads of households did not have a primary education certificate. Majority of the house hold heads, which is 41.9 per cent had finished primary education (KCPE). 21 percent had finished secondary education while 2.6 percent had
finished college education. Vimefall (2011) had used data from Kenya to conclude that one of the main determinants of working children in Kenya is the educational status of the household head. Emerson and Souza (2002) used data from Brazil to conclude the same for Brazil. Bhalotra and Tzannatos (2003) and Basu and Tzannatos (2003) exemplify the same point that well-educated parents are more likely to ensure that their children similarly receive good education, creating a virtuous cycle and breaking dynastic traps of child labour. What this means is that the household heads in the area held lower educational qualifications, a factor more likely to encourage child labour in the area. These findings helped in chapter four, to probe the attitude of parents and the community towards education and effect on child labour.

2.2.4 Average Daily Income of Breadwinners

In order to assess the poverty levels of the sample, the questionnaires sought the average daily income of bread winners in the households. The findings are shown in figure 2.2.

![Figure 2.2](image)

*Figure 2.2*

*Average daily income of the bread winner in Kshs.*

(Source: Field Survey, 2016)
The findings reveal that majority of the household breadwinners, which is 41 percent earn Kshs. 201-400 per day, 26 per cent earn Kshs. 401-600, 14 per cent earn Kshs. 601-800, 11 per cent earn Kshs. 801-1000 and 3 per cent earn above Kshs. 1000 per day. 5 percent earned less that Kshs. 200 per day, implying that these families live on less than 1.90 dollars a day, which is the general filter this research adopted for poverty line as guided by the World Bank (World Bank, 2016). The 2005/2006 KIHBS reported that household spending power plays an important role in child labour with about half of the working children (48.9 per cent) coming from households with a monthly expenditure of less than Kshs. 6,001 per month or Kshs. 200 a day (ROK & ILO, 2008). 1 in 10 people in the world live under $1.90 a day, half of them in Sub-Saharan Africa, where Kenya is located (World Bank, 2016).

Compared to both the KIHBS report and the global rates, the area of study generally reported less poor people. Going by this finding of a small number of poor people in the area alone, then child labour should not be rampant. The low daily income of a comparatively small proportion of the heads of households shows that poverty is a less significant factor in child labour in the area. The finding did not concur with scholars who assert that poverty is the main cause of child labour (Basu, 1999; Cockburn, 2001; Harsch, 2001; Suda, 2001; Delap, 2001; Admassie, 2002; Basu and Tzannatos, 2003; Edmonds, 2007; Bhalotra, 2007; Odongo, 2012). The findings concur with Edmonds and Turk (2002), Bhalotra and Heady (2003), Nguyen and Quan (2003), Ganglmair (2006) and Shafiq (2007) and that poverty is not the main cause of child labour. This discord helped
to further probe the other factors at play as it is fairly established that poverty is a major contributing factor in child labour.

2.2.5 Distribution of Children by Age

The questionnaire also investigated the age of children because there are legal limits for allowable work by children in Kenya. The results are as shown in table 2.3.

<table>
<thead>
<tr>
<th>Age of the Child</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 13 Years</td>
<td>18</td>
<td>23.4</td>
</tr>
<tr>
<td>13-16 Years</td>
<td>43</td>
<td>54.5</td>
</tr>
<tr>
<td>16-18 Years</td>
<td>17</td>
<td>22.1</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

Data showed that majority of the children who participated in the study, which is 54.5 per cent were aged between 13-16 years, an age category where the law allows only light work. 23.4 per cent were aged below 13 years, a category where no work is allowed at all and 22.1 per cent of the children were aged between 16-18 years, the category where waged work is generally allowed under certain conditions. This variation in age distribution shows that the sample had all age categories, helping validate the data.
2.2.6 Distribution of Children by Sex

In order to answer the question whether child labour is a girls’ problem or a boys’ problem, I sought to classify the sampled children by sex. Table 2.4 shows the distribution.

Table 2.4 Distribution of children by sex

<table>
<thead>
<tr>
<th>Sex of the Child</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>46</td>
<td>58.4</td>
</tr>
<tr>
<td>Female</td>
<td>32</td>
<td>41.6</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

It emerged that majority of the sampled children, which is 58.4 per cent per cent were male. 41.6 per cent were female. The sample had both sexes, again helping validate the sample and setting the pace for analyzing the gender factor of child labour in chapter four of this study.

2.2.7 Distribution of Children by School Attendance

The questionnaires also sought to know how many sampled children were enrolled in school because in defining child labour, any work that causes a child to skip school is classified as child labour (ILO, 2004). Figure 2.3 displays the percentage of the children who attended school.
Figure 2.3

*Distribution of children by school attendance*

(Source: Field Survey, 2016)

It is seen that majority of the sampled children, which was 79 per cent attended school and 21 per cent did not attend school. The data shows that children are out of school despite free primary education (FPE) and compulsory basic education that is guaranteed in Article 53 of the Constitution and the FPE policy in Kenya. The findings of this study sharply contrast with the empirical data from the 2005-2006 report by KIHBS, which showed that Central Province of Kenya had an enrolment rate of 90.3 per cent (ROK & ILO, 2008). These findings tell that it is not enough to provide FPE. They also help probe the other factors keeping children away from school, other than inability to pay school fees in chapter 4. They also helped assess the views of the participants about other school expenses other than fees.
2.3 Number of Children Who Had Worked

This study sought to investigate the prevalence of child labour and how it is manifested in the area. This research assessed the number of children who had worked for wage and the type of work done in order to analyse the factors encouraging child labour and the solutions.

2.3.1 Children Who Helped with Work at Home

The questionnaires asked the children whether they helped their families with work at home, either after school or during school time. Figure 2.4 shows the findings.

![Figure 2.4](source: Field Survey, 2016)

<table>
<thead>
<tr>
<th></th>
<th>BOYS</th>
<th>GIRLS</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>15.3</td>
<td>3.1</td>
</tr>
<tr>
<td>YES</td>
<td>84.7</td>
<td>96.9</td>
</tr>
</tbody>
</table>

More girls, which is 96.9 per cent are engaged in work at home compared to boys, with 84.7 per cent. These findings demonstrate that girls are more at risk of working at home compared to boys. These findings concur with those of Suda (2001), Vimefall (2011 and 2005-2006 KIHBS report (ROK & ILO, 2008) that girls were at a higher risk of doing
household chores and family work than boys because girls bear the burden of domestic chores.

2.3.2 Children Who Skipped School to Work at Home

Out of the children who had helped with work at home, I sought to find out how many had skipped school in order to work at home and why they skipped school. Figure 2.5 summarizes the findings.

![Figure 2.5](image)

**Proportion of children who skipped school to work at home**

(Source: Field Survey, 2016)

I found out that 47.3 per cent of the boys and 46.9 of the girls had skipped school to help with work at home. The findings show that both genders skipped school to help at home; and that family work can keep children away from school too. These children, skipped schools mainly because the parents asked them to help at home or because the education was not as motivating (Personal Interviews, 6th -13th August 2016). These findings also show that many children had skipped school to work at home and concurs with Seiichi, Kana and Phoumin (2008) that it is the family holdings that take up majority of the child
workers. The findings also concur with those of the 2005/2006 KIHBS report which showed that majority, or 64.4 per cent of all working children were unpaid family workers (ROK & ILO, 2008).

2.3.3 Children Who Had Worked for Wage

In the questionnaires, I sought to know the percentage of children who worked and were paid. Children were simply asked if they had worked for wage. This would help me later analyze the children working in what is strictly classified as unlawful employment in the Employment Act. The findings are in Table 2.5 below.

Table 2.5 Children Who Had Worked for Wage

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
<td>71</td>
<td>91</td>
</tr>
<tr>
<td>NO</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

From the findings, 91 per cent of the sampled children had worked for wage whereas 9 per cent had not worked for wage. This number points to a very high prevalence of children who had worked for wage. In the interviews, each of the 70 informants said they had seen child employment in the area, though mainly as casual workers (Personal Interviews, 6th –13th August 2016). Most of the key informants linked the high employment rate to the high labour demands in the tea and coffee farming which is the
main economic activity in the area (Personal Interview, 6th -13th August 2016). A chief (Personal Interview, Thursday, 11th August, 2016) attributed child employment in his location to horticulture being the main economic activity in the area by pointing out that:

This place is called Canaan because of how productive it is. We get an influx of workers including children in the horticultural farms throughout the year. It is a pity that because so much money flows here from horticulture, some teenage girls have learnt prostitution at an early age, mainly those whose mothers are also in the trade.

In a different location, another chief’s elder (Personal Interview, Monday, 8th August, 2016) lamented how the bodaboda business had distracted the children because ‘no academic certificate was needed to ride it except a driving license which anyone can get’. The high statistics could be linked to majority of the sampled children saying they had worked for wage during school holidays and not school time (Personal Interviews, 6th-13th August, 2016). In a focus group discussion by children (Focus Group Discussion, Sunday, 7th August 2016), most excitedly shared how they had at one time or another worked ‘to earn some coins and buy their own things’ during the school holidays. The findings are comparable to the KIHBS report, where working children were mainly from the rural areas, at 88 per cent (ROK & ILO, 2008). As such, the findings of this study in Mathira constituency, a mainly rural set up are in tandem with the above report.
2.3.4 Children in Unlawful Employment

Out of the children who worked for wage, I sought to establish their age and the hours they had worked in order to identify those in unlawful employment. The minimum age for children’s work in Kenya is 13 years, meaning no child under that age should be employed. Normal working hours in the Labour Institutions Act, 2007 are approximately 8 hours (ROK, 2007). This means no child should work above 8 hours. The Employment Act allows only apprenticeship and light work for children aged 13 and 16 years. Apprenticeship is not limited but light work is generally understood in the regulations to be work not exceeding 2 hours. This means no child aged between 13 and 16 years should work for more than two hours unless they are on apprenticeship. I did not encounter any apprentice from the sample. These thresholds helped me analyse how many children, out of those who had been employed, would be termed as being in unlawful employment. Table 2.6 displays the children in unlawful employment strictly by age and hours only.

Table 2.6 Distribution of Waged Work by age and hours

<table>
<thead>
<tr>
<th>Age</th>
<th>Those who did not work</th>
<th>Hours Worked</th>
<th>Percent in shaded area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Less than 2</td>
<td>2-8</td>
</tr>
<tr>
<td>Below 13 Years</td>
<td>2</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>13-16 Years</td>
<td>3</td>
<td>13</td>
<td>21</td>
</tr>
<tr>
<td>16-18 Years</td>
<td>2</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Frequency</td>
<td>7</td>
<td>20</td>
<td>37</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)
From the findings, those children aged less than 13 years (a category where no work is allowed) yet had worked were 20.5 percent of the sampled children. The children aged 13 to 16 years (the category where only light work is allowed) and had worked for more than 2 hours were 34.6 per cent of the sampled children. The children aged above 16 years and had worked overtime, which is considered irregular made 7.7 per cent of the sampled children. These findings demonstrate that 62.8 percent of the sampled children worked outside the allowed hours.

This can be said to be unlawfully employed children. The study also established that majority of the children that had been unlawfully employed were in the category of 13 to 16 years. Generally, there were fewer children working overtime in the under 13 year’s categories compared to the 13-16-year olds and those above 16 years, who had the same numbers. The number of hours worked did not fully increase with the age of the child, it actually declined for those above 16 years. The findings did not concur with the KIHBS 2005/2006 report where the average number of hours worked increased with rise in age (ROK & ILO, 2008).

I was able to summarise the aggregate number of children involved in what is classified as unlawful employment in the Employment Act. The data is presented in Table 2.7 below.
Table 2.7  
*Classification of Unlawfully Employed Children*

<table>
<thead>
<tr>
<th>Categories of employment</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not economically active</td>
<td>7</td>
<td>9.0</td>
</tr>
<tr>
<td>Allowed employment</td>
<td>22</td>
<td>28.2</td>
</tr>
<tr>
<td>Unlawfully employed</td>
<td>49</td>
<td>62.8</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

The findings were that 9.0 per cent of the sampled children had not worked for wage, 28.2 per cent had worked in what is classified as allowable employment and 62.8 per cent were in what is classified as unlawful employment. The upshot of this is that 62.8 per cent of the sampled children had been unlawfully employed, what is known in other words as child labour. The high statistic could be linked to majority of the sampled children saying they had worked for wage during school holidays and not school time (Personal Interviews, 6th-13th August, 2016). In a focus group discussion by children, most excitedly shared how they had at one time or another worked ‘to earn some coins and buy their own things’ during the school holidays. One child was too particular that she had never ‘touched money and when she worked during the holiday, she was rewarded by the employer and bought the ‘most special dress on earth’ (Personal Interview, 9th August, 2016).
From the data, the prevalence of children who had worked for wage in the area of study was found to be much higher than that in KIHBS report, which had 14.7 per cent and an extra 10.7 per cent who were running their own businesses (ROK & ILO, 2008). These findings also sharply contrast with global and regional trends, where ILO reports that 11 percent of the world children are engaged in child labour and sub Saharan region, where Kenya lies had 21 per cent incidences (ILO, 2013). The high variance of this study’s data away from the local, regional and global trends helped me reflexively inquire the underlying causes in chapter four of this study and also reinforced the move from liberalism theory, as clearly the statistics on child labour were quite high and did not support the utopic assumption of bliss within international regimes.

2.3.5 Sectors that Employed Children

I further sought to assess the kind of work that children were employed to do. The sectors are presented in figure 2.6 below.

Figure 2.6

Sectors That Employed Children

(Source: Field Survey, 2016)
I found out that children worked for wage in many sectors of the economy but four main sectors stood out and were domestic, agricultural, commercial, and transport sectors. The domestic sector had 27 per cent boys and 73 per cent girls. From the FGDs and interviews, many parents concurred they had encountered situations where children were babysitting, fetching water for domestic use and housework.

One teacher painfully narrated how she had rescued a girl pupil who had been working as a house girl in town instead of schooling and had managed to place her back in school (Personal Interview, 7th August, 2016). The agricultural sector had 53 per cent boys and 47 per cent girls. The respondents and mainly chiefs said they had seen children engaged in coffee picking, tea plucking, delivering the produce to the collection points, cattle herding and milking, digging farms, avocado picking and tree pruning (Chief, Personal Interview, 8th August, 2016). One chief said his area had an influx of child workers because of readily available labour demand in the horticultural zone but by default this also increased child prostitution because of ‘easy money flow’ (Chief, Personal Interview, 11th August, 2016). These findings were consistent with the KIHBS report (ROK & ILO, 2008) that 88 per cent of the child workers were from the agricultural sector.

The commercial sector had 58 per cent boys and 42 per cent girls. One teacher said she had seen bar attendants, hawkers, quarry workers, mjengo workers, shop attendants, green grocers, bhang (cannabis) peddlers, tree loggers, charcoal burning, child prostitutes and acrobatics (Teacher, Personal Interview, 10th August, 2016). I noted that bar attending,
bhang (cannabis) peddling and child prostitution are criminal under Kenyan penal laws. They also count as worst forms of child labour under the Employment Act and also ILO Convention on worst forms of child labour (Convention 138). Therefore, by having children engaged in such forms of labour infringes on their rights as stipulated by international conventions on human rights.

In the transport sector, 72 per cent of those involved were boys and 28 per cent were girls. Some chief in a baraza were agitated to report how the transport sector ‘absorbed underage boys’ as bodaboda riders, in car washing and matatu conductors. From interviews with parents, teachers and administrators, the respondents were generally unhappy with the bodabodas, arguing that bodabodas were the main cause of teenage boys dropping out of school and in the words of one elder, were good for nothing. (Elder, Personal Interview, 8th August, 2016). A teacher lamented that the bodabodas had created a perception that the children did not need an education to ride them. This scenario has led to high school dropout rate especially for boys in the region (Teacher, Personal Interview, 7th August, 2016). One parent (Personal Interview, Monday, 8th August, 2016) had this to say about bodabodas:

These things are terrible. They have replaced education as our young ones see no need for certificates. The government should place a minimum KCPE to make sure our children finish at least primary school before riding bodabodas

One chief was so agitated by the role of the car wash businesses that he had taken it upon himself to inspect a nearby car wash every day to ensure that boys were not cleaning cars
(Chief, Personal Interview, Thursday, 11\textsuperscript{th} August, 2016). There was a sharp contrast between girls and boys in the domestic sector and the transport sector. The domestic sector had 27 per cent boys and 73 per cent girls whereas the reverse was nearly accurate in the transport sector with 28 per cent girls and 72 per cent boys. The agricultural and commercial sectors had a nearly equal representation of waged workers across genders.

The researchers’ own experience was that girls were more engaged in domestic work such as fetching water and babysitting than boys. The findings showed that girls were mainly engaged in domestic work while boys were mainly engaged in the transport sector, such as the \textit{bodaboda} riders and matatu conductors. These findings coloborate those of the 2005/2006 KIHBS report, that the proportion of girls employed in activities traditionally dominated by boys such as construction, mining and quarrying was low and that girls mainly were engaged in social and personal services work especially in domestic, hairdressing and beauty shops (ROK & ILO, 2008).

2.3.6 Children Who Skipped School to Work for Wage

By definition, child labour also includes work that causes school absenteeism. Therefore, I sought data on children who skipped school to work for wage and tabulated the findings in figure 2.7 below.
I found out that 42.1 per cent of the girls skipped school in order to do waged work. 57.9 per cent of the girls did not skip school to do waged work. More boys, 55.6 per cent skipped school in order to do waged work. 44.4 per cent did not skip school to work for wage. This shows that boys were more likely to skip school to do waged work than girls. This was confirmed by interviews from some of the older children who said employers preferred boys to girls especially in coffee picking, mjengo and other heavy work because boys were ‘perceived as more energetic and strong’. One boy laughed about girls being seen as time wasters in coffee picking because of their physique they were more delicate (Child, Personal Interview, 11th August, 2016). Some parents shared similar sentiments about the higher risk of employment that boys faced for waged work compared to girls. One parent was quick to point out that the survival attitude of boys had caused them a lot.
in life, including working ‘before their time’ (Parent, Personal Interview, 10\textsuperscript{th} August, 2016).

### 2.3.7 Occupational Safety and Health (OSH) Hazards of Child work

I sought to find out the general hours children worked for wage in the area of study in order to establish if some had worked over time. The findings are in Figure 2.8 below.

![Figure 2.8](image)

**Figure 2.8**

*Hours worked by children daily*

(Source: Field Survey, 2016)

I found out that 9.00 per cent of the children had not worked. 25.6 per cent of the children had worked up to 2 hours, which is generally considered light work as long as the children are over 13 years. 47.40 per cent of the children had worked between 2-8 hours, which is considered regular working hours. Only 18.00 per cent of the children had worked for over 8 hours, which is considered over time under the Employment Act (ROK, 2007). These findings compare well with the KIHBS report, whereby working children were employed for an average of 33 hours per week. For overtime, 18.00 per cent seems a
relatively high number for children to do over time and one parent who is a nurse said, their bones are not fully developed, posing an occupational hazard (Parent, Personal Interview, 7th August, 2016). Some of the children interviewed said they were sensitive to the working hours and one child emphasized he would not wish to ‘harm his back’ with extra hours and he would rather earn less money (Child, Personal Interview, 11th August 2016). An older boy said he had been injured while trimming tree branches, fractured a hand and got a deep cut on the forehead and got occasional seizures as a result (Child, Personal Interview, 8th August, 2016).

The key informants were generally sensitive to hours and as one chief observed, though holiday work seemed acceptable, they were keen to enforce working hours so that children are not harmed (Chief, Personal Interview, 11th August, 2016). The county labour officer was of the same view about decent work and protection of children where they have to work (Labour officer, Personal Interview, 12th August, 2016).

The research also sought to establish whether children working at home or for wage outside home were given protective wear. In order to assess the other hazards for working children, other than over time. Figure 2.9 shows the findings.
Majority of 69 per cent out of the working children were not provided with protective clothing. Only 31 per cent were provided with protective clothing. I also sought to know the safety and health problems (hazards) met by children while working in the area. The findings on hazards are presented in table 2.8.

**Table 2.8 Hazards of Child work in the Area**

<table>
<thead>
<tr>
<th>Adverse Effect</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chest and Cold Related Illnesses</td>
<td>14.1</td>
</tr>
<tr>
<td>Backache and Head Ache</td>
<td>28.2</td>
</tr>
<tr>
<td>Insect, Spiders and Snake Bites</td>
<td>5.1</td>
</tr>
<tr>
<td>Cuts and Bruises</td>
<td>34.6</td>
</tr>
<tr>
<td>Verbal Abuse, Torture</td>
<td>18.0</td>
</tr>
<tr>
<td>None</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)
Table 2.8 above shows that a considerable number of children, which is 34.6 percent sustained cuts and bruises from pangas, fork jembes and other tools of trade. 28.2 per cent experienced backaches and headaches. 18 per cent of the working children were verbally abused. Of the sampled children, 14.1 per cent got colds, flu and chest related illnesses while 5.1 had insect bites. It is shown that all children who had worked either at home or outside had been exposed to hazards. In the interviews, I asked respondents about the greatest risks for working children in the area. One of the parents was a nurse who indicated that the cold weather reported in Mathira Constituency, at the foot of Mount Kenya area had adverse effects on the working children, who mainly contracted colds and flu (Parent, Personal Interview, 7th August, 2016). The parent expressed fear that when children pick dew infested tea and coffee on early mornings without protective or water proof gears, this causes numbness and in her own words ‘hurt their young nerves’, cause colds, flu and other chest related infections. Most of the children who had plucked coffee berries narrated incidences that they had to do so under heavy rains. One boy thought the farm owners were more concerned about ‘not harvesting ripe berries that day’ than minding the colds, flu and chest infections that the children were exposed to (Child, Personal Interview, 13th August, 2016). These findings on health hazards on working children in Mathira Constituency emerge against the principle of rights enforcement in Kenya. This therefore underscores the need to safeguard the best interests of the child in protecting the young people.
As I sought to understand the hazards posed in the area of study, I took a photograph of tea bushes in the area as shown in figure 2.10.

Figure 2.10

*Photograph of a tea plantation in Mathira Constituency.*

(Source: Field Survey, 2016)

In figure 2.10 above, the snow-capped Mount Kenya could be seen in the background to the tea farm, corroborating the nurse’s concerns that the area could get very chilly in the morning. The parents’ FGD also explored the spill over effects of child labour as suicide and suicidal tendencies. One elderly parent shared an instance of a child who was constantly not allowed in school because of finances and was forced ‘to work to get school fees but did not like it’ (Parent, Personal Interview, 7th August, 2016). Raising concern of the urgent need to help the child, another parent said in frustration:
All we now wait is for that child to hang herself out of stress, because she has threatened to do so and we cannot watch her 24 hours as if we are the police force of the village yet we have our own problems to sort.

In one of the interviews with a child, he recounted how he had had fallen from a tree while pruning the branches three years before, he got a deep cut from the *panga*, retaining what he branded as ‘an ugly scar’ and seizures after that (Child, Personal Interview, 8th August, 2016). The same child emphasized this way on the psychological effect of child employment:

> I get lonely working amongst adults who talk about politics mainly, I miss my peers and wish there was anything I could do to have peer company so that we can talk about soccer matches, more childlike discussions and our future.

I interviewed 17-year-old twin boys who were known in the village as the champions of coffee picking and they were bothered about the hazards at work. One of the boys (Child, Personal Interview, 13th August, 2016) said:

> You think our frequent employer cares about our hard work? She snaps at us even when we break the coffee branches by accident...very nasty...it is baptism by fire and we only return to her farm because we have to supplement the income for our single mother in order to complete secondary education.

Clearly, there were serious hazards for working children in the area. Some were physical injuries, illnesses while others were psychological stress. These hazards exist despite legal conditions that child employment should not be detrimental to the child’s health,
safety and development. As shown in these findings, there was high rate of child employment, which should open the eyes of the duty bearers to ensure that where children must work, then the work is decent and not hazardous, to reduce child labour and assure children’s rights.

2.4 Conclusion
From the findings, the children who work for wage in the area of study were 91 per cent. 9 per cent had not worked for wage. Out of these 62.8 per cent were in what is generally classified as unlawful employment and 28.2 per cent were in allowable employment. The kinds of waged work that children did were in the domestic, agricultural, commercial and transport sectors. There were children who had done the extreme worst forms of child labour. The findings also showed that girls were mainly doing domestic work while boys were engaged in other sectors such as transport, commercial and agricultural work. More boys are engaged in work at home more than girls. The consequences of child work in the area were absenteeism, over time hours of work, injuries, illnesses and psychological stress. The study found out that a high proportion of children skip school to work at home with boys recording a higher prevalence than girls. The study found out that the number of hours worked increases with the age of the child and that boys generally work for more hours than girls of the same age. The findings indicate that boys are more vulnerable than girls of being overworked. Child labour is a social reality in the area that cannot be ignored. Free primary education had not translated to full retention of children in school, again calling for rethinking of the education sector reforms on incentives for enrolment. The glaring hazards are a wakeup call about securing decent work for children and opening dialogue on how the children can be empowered and protected at work. Generally, these findings call for rethinking of the realities of child labour, rethinking the law and possible ‘halfway meeting point’, in instances where children have to work. This background of the high prevalence of child labour propels the next chapter, to analyze the effectiveness of child labour conventions in Kenya.
CHAPTER THREE: CONVENTIONS ON CHILD LABOUR

3.1 Introduction

In the previous chapter, I presented the prevalence of child labour in the area of study. In order to examine why this is so in chapter four, it is necessary to first understand the international regime under which these statistics have been reported. In the current chapter, I shall critically analyse the conventions on child labour, how they have been domesticated in Kenya and whether they have been enforced within Kenya’s legal system, socio economic and cultural environment. I have divided this chapter into three parts, to contextualize child labour in the international human rights arena, to analyse the conventions on child labour and also their domestication in Kenya. In all these sections, it is necessary to ask whether these conventions can be uniformly enforced globally.

3.2 Child Labour as an International Human Rights Issue

Child labour generally happens at the lower, sometimes invisible level of society because it is prohibited by the United Nations (UN) conventions. UN has made it a global human rights issue attracting global concern. Child labour runs against the human rights of children such as preventing growth, development and schooling of children. It also exposes children to hazards and generally denies them childhood. Debates whether children are victims or victors in the human rights arena are contentious but what is definite is the clarification by the Universal Declaration of Human Rights, 1949 (UDHR) that a child is born with full rights. It is in this context that child labour fits for scholarship in the arena of international human rights.
Human rights are legally enforceable expectations on how duty bearers should act towards the right holders (Woodiwiss, 2005). A rights-based approach emphasizes on accountability of the state as the principal duty bearer, policy makers and other actors (Jonsson, 2003). A “rights-based approach” to human rights empowers citizens to claim their rights and enables duty bearers to fulfil their duties to each person (Eyben, 2003). The fact that child labour is reported in most continents of the world creates a universal concern and approach in finding lasting solutions. The analysis of child labour conventions and how these conventions have been domesticated in Kenya will be done within the broader concept of international regimes. This is especially significant as, to help understand the conventions, organisations, processes and events concerned with child labour.

3.2.1 The International Labour Organisation (ILO)

The International Labour Organisation (ILO) is the main organisation concerned with child labour hence it is a key player in the international regime on child labour. The ILO was established in 1919, in part, to help member states meet their social responsibilities regarding fair and humane conditions of work under Article 23(a) of the 1918 Covenant of the League of Nations (the predecessor to the UN). It was also mandated to set international labour standards and to improve the rights of the workers globally (Pease, 2003). Swepston (2009) observes that the ILO is one of the UN organizations dealing with human rights, specifically creating an international regime on labour rights as a human right in the global governance arena. This mandate of ILO is crucial to this research, because it is the main organization that implements conventions on child labour.
and when I interrogate the global actors, I shall dwell on it mainly focusing on whether it has delivered in implementing the relevant conventions, in the sections below.

3.2.2 Minimum Age Convention, 1973 (Convention 138)

One of the existing instruments regulating child labour is the minimum age convention, 1973 (Convention 138), which was adopted by the international labour organisation (ILO) on 26th June 1973. Convention 138 sets the minimum age and places a responsibility on member states to provide a minimum age for admission to employment and regulation of hours and conditions of employment of children who (must) work. In addition, Convention 138 creates a general requirement for the minimum age in all nations and a lenient one for developing countries. The minimum age for employment should generally not be younger than 15 years but developing countries may initially fix it at 14 years where the economy and educational facilities are not sufficiently developed. However, if children are engaged in hazardous work due to the work’s extreme nature or conditions, such as working regularly for excessive hours, then their work is considered as one of the “worst forms of child labour.” In this case, such a scenario calls for urgent need of elimination under the worst forms of child labour convention, 1999 (Convention 182) (ILO, 2004).

As part of domestication, article 1 of Convention 138 requires each member to undertake to pursue a national policy for effective abolition of child labour. Accordingly, it is supposed to progressively raise the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons. Of relevance to this study is that this article refers to a national policy and not laws or
regulations. Without a requirement to draft a specific law, it becomes difficult to enforce such a convention as it leaves member states with a lot of freedom. This failure to specify the measures meant that nations could just ratify the conventions but not enact laws or take extra specific steps (Boockman, 2009). Child labour being too complex needs serious and specific follow up, much more than mere policy (Mendelevich, 1979). This is because implementation at the grassroots level is much more difficult (Alston, 1989) as child labour is obscured by other factors and social contexts.

Another relevance of this article to the study is that the definition of a ‘level consistent with fullest physical and mental development’ is not provided. That leaves it open to members to apply their own understanding of this phrase, which is likely to vary and impact efforts to curb this in different ways. For example, in Africa, gaining skills in the family farm is considered as part of physical and mental development whereas elsewhere it could be seen as detrimental (Punch, 2003; Bass, 2004; Lord, 2011) to a child. As such, understanding of the social and cultural context of different regions is key in dealing with child labour.

However, it appears that Article 2(1) of Convention 138 foresaw such a situation. This is well taken care of as the convention requires members to ratifying the convention to also append a declaration of the minimum age in its territory and cautions that no one under that age should be admitted to employment in any occupation. The relevance of this article to this study is that the study questions why child labour continued despite the declaration of minimum age in Kenya. This study was located in Mathira Constituency,
Nyeri County. In chapter 2 of this work, the findings were that children below 13 years, the minimum age of employment in Kenya were employed. Table 2.6 of chapter 2 showed that 20.5 per cent of the waged children were below 13 years, the minimum age of employment in Kenya. Convention 138 is applauded as the convention specifically limiting minimum age for work, generally addressing all economic sectors since what existed before was a minimum age convention for the 10 main economic sectors (Creighton, 1997). Some scholars argue that the bracket elimination of all work diverts attention and value from genuine child work (Bourdillon, White & Myers, 2009).

Article 2(3) of Convention 138 states that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling not be less than 15 years. This article is relevant to this work because chapter 2 highlighted that lack of schooling opportunities as one of the aspects used to define child labour. Article 2(4) exempts members whose economy and educational facilities are insufficiently developed, to initially specify a minimum age of 14 years in consultation with the organisations of employers and workers’ unions. This is only to happen when a statement is issued to ILO under article 2(5) giving the reasons for setting it so.

This requirement to limit working at not less than the age of completion of compulsory schooling (not less than 15 years) is problematic because the minimum age of completion of compulsory schooling varies across nations and individuals. Swepston (1982) criticized this criterion of attaching admission to work to schooling as short sighted in that it assumes all countries have educational infrastructure or that they even attach value
to formal schooling. In this regard, such a requirement devalues the family experiences of children where they work in family farms. Another problem emanates from the view that developing nations are allowed to use 14 years initially, yet a monitoring mechanism is not set to assess when these developing nations get developed.

Article 4 of Convention 138 gives leeway to members to exclude from the application of this convention limited categories of employment or work in respect of which ‘special and substantial problems’ of application arise. Article 4(3) clarifies that there is no chance of excluding jeopardizing work. Without a definition, the phrase ‘special and substantial problems’ can be interpreted anyhow. Swepston (1982) argues that no country had made use of this clause as it created more confusion than clarity. Scholars have criticized Convention 138 as having been drafted with a Western mind set, ideas, history and circumstances, not taking care of the cultural deviations and peculiarities of the global south (Abernethie, 1998).

The other concern is that the African nations were not adequately represented during the treaty making process for the convention, bringing what Abernethie refers to as non-inclusiveness. Bourdillion, White and Myers (2009) dismiss Convention 138 by pointing out that it explores the romantic notions of childhood dominant in developed countries and not for developing countries that make up its membership. Borzaga (2008) argues that in the drafting of Convention 138, Western countries dominated ILO membership making it difficult for developing countries to ratify the convention for economic and cultural reasons. The statistics presented and analysed in chapter 2 help to question
whether ‘a one size fits all’ universal application of conventions is possible and also
gather the views of the communities on likely challenges in enforcing child labour laws
in the area of study.

Article 5 of Convention 138 excludes application of the convention from family and
small-scale holdings producing for local consumption and not regularly employing hired
workers. This article is problematic because children in Africa work at home, as a way of
life and from the data presented in figures 2.5 and 2.10 as well as table 2.8 in chapter 2,
showed how family work had become hazardous and had also caused absenteeism for
children. These are two indicators of whether work done by children is child labour. This
article creates more problems for the African and developing nations where agriculture is
considered the most important economic activity there and child labour is known to be
prevalent in that industry (Borzaga, 2008; ROK and ILO, 2008). This creates confusion
and makes children vulnerable since they stand exposed internationally (Smolin, 2000).
Excluding family and small-scale holdings producing for local consumption and ‘not
regularly’ employing hired workers can be abused because in some continents, such as
Asia and Africa it is the family holdings that take up most child workers (Seiichi, Kana
and Phoumin, 2008). Again, the problematic is that the frequency or ‘how regular’ is not
defined. In this study, the primary focus shall be on Mathira Constituency, a
predominantly small-scale agriculture locality.

Article 7 provides that light employment is allowed for persons aged 13 to 15 years of
age under certain conditions. For instance, it is only allowed as long as it does not harm
their health and development or prejudice their school attendance. This contradicts article 2 which sets the minimum age for employment at 14 years for developing countries and 15 years generally. The challenge is that the convention does not define child labour or even light work, creating ambiguity and a vacuum within which individual countries implement at their own whims and needs. According to Alston (1989), such a glaring ambiguity is bound to attract different implementation due to cultural deviation since African cultures define child labour differently from the western concepts. This ambiguity also places the fight against child labour initiatives in a balance as Myers (2009) points out that countries could even use this vagueness to encourage abuse. A case in point here is that most African cultures view child labour as a way of instilling value and moral standards, skills and trade through generations (Celek, 2004; Nhenga-Chakarisa, 2010; Kaime, 2009). As such, any attempt to convince some of the practitioners in such cultures otherwise is likely to meet resistance.

Article 8 allows the authorities to permit children to work if the purpose is to allow participation in artistic performance as long as the hours and conditions of work are specified and limited. This article is based on the assumption that developed countries have talent development centres where children are admitted to be nurtured. However, this study examined the motivation for waged work and whether talent development in school or outside school had any role to play as discussed in chapter four of this study. Criminalizing of the offenders to the convention, through asking members to declare penalties in article 9, rather than assure social protection made the convention to be viewed by scholars as short sighted and bigoted to the realities of life in the global south.
For instance, social realities such as socio-economic challenges reinforce child labour and it is likely to push the children to underground or invisible work (Alston, 1989; White, 1996).

Myers (2009) dismisses Convention 138 that it was adopted out of fear of adults losing their work to children. It seems, from the statistics presented in chapter 2 that the motive of Convention 138, which was to eliminate child labour across all sectors, has not been achieved. This work seeks to understand why child labour persists. Consequently, the work sought to find out the local community’s perspectives on what can be done to eliminate child labour. Chapter 2 sought to know how the local community defined or understood child labour. This data obtained showed that the age, type of work and schooling opportunities play a role in defining child labour as the three are intertwined. To summarize, the problems expressed in Convention 138 are lack of definition, ambiguity and presupposition of universal application. These problems have been carried on to the Kenyan legislation, which will be discussed later under local laws. The next section, analysed the United Nations Convention on the Rights of the Child, 1989 (UNCRC).

3.2.3 The United Nations Convention on the Rights of the Child, 1989 (UNCRC)

Another international instrument on child labour is the United Nations Convention on the Rights of the Child (UNCRC) which was adopted by the UN on 17th November 1989. Article 32 of this convention is mandated to protect children from economic exploitation in member nations across the globe. The article states that parties to the UNCRC should recognize the right of the child to be protected from economic exploitation and from
performing any work that is hazardous or any work that interferes with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The article requires member states to provide for a minimum age for admission to employment, regulation of hours, conditions of employment of children and to have penalties for effective implementation of the article. Seeing that chapter 2 provided statistics on child labour, manifestations and the consequences of the same to a child and to society, article 32 provided the main basis upon which this work questioned why child labour persists amidst the recognition of these rights.

Article 12 of UNCRC is also concerned with child labour to the extent that it allows child participation in matters related to child work. The article defines child participation as the right of children to express their views freely in all matters affecting their wellbeing. This article helped to assess the voice of children in terms of child employment. This is especially important to stakeholders as it opens up space for children to express their views in decisions that affect them. I was interested to know how empowered a child in Africa was, compared to the western child. I also questioned parents’ willingness to empower their children so that they know their rights while at work. The study also investigated whether the local communities made up of duty bearers understood what child participation is and if they did, whether their understanding matched with what is given in the UNCRC and local laws.
The questionnaires asked children whether they had a voice or a say while working. The simplified question was whether the children felt empowered to air their views or choose better terms of the work they did. Their responses are in figure 3.1 below.

![Figure 3.1](image)

**Figure 3.1**

*Percentage of children who thought they had a voice in child labour*

(Source: Field Survey, 2016)

The findings are that 69.23 per cent of the children thought they had a voice. 30.77 percent of the children responded that they did not think they had a voice. With a significant number of children still voiceless, child participation may remain a paper right in Africa because the children are raised in a more limiting ‘social’ setting with strict adherence to particular code as such, individualizing rights may be problematic. In the interviews, I also sought the perspectives of the participants about children’s views. Majority of the respondents felt that too much space had been opened for children in the contemporary society. Therefore, child participation and parental control has been lost. They gave instances where children avoided helping at home, even when the work was to prepare them for the life ahead, such as cleaning the house or washing utensils and marriage.
especially the girls. One Assistant Chief (Assistant Chief, Personal Interviews, 8th August 2016) comically said:

Marrying off girls before learning how to cook for their husbands is a taboo in our community. I hear some Nairobi girls get married without ugali and chapati cooking skills. It is absolutely embarrassing and to imagine we can tell our children to not work is absolutely out of the African culture.

A number of children who had worked for wage emphasized they chose where and which employer to work for, the type of casual work done and for how long. An older boy said he even choose which days to work and which ones to rest (Child, Personal Interview, 11th August 2016). Although the UNCRC assures the right to child participation, it is a contested notion. White and Choudhury (2007) pessimistically dismiss the place of UNCRC in some nations because welfare regimes typically neglect some rights such as the right to child participation, justifying that providing welfare needs is enough to secure rights. Perrault, Hall and Lundy (2008) recommend that national laws should encourage and set a mechanism for children to relate with the state and allow them to air their views freely in all matters affecting them. Odongo (2012) explores the practical ways to encourage greater children’s participation in Kenya but points out that it requires much more profound changes since the prevailing socio-cultural attitudes in Africa still inhibit full consideration of children’s views.

On the same principle of child participation, Okyere (2013) aligns with the works of Miljeteig (2000), White (2009), Stasiulius (2002), and Feeny and Boyden (2004) to assert
that the children’s viewpoint has been largely ignored by children’s rights’ policy makers instead of deriving solutions from their own participation. For instance, Feeny and Boyden recommended that due consideration be given to both the extreme livelihood hazards pushing children to work and the work hazards that they encounter as a result. These citations also helped to analyse the participants’ understanding and views on allowable work.

Article 5 of the UNCRC allows community participation in safeguarding the rights of children. It urges state parties to respect the responsibilities, rights and duties of the members of the community as provided for by local custom in the exercise by the children of their rights. This article and article 12 helped to analyse the children’s views, household heads and also the communities’ on whether children should be allowed to work for wage. In this research, I asked if mere statements of rights are enough to eradicate child labour without looking at the socio-economic problems faced at the grass roots where these rights are enforced. This was significant as it was informative in assessing the community’s level of acceptance of the principles in the UNCRC. It also helped to assess the views of the participants about any correlation between culture and child labour. First, I sought views on whether children would work for wage even if provided for. The responses from this item are as shown in table 3.1 below.
Table 3.1 *Percentage of children who would work for wage even if provided with basic needs*

<table>
<thead>
<tr>
<th>Response</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>30</td>
<td>38.5</td>
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<tr>
<td>No</td>
<td>48</td>
<td>61.5</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

Table 3.1 shows that 38.5 per cent of participant children indicated that they would work for wage even if provided with basic needs. 61.5 per cent indicated they would not. The questionnaires also asked the heads of households whether children should be allowed to work. The data is in table 3.2 below.

Table 3.2 *Heads of households who thought children should be allowed to work for wage*

<table>
<thead>
<tr>
<th>Response</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>44</td>
<td>56.4</td>
</tr>
<tr>
<td>No</td>
<td>34</td>
<td>43.6</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

From table 3.2 above, we see that majority (56.4 per cent of the household heads) indicated that waged work for children should be allowed. 43.6 per cent did not support
waged work for children. Children were also asked whether waged work should be allowed. Figure 3.2 displays the findings.

Figure 3.2

*Proportion of children who thought children should be allowed to work for wage*

(Source: Field Survey, 2016)

Figure 3.2 shows that the percentage of children who thought that waged work should be allowed was 36 per cent. 64 per cent of the children did not think that children should be allowed to work for wage. Compared to the children’s responses on similar question in table 3.2 above, more parents, (56.4 percent) were of the view that children should be allowed to work for wage. The sharp contrast of figures between parents and children who preferred waged work is a pointer to the discrepancy between the parents’ views and children’s views. This is significant as it calls for conducive space within which opportunities for children to air their views is cultivated. Such an opportunity is likely to influence parents’ worldview on why children should not be allowed to work for wage. It also pointed to the social realities on the ground such as some resistance to labour laws by the parents and the community in relation to reducing child labour. This data also
helped to probe the participants about any cultural or communal attitudes restricting children’s views and generally enforcement of rights. The other question that arises is whether African states, in particular Kenya, in domesticating the international conventions on child labour considered the legal tradition and cultural challenges that African civilizations face in embracing this phenomenon. This is covered exhaustively in chapter four of the study.

Anyango-Kivuva (2006) and Grugel (2013) recognize the importance of rights charters but also argue that the UNCRC is a relatively weak instrument when it comes to changing the material realities of the vulnerable children’s lives, especially in the global south. Detrick (1999) and Van Bueren (1998) traces the history of this body by pointing out that the UNCRC was drafted because the 1959 UN declaration of the rights of the child no longer reflected the needs of the world’s children, therefore a concise treaty needed to be enacted. Detrick traces the proponent of the UNCRC as Poland, which had singlehandedly drafted the UNCRC in 1978, which was adopted in 1989 with minor amendments. Only Algeria, Egypt, Morocco and Senegal from Africa had participated in amending the draft UNCRC (Viljoen, 2007; Keetharuth, 2009). Could a sole European state capture majority of the views of the world about children’s rights in the draft? How inclusive were these minor amendments? These questions are important because there was an assumption that the needs of developing nations could be protected by developed nations. These questions propelled me to gather the views of the local community on international instruments dealing with child labour.
The main elements of the UNCRC include article 32 which protects children from exploitative labour, article 12 which allows child participation and article 5 which opens space for community’s views on rights’ enforcement. These provisions are tied to this research’s data, which unveiled the reality of life in the global south. This was informed by the fact that the circumstances and the participants did not fully accept the conventions’ ban on child labour with a significant number of participants being of the view that children should be allowed to work for wage. Child participation also seemed ‘alien’ to the community but will be explored further under culture in the next chapter. These responses also helped to further probe the reasons why children work for wage in chapter 4.

3.2.4 Worst Forms of Child Labour Convention, 1999 (Convention 182)

The Worst Forms of Child Labour Convention, (1999) (Convention 182) is another convention that protects children from child labour. It was adopted on 17th June 1999 and mainly requires ratifying states to take immediate and effective measures to prohibit and eliminate worst forms of child labour (WFCL) as a matter of urgency. Article 3 of Convention 182 defines WFCL in four ways. It is all forms of slavery (such as sale and trafficking of children, debt bondage and serfdom, forced labour and armed conflict), prostitution or pornographic performances, illicit activities in drugs trafficking or work which by its nature is likely to harm the health, safety or morals of the child.

From the data in chapter 2, I was able to identify cases of WFCL. For instance, bhang (cannabis) peddling, child prostitution and bar attendance, all of which are unconditional WFCL. One teacher in an urban school expressed the frustration she underwent trying to
withdraw a child from bhang (cannabis) peddling and another from prostitution and confessed that her life had been threatened by the parent. The threat in the line of duty was also reported by a union officer (Union Officer, Personal Interview, 12th August 2016) who confessed:

pulling out children from domestic work was like pulling an elephant from a pit ...
... you could die in the process since some employers use knives and other dangerous weapons to attack or chase you...it does not help to go there with the police... these communities can do mob justice.

This research’s findings align with Smolin (2000) who raised issues with the vices that Convention 182 aims to stop, such as pornography and drug trafficking which are hard to eliminate due to their underground operations and risks in enforcement. Smolin lists other sectors that are difficult to penetrate, such as family or domestic work. In fact, the union official pointed out he had seen ‘very young’ girls doing invisible domestic work, what Alston (1989) argues was a natural consequence of ‘bigoted criminalizing of child labour’.

Article 4 of Convention 182 gives countries the leeway to determine the type of work likely to harm, health safety and morals of the child. This study established that the community within which the study was carried out generally detested children working in unconditional WFCL. They seemed to disagree with the fourth category of WFCL-work causing ‘harm’ to children as they argued ‘harm’ is relative and ambiguous. In one
focus group discussion (FGD) by parents, they spoke in whispers as they narrated how a teenage girl had turned to prostitution. The village elder cringed as he narrated how the same girl was ‘losing her future’ through prostitution (Village elder, Personal Interview, 8\textsuperscript{th} August 2016).

Convention 182 contains no flexibility clauses and makes no distinction between developed and developing countries. The facts that it outlaws activities rather than bracket sectors make Convention 182 more popular and clear (Davidson, 2001). Scholars have critiqued Convention 182 by arguing that it is an attempt to cover up the inadequacies in Convention 138. It is argued that the ambiguities and complexities of Convention 138 led the ILO to rally a new convention to mitigate the former’s ambiguities by effective elimination of the worst forms of child labour and applying it to all persons under eighteen years. This has worked well in bringing clarity to the jumbled-up Convention 138 (Creighton, 1997; Davidson, 2001; Myers, 2001; Noguchi, 2010). Noguchi (2010) praises Convention 182 for emphasizing on measures and action beyond policy and legislation, which breaks it down to achievable activities across nations.

Smolin (2000) dismisses Convention 182 as a ‘first aid’ measure to mitigate the short comings of Convention 138 without sorting the issues already raised from Convention 138. Smolin generally has issues with ILO’s lack of criminal jurisdiction and the possibility of enforcement as ILO deals with tripartite labour relations between government, employees and employers. Some criticize Convention 182 as unnecessary, that there is nothing new it added to the existing labour norms of international law (Hanson & Vandaele, 2003; Mavunga, 2013). Mavunga blames the ILO of delving into
an area it has little experience in, creating potential for conflict and advises the ILO to focus on tolerable child work and leave the criminal justice system to the concerned bodies to enforce.

This appraisal of Convention 182 is informative in chapter four of this study. This is because it helped to probe why the area of study reported some WFCL despite such clarity, urgency and targets in the convention. This appraisal was also used to present views from the participants on how WFCL could be eliminated.

3.2.5 African Charter on the Rights and Welfare of the Child (ACRWC), 1999

This work has also explored the challenge of assuming that human rights can be enforced in the same way across the globe. This scenario and international politics of child labour facilitated me to question how inclusive the conventions are in so far as socio economic realities on the various geographic regions are concerned. This question brings me to the relevant continental instrument by the African Union (AU). The African Charter on the Rights and Welfare of the Child (ACRWC) which was adopted in 1990 but came into force in 1999. In its preamble, the ACRWC reaffirms the principles of the rights and welfare of the child stated in the UNCRC confirming that generally protects children’s rights.

Of relevance to this work is article 15 of the ACRWC which provides for minimum age of employment, regulation of hours and conditions of employment of children. That provision is crucial to this study because the study is premised on these three indicators
of appropriateness of child employment, as guided by ILO (ILO, 2004). In the same article, state parties are asked to pay regard to the ILO conventions in whatever law and measures they adopt for reducing child labour. Some scholars think the reason for the timing of the adoption of the ACRWC, which was a year after UNCRC, was that African state parties had been ‘grossly’ underrepresented in the drafting process of the global UNCRC. This is because Africa was only represented by countries such as Algeria, Egypt, Morocco and Senegal from who despite this participated significantly in drafting it (Viljoen, 2007; Keetharuth, 2009). Viljoen and Keetharuth argue that the ACRWC was drafted to supplement the UNCRC. Ruppel (2009) disagrees with this argument by stating that the ACRWC contains no provisions that directly contradict the UNCRC.

Sheahan (2009) and Viljoen (2007) thought the ACRWC presented an opportunity to address specific concerns from Africa in more detail, at several stages and to insert African specificities that were not addressed by UNCRC. Muthoga (1992) viewed the adoption of the ACRWC in 1990 as originating from ‘a desire to address certain peculiarly African problems’ which the UNCRC had largely ignored such as the African conception of the community’s responsibilities and duties and the role of the extended family in the upbringing of children. Are these African specificities adequate in addressing the African human rights perspectives? Wako (1998), a former attorney general in Kenya strongly asserted that “each region, with its unique culture, traditions and history, is best placed to handle and resolve its human rights situation.” These place the value of regional arrangements per se as a moving force for positive change and, in this case, as a tool for the enhanced protection of African children. How then is it that
child labour continues despite existence of a regional charter which is perceived as more acceptable than the UNCRC?

Through these arguments about ‘Africanization’ or decolonization of the UNCRC using ACRWC, I was able to assess the participants’ views about the ACRWC and analysed if that view was different from that of the global UNCRC. Participants in this research reacted to the ACRWC in nearly the same way, terming it as a ‘law from another country’ that cannot wholesomely be applied to the unique situation in Kenya. Further, when the participants were questioned on regional consensus, they maintained that the motive was not good, that Kenyans ‘were not goats to be fed by whatever grass the AU wished to feed them’. Such responses confirmed the general apathy to the conventions irrespective of whether they are regional or global.

Article 31 of the ACRWC requires children to assist family and society when in need to preserve and strengthen African cultural values in their relations with other members of the society in order to attain African unity. If on one side child labour is outlawed but on the other, children are expected to help at home, this research made a social enquiry on the balance between rights and culture. Who determines if these cultural values are in the best interests of the child? Kaime (2009) commends the ACRWC that it filled the voids in UNCRC by addressing African concerns and at the same time clothing it with conceptions within the ‘African –cultural’ context or a ‘cultural-universalistic’ outlook, what Ncube (1998) calls ‘African cultural finger printing’. On the contrary, Thompson
(1992) raises issues with the responsibility to preserve and strengthen African cultural values in their relations with other members of the society.

According to Thompson, the construction of children’s rights in the cultural context questions what is beneficially beneficial. Kaime (2009) argues that children rights conventions will remain paper rights unless they are brought in to the homes of African children. This research is placed in the constructivism school of thought and explored how local communities’ perspectives about child labour and the labour laws in Africa could be enforced within the social realities in the ‘the homes of these children.’ Through the analysis of the conventions on child labour, it is seen that the acceptance levels of children’s rights at grassroots stand challenged. The next section seeks to assess how these conventions have been adopted into the Kenyan law, policy and procedures.

3.3 Domestication of International Instruments in Kenya

The previous section highlighted and analysed the various conventions dealing with child labour. Under international law, after ratification, member countries are expected to domesticate conventions for implementation at the country level. This is done mainly through passing laws. Kenya joined the ILO in 1964 and in 1979, ratified ILO’s minimum age convention of 1973 (Convention 138). It ratified the UN convention on the rights of the child, 1989 (UNCRC) in 1990. Kenya ratified the African Union’s charter on the rights and welfare of the child, 1999 (ACRWC) in 2000. Kenya ratified the convention on the worst forms of child labour, 1999 (Convention 182) in 2001. The next section illustrates how, after ratification in Kenya, these conventions have been domesticated up to date through the national laws, policies and programmes. As I critically analyse the
national laws on child labour in Kenya, I am inclined to ask whether mere ratification and domestication of conventions is enough to make them applicable locally. Later in chapter 5, I shall critically analyse their effectiveness in Kenya’s socio-economic context.

3.3.1 The Constitution of Kenya, 2010

The Constitution of Kenya is the supreme law of the land. Article 2 (5) and (6) of this Constitution provides that the general rules of international law would form part of the laws of Kenya and that any treaty or convention ratified by Kenya would form part of the laws of Kenya. In Article 53(1) (d), it provides for children’s protection from hazardous or exploitative labour, from abuse, neglect, harmful cultural practices, and all forms of violence, inhuman treatment and punishment. The constitution breathes life to all laws; therefore, this protection is a forward step in declaring the protection of children from child labour but does not translate to actual elimination because chapter 2 presented the statistics of child labour. This declaration shall help to question why child labour exists amidst the constitutional cushion in chapter 4.

3.3.2 The Children Act, 2001

In the preamble, the Children Act of Kenya was enacted to provide for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children’s institutions; to give effect to the principles of the UNCRC and the ACRWC (ROK, 2001). This research raises an issue with the preamble because it does not refer to giving effect to the ILO conventions 138 and 182 yet these conventions existed before and are the conventions concerned specifically with child labour. I asked if the omission is by design
or by default but the senior labour official attributed it to parliament being lax about some of these laws by ‘not taking child labour seriously’.

Section 10 of the Children Act (2001) protects children and youth below 18 years from economic exploitation and 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, physical, mental, spiritual moral or social development. The section defines child labour elaborately and implies the employable age to be 16 years. Sections 119 (g and o) assures care and protection of children. Section 127 lists penalties for various offences, including exploitative hazardous work.

Section 30 of the Children Act establishes the national council for children services (NCCS) as an advisory body on all matters of children’s rights and welfare. Section 32 (2) (q) of the Act gives the national council for children services (NCCS) the duty to establish area advisory councils in order to delegate their work at the local level. NCCS (2006) elaborate the aim of the AACs as to address issues affecting children at the then district level in order to decentralize delivery of Government services to Wanjiku, with the understanding that local people understood their problems better.

In this study, the question of whether AACs had been effective in the area of study is also important. In the interviews with the enforcers, that is the children’s officer, the labour officer, the probation officer and the judicial officers said that AACs existed at the county and Sub County level and were supposed to meet each quarter but had been irregular.
Except for one, all the chiefs interviewed, did not know about the AACs but in the words of one chief, were ‘eager to be enlightened more about them’ (Chief, Personal Interview, 8th August 2016). I asked the key informants why the AACs met irregularly and the response from the union representative, the labour officer and the probation officer all pointed to lack of resources to run the meetings. The labour officer and the children officer pointed to lack of time because the labour officer was the only labour officer in the county and had limited support staff. The children officer was serving 3 sub counties in all children matters, meaning she was standing in for both the two sub county labour officers and the children officers. This is quite a lot of work to be effectively discharged by one person. This is well captured in the sentiments by the labour officer and the children officer that they could not ‘humanly manage all the work’ unless assisted and resources mobilized to realize this (Children’s officer, Personal Interview, 10th August 2016 and Labour Officer, personal interview, 12th August 2016).

I asked whether AACs were operational in the area. Despite legal backing in section 32 (2) (q) of the Children Act, 2001, AACs were not fully effective in the area. Only 1 out of the 6 chiefs and sub-chiefs knew of the existence of AACs. AACs are expected to meet each quarter at all levels. The labour officer explained that without sub county labour officers to assist her, she could not ‘humanly attend’ to all 8 sub counties in Nyeri county besides the county meetings, unless ‘she spent all her work day in meetings’. Generally, lack of money and human resources for enforcers affected implementation of laws. A unions’ official emphasized that funds shortage had reduced their activities and hindered awareness events such as processions in town on international days. He also
highlighted the case of one labour officer serving the entire county without any funds yet covering the 8 sub county levels and the children’s officer serving 3 sub counties.

What stands here is that the area is wide to cover especially coupled with inadequate funding. This is an appropriate recipe for violation of children rights especially those touching on child labour. The labour officer acknowledged she could barely make it to the quarterly sub-county AACs meetings, as it was not humanly possible. This pointed to a dire staffing and resource need that suggest that unless it is addressed, then implementation of child labour laws will for a long time remain a pipe line dream.

Even if the children act states that children should be protected at all times and if the need arises, should be taken to a safe house. The respondents also underlined lack of children's homes, safe houses and hostels as a great challenge. The probation officer pointed out how hard it was to get an admission slot in a children's home within the county or at the probation hostel which is 2 counties away. Such facilities are important as they specially shield children rescued from unconditional worst forms of child labour (WFCL) which the probation officer said is ‘a draining 600 kilometres journey’ by road. This officer was of the opinion that more of such units should be built in each county in the spirit of devolution and decentralization to take care of vulnerable children. One chief was of similar view and said getting a slot in a children’s home to ‘hide’ a vulnerable child was more difficult than ‘an elephant going through the eye of a needle’. The key informants said that the social partners, NGOs, CBOs and FBOs had not ‘taken up the challenge to
fill the resource gap.’ The children’s officer attributed this to a misconception that central Kenya was financially endowed and did not need welfare cushions.

The limited resources point to lack of eagerness to comply with the measures and actions to eliminate child labour. This laxity in enforcement of the Children Act and other laws was a great concern to the community. Some parents and some key informants said enforcers applied double standards and extraneous considerations in their enforcement. This laxity created a culture of suspicion and mistrust of the police and enforcers. This made the community not to report cases. For instance, one chief pointed out that people’s belief that exhibits are stolen from police and a notion that chiefs were not doing their work has hampered initiatives put in place to deal with this menace. As such, the community opts to keep the exhibits and withdraw cases rather than proceed with the same. Another example was of a teacher who painstakingly highlighted a case where a child was 'sold off as a prostitute' to ‘make some money’ for the family. She narrated in detail how the mother bragged that chiefs were ‘in her pocket singing to her tune’ because she gave bigger bribes to secure her release each time the child reported to the police. The police justified the abuse arguing that her mother pushed her to do it and that the child is ‘now used to it’ and is not complaining.

Therefore, this scenario points at the lack of understanding by police that parental responsibility does not include hurting the child and that this should not stop them from carrying out their mandate. Based on this, the teacher helplessly posed “who should the children turn to, if law enforcers are like this?” Another teacher observed that chiefs kept
their children out of child labour, yet child labour continued. She highlighted how an employer bragged to him that he knew he could not be arrested because the legal systems ‘were down’. A child narrated how he worked for wage in the farm of a factory director, but on the other hand, the same person advocated for child labour free certification (CLFC) in the factory.

This pointed to lack of understanding of the rights-based approach expounded by Johnsson (2003), that even one severe case of human rights abuse should be addressed, rather than only look at many victims of smaller violations. Onyango and Lynch (2006) avers that Kenya’s preparation of a national plan of action and presentation of its first report to the United Nations even before it enacted the Children Act, 2001, translates to eagerness to comply with international law. The findings deviate from Onyango and Lynch because adequate resources have not been allocated and there is laxity in enforcement of the laws. The next section analyses the Employment Act, compare and contrast it with the Children Act and other laws.

3.3.3 The Employment Act, 2007

In its preamble, the Employment Act of Kenya specifically adopted the ILO convention 138 and convention 182. Part VII (Sections 52-65) elaborates on child labour elimination. This Act sets the minimum age for children’s work. It also allows some age groups of children to work under certain conditions but outlaws’ worst forms of child labour (WFCL) for all.
In this Act, children below 13 years are restricted from working for wage. Children between 13 and 16 years may do light work which is not harmful to their health or hinder schooling; as long as they are not given written contracts. In essence, section 56 outlaws child labour for children below 13 years. Children aged 16 years and above may work in any undertaking, the only restriction placed on industrial undertakings against night duty and banning of WFCL. Contrary to this minimum age of 13 years in the Employment Act, section 10 of the Children Act gives the employable age of children to be 16 years.

Section 52 defines employment of a child to be employment (sic) of a child in a situation where a child provides labour as an assistant to another person and where his labour is deemed to be the labour of that other person for the purposes of payment. In this way, the child’s labour is used for gain by any person or institution whether or not the child benefits directly or indirectly; and whether there is in existence a contract for service where the party providing the service is a child. The Act does not define child labour but only mentions a child’s labour. This is a contrast to the Children Act, 2001 which defines child labour elaborately in section 10.

Section 53 bans worst forms of child labour (WFCL). WFCL is defined as employment, engagement or usage of children in any activity comprising of four things. First, 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 recruitment of children for use in armed conflict. Secondly, the use of, procuring or offering a child for prostitution, production of pornography or pornographic performances. Thirdly, 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 and fourthly, work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child.

The bone of contention is the definition of ‘harm to health, safety or morals’. These are not defined and the degree of harm is not defined but left to the imagination of the enforcer. The above definition is simplistic in that the first three categories are straightforward but the last one is ambiguous. The likelihood to harm the health, safety or morals of the child can be experienced in simple jobs such as grazing family cows which is likely to expose the child to long hours under the sun, or bushes with harmful animals such as poisonous snakes.

Children between 13 and 16 years may be employed to perform light work only. The problem created in the wording of this section is that light work is not defined and that the gazetted regulation is not clear. The lack of clarity in the regulations creates ambiguity because different people or communities would understand light work differently. The understanding of light work differed from one community to another. Participants deemed all family work to be light work. Parents in a focus group discussion felt that waged work could not be classified as light because the pay was equal for all despite the age differences. One parent (Parent, Personal Interview, 7th 2016) unanimously gave an opinion on light work:
What can pass as light work is family work because there, the parents can be sensitive to the children but not where an employer expects delivery of targets before paying...even when the work is on piece meal, the child cannot slow down simply because they are children. They do not want to be paid little.

The legal definition of light waged work and WFCL in the Employment Act remains problematic and contradictory. The fifth schedule of the Employment (General) Rules list agricultural work not exceeding 2 hours as light work. However, the other jobs listed as light work (school-based work, newspaper delivery, shop keeping, domestic hair dressing, ‘light’ office work, car washing by hand in private homes and waiting on tables) are not limited by hours. In one instance, commercial hair dressing and domestic work is considered hazardous and in another, domestic hair dressing is allowed as light work. The latter can only mean family work then. Schedule 4 lists activities that are considered WFCL. Only the harm (to health, safety and morals are considered) and leaves out what ILO terms as unconditional WFCL (slavery and use in armed conflict, prostitution and drugs). The process of issuing permits for 13-16-year-old workers would be tedious and seemed to have been crafted with corporate employers in mind since issuing permits in small scale farms for casual work may be tedious. The children’s officer made an issue with the drafters for not considering the high percentage of child labourers in the agricultural and other informal sectors where casual work is the norm and where contracts are not issued.
A chief’s elder stated that he found a very narrow line between child labour and child abuse since the second is a component of the first. He was more comfortable with child abuse as it is general enough to cover each instance a child is in need of care and protection. The return of cases from the courts showed that there were a number of children abuse cases in the area. Despite the presence of these cases, my physical verification of the facts in files showed that a few of the child abuse charges were about child labour. This is because police perceive child labour to be a minor offence, not a felony. The probation office affirmed that they mainly charge parents with child abuse and child neglect under the Children Act, rather than the Employment Act as they find the Employment Act too complex. These views affirm Creighton (1997), Davidson (2001) and Myers (2001) who viewed Convention 138, (which Employment Act domesticated) as too complicated.

Section 2 defines worst forms of child labour guided by convention 182. Section 53 expressly prohibits WFCL and requires the minister to make regulations declaring work, activity or contract of service harmful to the health, safety or morals of a child as WFCL for immediate elimination. Section 57 allows only verbal contracts of employment for 13-16-year olds except the indentured learners and apprentices who have a deed of apprenticeship under the Industrial Training Act. Section 58 prohibits children of 13 to 16 years from being employed in an industry to attend to machinery, save if they are apprentices or indentured learners.
The section also restrains work in opencast workings or sub-surface workings that are entered by means of a shaft or a pit. Section 59 bans working from 6:30 P.M to 6:30 A.M for children employed in industrial undertakings. The minister is also allowed to gazette certain employers from applying this section in some industries and in Section 60, the minister is given leeway to gazette public interest emergencies where rule 59 may be suspended. Too much leeway is given to the minister, which is the same flexibility given in Convention 138.

Section 88 of the Employment Act implies that a child is not liable for child labour and exempts children from penalties. This provision assumes that children do not choose to work for wage and are victims of their parents’ choices. This may not necessarily be the case especially for children in own businesses and also child-controlled labour. This research investigated instances where children choose to work for pay on their own without the parents’ knowledge and presented it in table 3.3.

**Table 3.3** *Whether parental consent was given before waged work*

<table>
<thead>
<tr>
<th>Response</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
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<td>46</td>
<td>59</td>
</tr>
<tr>
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<td>32</td>
<td>41</td>
</tr>
<tr>
<td>Total</td>
<td>78</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)
Table 3.3 shows that 41 per cent of the children worked for wage without parental consent, challenging the assumption in section 88 of the Employment Act that children do not choose to work for wage. Anyango-Kivuva (2006) raises an issue with denying children the right to work. Anyango-Kivuva argues this denial hinders children from taking pride in owning things they have bought with their money and there was need to create acceptable working terms. As is, children here have presented themselves as decision makers and overpowered their parents and the state. Whereas the state and the parents assume that the children do not make labour decisions and that the two have the power, this research’s findings show the contrary. The findings also detach this study from primarily focusing on realism theory of international relations as it shows a state out of control and children who have become quite independent and taken control of their labour.

The employment Act acknowledges police officers (the rank of inspector and above) and labour officers in prosecuting worst forms of child labour under section 54(1) and section 64 lists the penalties for WFCL. In contrast, the children Act recognizes police officers, administrative officers, children’s officers, approved officer, chiefs and labour officers as enforcers. Children’s officers, chiefs and other key child protection officers were left out of the enforcement processes of the Employment Act, yet the Children Act existed before and had made a provision for child labour prevention and prosecution. LCLCs are not provided for under the Employment Act or the regulations despite an administrative note from the MOLSSS to enforce them.
Participants made an issue with DCLCs and LCLCs not being fully implemented at the local level. The county labour officer pointed out that though the Nyeri County Child Labour Committee (CCLC) had been constituted, it had not met in 3 years as there were ‘no resources to run it.’ As such, staff were limited and she did not have sub county labour officers to assist. None of the 6 participant chiefs knew about LCLC. Teachers and FGD parents welcomed the LCLC as it would reduce blame, tensions between enforcers and parents to a committee.

The research findings are not far off the events of a parliamentary session in 2008, where the minister of labour, responding to a question about child labour in central province stated that he knew LCLCs had not been implemented in all areas but challenged MPs and other ‘likeminded people’ to implement them (ROK, Parliament, 2008). The minister also said he knew that no case of child labour had been prosecuted there by his officers and that prosecution was a last resort as his ministry had adopted a multi sectored approach to the issue. The shifting of roles to the MPs and well-wishers even when the law was clear on the ‘enforcers and not ‘any volunteer’ in such matters is likely to affect enforcement.

Such over reliance on well-wishers had been highlighted by the county labour officer in this research- that her office relied on well-wishers to run most of their programmes. USDOL (2011) questioned the commitment of the Kenyan government in implementation, labelling the government’s reliance on volunteers to set up LCLCs as counterproductive apathy. Grugel and Piper (2009) focus much on the role of welfare in
child protection suggesting a shift from mere ‘formulaic declarations’ of state responsibility over children to facing the real challenges of delivery and implementation of treaties. This then will allow the global liberal to incorporate these challenges in periodic reports and give assistance instead of ‘romanticizing’ child protection in utopic bliss, typical of liberalism theory. That is the balance this study sought views about on possible model to balance the interests. Generally, participants believed they had solutions within the community.

As if to echo the spirit of the people and their attitude towards the criminalization of their way of life, the labour officer stated she had not prosecuted for child labour in 5 years (Labour Officer, Personal Interview, 12th August 2016). The divisional police had not received a complaint on child labour in a year. He attributed this to perceptions of child labour as a civil or societal problem than criminal, and defiance to criminalization of a ‘societal issue and way of life’ (Police Officer, Personal Interview, 12th August 2016). This was similar to the case of Joseph Maraka Adoro versus Paul Njogo Kihara, Nairobi High Court Civil Case Number 238 of 2004, where a 9-year-old minor had his arm shredded while operating a grass shredder machine. In this case, Justice Ang’awa noted that the children’s officer had not pursued the matter after the accident occurred but only ensured the child was treated medically and was later enrolled in school yet these are only rehabilitative remedies for the child and do not compensate for pain and suffering or penalize the employer under the Employment Act.
As a contradiction of the laws, the penalties for child labour under the Children Act and the Employment Act are different. Section 127 of the Children Act gives a maximum five years’ sentence or maximum fine of Kenya Shillings Two Hundred Thousand for child labour. Rule 16 of the Employment (General) Rules (2014) gives a fine not exceeding one hundred thousand or imprisonment for a term not exceeding six months or to both for its violation. For WFCL, section 65 of Employment Act provides a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both. If a child is killed or suffers any bodily injury, the employer shall, in addition to any other penalty, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both and the whole or part of the fine may be applied for the benefit of the injured child.

In the case of B.A.A versus Republic, Kakamega Criminal Appeal Case Number 250 of 2010, the accused was charged under section 127(1) (b) of the Children Act that she lured a 14-year-old child out of school for child labour, causing the child to be in need of care and protection. The accused pleaded guilty at the Magistrate’s court and sentenced to three years’ imprisonment. The judge reduced the term to 6 months, which the Appellant had already served despite the law providing a maximum five years’ sentence or fine of Kenya Shillings Two Hundred Thousand. This inconsistency in the application of the law has the potential to place enforcers in a state of confusion as the various laws leave enforcers unsure which Act to use. The accused persons may not accept the harsher provisions and the victim may not accept the lenient one. In one instance, the children’s officer narrated how faced with a case of child labour, she did not know which Act to
prosecute under and on being given time by the court, she ‘google searched’ to get the specific section within Employment act. She found the section to be ‘too lenient’ and she reverted to the Children Act.

In conclusion, the Employment Act was drafted without considering harmonization of other laws on children, such as the Children Act, which is the same fate that is highlighted in previous sections of this chapter as having befallen the UNCRC during drafting. Detrick (1999) identifies the proponent of UNCRC as Poland and argues had singlehandedly drafted the UNCRC closing out many nations from giving views during the convention making.

3.3.4 Occupational Safety and Health Act, 2007

Under this Act, employers have a duty to provide protective gear at work for their employees. This study investigated the proportion of children provided with protective clothing at work and presented the findings in figure 2.9. Only 31 per cent were provided with protective gear. Section 98 of the Occupational Safety and Health Act (2007) creates an obligation on employers to ensure persons under 18 do not work or perform work which would harm a person's OSH. The study sought to understand the adverse effects of child work in the area. Table 2.8 presented these as cuts and bruises, chest pains and cold related illnesses, backaches, headaches and verbal abuse.

3.3.5 Basic Education Act, 2013

Section 38 of the Basic Education Act prohibits employment of a child of compulsory school age in any labour or occupation that prevents such child from attending school.
The penalty is a fine not exceeding Kenya Shillings five million or sentencing for a period not exceeding five years or to both. This section creates an impression that employment during holidays is allowable and is also ambiguous because the compulsory school age is set but the actual completion date varies, meaning an 18-year-old could still be a student needing protection. The provisions on absenteeism in Section 38 of the Basic Education Act contradict the Employment Act and generally ILO conventions. This once again leads me to question if consultations were done before it was enacted. The section prohibits employment of a child of compulsory school age in any labour or occupation that prevents such child from attending school. The penalty is a fine not exceeding Kenya Shillings five million or to sentencing for a period not exceeding five years or to both. This section creates an impression that absenteeism is the only reason that would cause child employment to be banned, without looking at the other variances such as minimum age, harm and unconditional WFCL. It is also ambiguous because the compulsory school age differs depending on children’s abilities.

On pupils’ absenteeism, the head teacher is legally required to investigate the reasons and if not reasonable, ask the parent to comply and if the parent does not comply, to report with the County Education Board. This chain of command is out of reality because the board sits at a very executive level and may not have the time to address the grassroots complaints about child labour. A report to the police, chief or ward education officer, then Sub County officer before it gets to the county education board would elicit rapid response as a ‘bottom-up’. The child might miss a term before the complaint is resolved under the ‘top-bottom’ command.
Section 40 of the Act makes primary education compulsory and sets harsh penalties for parents and head teachers encouraging pupils’ absenteeism. I sought to know why the children were absent from school in order to assess the realities of these children at their local communities’ levels. The motivation for child labour related absenteeism was poverty mainly but also an education that was perceived as ‘less vibrant and insensitive to talent.’ This education was also viewed not relevant to the dyslexic and children with special needs. Some children viewed the education provided as ‘too stern’ and preferable to a chosen few. Most participants observed that there was need for talent management and alternative education for dyslexic children so that ‘no one is wasted through formal education.’

### 3.3.6 Policies and Partnerships

Whereas laws give a general guide, implementation is done through simpler processes such as agreements, programmes, enforcement actions and events. This section explored these processes of the implementation of the conventions to local laws in Kenya. In 1992, Kenya signed a memorandum of Understanding with ILO to launch and cooperate on the ILO’s International Programme for the Elimination of Child Labour (IPEC); which has collaborated with Kenya using programmes at the grass roots. Kenya’s policy documents have a framework for elimination of child labour. These include the National Action Plan for the Elimination of Child Labour in Kenya (2004-2015), a framework for the implementation of the Convention 182, Vision 2030, the Medium-Term Plan (2008-2012) and the United Nations Development Assistance Framework (UNDAF) (2009-2013). Kenya prepared a national plan of action and presented its first report even before
it enacted the Children Act in 2001, indicating zealousness at reporting compliance than implementation (Onyango & Lynch, 2006). Kenya also cooperates with the ILO and United States Department of Labour (USDOL) through the time bound programme (TBP), an ILO’s regional project on hazardous child labour in commercial agriculture programme (ComAgri) in conjunction with the Central Organisation of Trade Unions (COTU) and the Federation of Kenya Employers (FKE).

The national draft on child labour policy was drafted in 2001 and had not been formally adopted during data collection but was later adopted in October 2016 (ROK, 2016). The informants had given the reasons for delay as inter-ministerial tension, confusion in chain of command and general apathy. The informants also expressed their views that other policies, generally but not specifically providing for child labour had also caused the delay in finalizing the child labour policy draft, whose duplication, according to the informants, caused more harm than good because of lack of clear ‘chain of command’. The policy is anchored on six principles, being the best interests of the child, equal opportunity, partnership, participation, sustainability and decent work for children above the minimum age of employment.

3.4 General Knowledge of Laws

This study also probed the general awareness of laws. The participants were generally aware that child labour is not allowed in the laws of Kenya, though they could not cite the specific laws of Kenya or conventions. Some household heads had a general fear that the researcher would ‘get them into trouble in relation to this issue. However, participants cooperated after reassurances by the administrators who had been informed of the
researcher’s presence following research ethics briefing. This fear implied they were aware of labour laws in Kenya. What was interesting was that some child informants as young as 6 years knew child labour laws. In one FGD involving 6-7 years old children, the discussion started with an icebreaker of what they wanted to do when they grow up. Each child had a dream of who they want to be when they grow up. The children informed the researcher that they had been taught about child labour in school. The children mainly associated child labour with absenteeism and gave the example of a boy who had been ‘taken away by the uncle’ to sell in a shop in a neighbouring county. The children also knew that teachers questioned parents when children failed to attend school on a regular basis. The children felt that the people who do like that relative should be punished.

Though generally aware of the ban on child labour, the participants were unaware of specific provisions of child labour laws even amongst some key informants. A children’s officer quoted an instance when she ‘googled’ the sections concerned with child labour under the Employment Act, only after being prompted by a judicial officer. She said that she would not have known the existence of child labour sections in the Employment Act on her own, were it not for what she termed as the ‘kindness of the judicial officer’. She argued that the Employment Act was too complicated and that awareness had not been raised about it. The children’s officer also highlighted misinformation about the law as common, in that people knew child labour was wrong but did not know it could be a ‘police case’. These research findings on the complicated nature of child labour laws concur with Alston (1989) and Detrick (1999) study findings.
On observation, the researcher took a photo of a wall poster in a tea collection centre ‘banning’ child labour, presented in figure 3.3.

Figure 3.3

Photograph of a wall poster in a tea collection centre ‘banning’ child labour

(Source: Field Survey, 2016)

The poster is written in both Kiswahili and Kikuyu. This is the most accessible lingua by the majority in this region. This is translated to mean ‘children are not allowed to pluck tea, transport tea to the centre or roam around the tea collection centre.’ As heard from the key informants, actual work happens in the farms and this banner may be a show of public relations since it is not implemented. There was also a free-standing poster outside
a coffee factory banning child labour in a neighbouring village. This is presented in figure 3.4 below.

![Image of a gate with a sign that reads "No Smoking Zone, No Child Labour" (Source: Field Survey, 2016)](image)

**Figure 3.4**

*Photograph of a ‘no child labour’ poster at the gate of a coffee factory*

(Source: Field Survey, 2016)

The above two posters raise a lot of questions. If indeed this is the case, why then are children still engaged in waged work? Who is responsible for the implementation of such orders? However, I point out that the posters are meant to mask the reality on the ground as children still work. The same posters demonstrate that those who employ the children are aware that it was criminal to do so. Therefore, for child labour to be dealt with in totality, there is need for collective responsibility on the part of the employers, parents
and other stake holders as earlier mentioned in the research. Otherwise, child labour will still flourish behind the very posters that purports to ban the same.

I also observed and assessed the reaction of the community about my research in order to assess their outlook about waged work for children. Some household heads declined to fill the questionnaires for fear that they could be arrested. This is a confirmation that participants generally knew about the existence of child labour laws just as the employers in the above photos banning children from working in their premises. However, this implies that it is not enough to have laws but implementing them is a crucial component of the same. Statistics in chapter two of this study are high in the same way the general awareness of child labour ban in the area is. This shift shows that the international regimes are not as efficient as the proponents of liberalism think and this utopia state is what shifts the primary focus of this study from liberalism theory. The shift also helped probe the factors causing child labour and influencing implementation of child labour laws in chapter four.

3.5 Conclusion

This chapter has explored child labour rights in the international human rights arena. A highlight of the main elements of convention 138, the United Nations convention on the rights of the child (UNCRC), Convention 182, the African Charter on the Rights and Welfare of the Child (ACRWC) and the Kenyan laws dealing with the same has been done. A review of the effectiveness of these conventions in dealing with child labour, has been done and also expounded on the glaring gaps, contradictions and discrepancies in
them. The challenges in applying the international principles to the local situations have been explored. The local realities are that both children and parents, at 36% and 56.4% respectively thought that children should be allowed to do waged work.

A significant number of children, which was 38.5%, indicated they would work for wage even if provided for with basic needs. What also stood out is that although 69.23 per cent of the children thought they had a voice in child labour, parents thought otherwise about child participation and did not strongly support it. Despite the parent’s failure to support child participation, the percentage of children who worked for wage without parental consent was high (41%). This percentage indicates that children had already taken decisions to work for wage, not necessarily because their parents said so. What is seen is an elaborate pattern of parents losing the grip over their children and the state may also not yield much power as realism theory presupposes. Engaging the children may not be optional but mandatory. This finding also challenges Kenya’s Employment Act, which dictates that only parents and employers are held responsible for paid child work, yet even children independently decide to work. As such, this opens discussion on children participation in labour matters. All these realities concur with data from chapter two which draws a sharp distinction between existence of laws and their implementation, that the conventions are less effective. The above discussion propels the study to chapter four where the factors affecting implementation of conventions in Kenya are examined.
CHAPTER FOUR: IMPLEMENTATION OF CHILD LABOUR CONVENTIONS

4.1 Introduction

The data provided in chapter 2 showed that it is not enough to have conventions seeing that even with the presence of conventions, children still participated in child labour. Chapter three critically analysed the international and local laws on child labour in Kenya, highlighting the gaps and contradictions in them. The need to understand why child labour persists and why the conventions have not been implemented fully ushers chapter four, to examine the factors affecting implementation of child labour conventions in Kenya. Chapter four presents findings in three broad sections, which are children’s motivation to work for wage, causes of child labour and the challenges encountered by enforcers in implementing child labour laws in Kenya.

4.2 Children’s Motivation for Waged Work

In the questionnaire, I also asked the children how they used the cash they had earned from waged work, to help gather what motivated these children to work despite there being laws regulating child work. The findings are in figure 4.1 below.

Figure 4.1

How cash earned by children was used
(Source: Field Survey, 2016)
Figure 4.1 shows that 53.34 per cent of the sampled children used the money earned for leisure and entertainment such as leisurely visits to nearest towns and watching videos. The interviews showed that children worked for wage as a way of passing time. Let me call this, the need for leisure and entertainment. 39.82 per cent used the money to pay school fees, buy ‘unga’ and clothes. These shall be called basic needs. 4.28 per cent used the cash to start income generating projects such as buying seedlings, chicken, and rabbit rearing. This creates the need for vocation, life’s skills and talent management. 2.56 per cent donated the earnings to religious charities and this is the need for religious participation.

The above findings demonstrate the realities faced by children. These realities had a role in fuelling child labour despite existence of laws and the general knowledge of the laws highlighted in chapter 3. These findings concur with those of Okyere (2013) and White (2009), who viewed the boundary between harmless ‘“child work”’ and harmful ‘“child labour”’ as problematic because of the realities that cause children to work for wage. This is even worsened by the African socio-cultural concept of childhood and the conflict emanating from the fact that children are not universal rights bearers.

The above four needs help question the possibility of allowing waged work for children without exploiting them or exposing them to harmful forms of child labour, absenteeism and loss of childhood. In relation to these, I interviewed participants on the causes of child labour in two ways. First, I wanted to know what caused children to work for wage
in that area generally and specifically, what caused children to work for wage without parental consent. The findings are in the next section.

4.3 What causes children to work for wage?

In the interviews, I asked participants the causes of child work in the area. I categorised the answers given into 9 broad categories, which are poverty and orphaned vulnerable children (OVC), employers’ interest and the global market demand, schooling opportunities, family size and structure, parents’ characteristic and attitudes, parental control versus children’s independence, cultural factors including communities’ views, gender and religion. Each of these categories is discussed in the subsections below.

4.3.1 Poverty, Orphaned Vulnerable Children (OVC) and Child Labour

This research examined the link between poverty and child labour in the study area. The findings showed that poverty was not the main cause of child labour in the area. From figure 4.1, only 39.82 per cent of the employed children used the money to pay school fees, buy unga and clothes. These are the basic needs for any individual regardless of age. Figure 2.4 of chapter 2 similarly showed that a big number of the household breadwinners (41 per cent) earned Ksh 201-400 per day. Only 5 per cent of the household heads earned less than Ksh 200 per day or less than 1.90 dollars a day which is the international poverty line set by the World Bank (World Bank, 2016).

These findings point that the high rate of child labour in the study area may not necessarily be linked to poverty as the households are able to afford the basic needs for its members.
These findings negate the KIHBS report that household spending power plays an important role in child labour (ROK & ILO, 2008).

Figure 4.1 shows that 53.34 per cent, a majority of the waged children used the money to watch videos, entertainment and also visiting nearest towns. 4.28 per cent used the cash to start income generating projects such as buy seedlings for farming, chicken and rabbit rearing. 2.56 per cent donated to religious charity. Only 39.82 per cent used the money for basic needs such as pay school fees, buy ‘unga’ and clothes. In fact, the poverty factor was challenged by some informants such as a teacher and a children’s officer. The children’s officer advised that where there is genuine poverty, children could be allowed to work for wage. However, should this be the case, there was need to protect their interests as more practical than deny them livelihood (Children’s Officer, Personal Interview, 10\textsuperscript{th} August 2016). They called it the ‘worse evil test’ as it would be worse to keep children out of child labour without basic needs, yet they can get the needs through decent work. These views were also supported by the labour officer and the trade union representative (Labour officer, Personal Interview, 12\textsuperscript{th} August 2016; Unionist, Personal Interview, 12\textsuperscript{th} August 2016).

In challenging the poverty theory, another FGD of parents highlighted imagined poverty as the cause of child labour in the area. This was particularly so in situations where some of the affected parents seemed to live with a fixed mind-set that they have to be helped and that the government should take care of ‘all’ their needs. They highlighted cases of parents who sought full CDF scholarship even when they could afford to pay some fees.
A teacher called this the ‘unga mentality’ whereby employees worked for a day’s living to ‘push them’ to the next day without thinking about the future. This, the teacher argued had also affected the attitude of the children towards education lowering their morale and aspirations.

The children seemed to think that all they needed was to make a day’s living, instead of pursuing more promising careers where they would earn more money. The labour officer countered the survivor mentality and self-pity attitude with cases of exceptionally poor people who still educate the children without subjecting them to paid work. A teacher highlighted a case of child prostitution, where too much love of money by the mother was hurting the child.

This was because the mother was a clothes’ dealer who could generally sustain the family without additional income from the child’s unorthodox means of getting money. A chief highlighted a mother who preferred an arrest because she believed the state would provide for her children as she served her jail term. I observed this money minded attitude with some participants who filled the questionnaires very fast as they believed they would be given money later, even after clarifying at the start that no financial benefit would accrue.

This work concurs with those scholars who did not find evidence to support the nexus between poverty and child labour and also alienated the Marxist theory. Andvig, Canagarajah and Kielland (2001) find that Africa as the poorest continent of the world has a higher incidence of child labour but explore how poverty is not so important in
explaining child labour in Africa. The fact that child labour exists even in developed countries distances child labour from being a merely socio-economic issue since developed nations like Britain has child labour against strong welfare cushions (McKechnie and Hobbs, 1999). Nguyen and Quan (2003), on an empirical study in Vietnam concluded that children in both wealthy and poor households were involved in child labour arguing that poor school performance is a stronger factor than household wealth in children’s work. The results of Vimefall (2011) did not support the hypothesis that poorer children have a higher probability of working; instead living in a poor household reduces the child’s probability of working in Kenya. These findings are also in line with the findings by Bhalotra and Heady (2003) that greater poverty does not lead to greater child labor.

The researcher also sought the views of the participants on poor and welfare programmes in the area. Most parents pointed out lack of sufficient welfare cushions to supplement the low income as the main reason poor children were pushed to employment. This challenge comes against the backdrop of the existence the Kenya National Safety Net Program (NSNP), which they said was too minimal. The NSNP was set up in 2012 to coordinate safety net support of cash transfer to five categories of poor and vulnerable populations in Kenya. These groups include orphans and vulnerable children (OVCs), persons with severe disabilities, the older persons, the urban food subsidy and the hunger safety net programme (ROK, 2012).
The NSNP evolved into the Social Assistance Act, in 2013 (ROK, 2013). On the same point, in a focus group discussion by parents, they questioned the Constituency Development Fund (CDF) for failing to follow up needy cases in the long term. One of the parents (Parent, Personal Interview, 7th August 2016) said that:

Feeding the needy only once does not sort them in the long term. What we need from the government through these local offices such as CDF is practical life changing help. Our people are suffering because of handouts. Teach them to fish and be economically empowered, do not just give fish.

I met an 80-year-old grandmother, whose son had neglected his children. She partly blamed the government for not charging her son with child neglect yet she knew she could not sit back and ‘watch her grandchildren turn into beggars.’ To avoid this to happen, the children were forced by circumstances to help her run the grocery kiosk up to 11:30 P.M. This was the only way she could manage to give them a better life than being street children. This grandmother (Parent, Personal Interview, 9th August 2016) lamented that:

Having given birth to all my 5 children before independence, it is not fair that over 50 years later, I am still limping to my grocery kiosk to work till late in the night for my grandchildren’s upkeep. Who will protect us?

The above voice captures the desperation of this old woman and at the same time, a lamentation for being neglected by the government. As observed in the paragraphs above, there are programs in place that are supposed to take care of the elderly yet this woman
seems to have not been helped, posing a dilemma as to what is best for the children in this scenario.

Accordingly, a teacher blamed NGOs and other social partners as having neglected their role of community empowerment projects and cash transfer programmes in the area. There was also similar concern by the children’s officer on the ‘misconception of central Kenya region as too financially endowed thus not in need of welfare cushions from NGOs’ (Children’s officer, Personal Interview, 10th August 2016).

This study also looked at other social welfare concerns in the area such as human immune virus and acquired immune deficient syndrome (HIV/AIDs). Though there was no report of waged work as a result of being HIV/AIDs orphans in the area, a number of orphans and vulnerable children (OVC) exist. This was well captured where these grandchildren were being raised by their grandparents under strenuous and hard economic conditions. This scenario was demonstrated by an 80-year-old grandmother who cautioned that her grandchildren’s survival could only be assured by their helping her run the grocery business till late; otherwise they could ‘turn to street children’ (Parent, Personal Interview, 9th August 2016). This is similar to Boyden and Myers (1994) caution against drastic withdrawal from child labour for children who are forced by circumstances to work. Boyden and Myers used data from a Bangladesh’s (under 14 years) child workers in a garment factory, who were laid off citing child labour conventions only to lead them to harsher conditions. Otele (2011) focused on tobacco farms in Malakisi, Kenya, where he pointed out that orphans whose parents had died mostly of HIV/AIDS were denied
schooling as the guardians preferred them working instead of schooling, to raise meals. The data presented similarly shows harsh working conditions for OVCs.

What emerges from this is that children work to get much more than basic needs. The notion that it is the poorest children that work has thus been challenged through this research and the literature cited above. The relevance of these findings to this research are that they dispute the theory that poverty is the main cause of child labour, because the data in figure 4.1 shows that majority of the children used their wage for entertainment, leisure and fashion activities. Through poverty analysis, the study identified leisure and entertainment, income generating projects (vocation) and religious charities as new drivers of child labour that the researcher did not understand before.

4.3.2 Role of Employers and Global Market Demands in Child Labour

Since child labour is a complex web involving many stakeholders, the researcher sought to know the role of employers in children’s work for wage and whether the employers emphasize on decent work where children must work. Data from figure 2.6 in chapter 2 was about the sectors which the sampled children worked in. The data showed that the agricultural sector had a high representation of children working for wage. The interviews also reinforced the finding from chapter 2, that majority of the children were involved in agriculture. They also concurred with the ILO report that agriculture remains by far the most important sector where working children can be found, at 59% (ILO, 2013). Agriculture is the backbone of the Kenyan economy, at 52.1 per cent of the total export earnings in Kenya (ROK, 2015). Over centuries, international trade has brought together
remote parts of the world and different civilizations, helped disseminate knowledge and ideas, and shaped the course of nations (Bachmann, 2000).

This background helped probe whether the global market demands these products from countries or through the multinational companies (MNCs) which import the same thereby bringing foreign direct investment (FDI) to Kenya, played a role in increasing child labour in the area. From the interviews, the participants were of the view that easily available labour in the area from small scale agriculture (mainly tea and coffee) encouraged child labour. One parent said she could not imagine how she could practically ‘keep off her big son from working’ yet the work was readily and easily available. (Parent, Personal Interview, 9th August 2016). This concurred with the findings by Cockburn (2001) that low household income and availability of commercial agricultural labour increased child labour.

Other views by participants were that employers preferred children as workers because they were more reliable and dependable, due to their ‘innocence and youthful energy’. One assistant chief said that in as much as fair trade programmes were present in the area, these programmes had focused only on transporting coffee and tea to points of collection, yet the actual work was being done in the farms (Assistant Chief, Personal Interview, 8th August 2016). Of note is that data in figure 2.9 of chapter 2 showed that protective gears were not provided for and in table 2.8 of chapter 2, various hazards were met by all children who worked, whether helping at home or outside their homes for a pay. The participants dared enforcers of the standards to visit the farms and work places, and not
restrict themselves to tea or coffee collection points as these did not tell the whole story. This opened further thought into the global trade and how other regions which use of child labour could be compared to the site of study and the affected crops- mainly tea and coffee.

The trends and challenge with child labour in the site of study could be compared to those in cocoa growing in West Africa. UNICEF estimates that nearly a half-million children work on farms across Ivory Coast, which produces nearly 40% of the world’s supply of cocoa, with hundreds of thousands of children, many of them trafficked across borders, engaged in the worst forms of child labor (ILO, 2013). These numbers again emerge despite existence of the international regime and for cocoa, the Harkin-Engel protocol also known as the cocoa protocol. The Harkin-Engel protocol was adopted in 2001, as a public-private initiative for the growing and processing of cocoa beans and their derivative products in a manner that complies with ILO convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labor. The protocol could be compared with the child labour free certifications (CLFCs) in Kenya. Unfortunately, child labour still persists in both East and West Africa (ILO, 2013).

As far as child labour is concerned, the narrative of fair trade seems to not work because not much is followed up to the grassroots. The liberalism theory is far from convincing that it is all rosy. This utopia must be countered by multi-national corporations (MNCs) and businesses taking a role in reducing child labour in the grassroots-the point of
production, otherwise such sensational television features such as ‘cocoa-nomics’ or ‘chocolate child slaves’ on child labour in cocoa farming will be common.

The other concern is the motivation and working conditions for those children who must work. Children in both focus group discussions and individually were of the view that employers perceived them as more obedient, honest, hardworking and in the words of one of the boys, that they had more energy and drive therefore preferred to adults (Child, Personal Interview, 12th August 2016). One coffee farmer who employed children said she could not tackle the stubbornness of adults, praising the ‘energy and honesty’ in children who rarely broke coffee stems or picked ‘wrong’ coffee berries (Employer, Personal Interview, 9th August 2016). One chief challenged children’s drive in that they work too hard for praise without knowing that this could harm them (Chief, Personal Interview, 12th August 2016). One 16-year-old boy (Child, Personal Interviews, 12th August 2016) excitedly shared:

I know I cannot lack a place to earn unga because employers preferred the ‘hot blood’ older stronger children like me. At the moment, I am the most sought-after coffee picker. I went to look for work with my father sometimes back and he was rejected for being too old and weak.

These findings are comparable with the ‘nimble fingers’ phenomenon, where Asian children are prone to child labour in the textile industries because of having nimble fingers which are preferred. Children in Mathira who had the preferred trait of hardworking and strength were more prone to child labour. This research also found out that the great
demands for tea, coffee and horticultural export crops had a direct bearing on children’s employment. These findings did not align with Palley (2002) and Neumayer and Sosya (2005) who warned against policy recommendations for using trade restrictions as a prohibition mechanism to penalise countries that export goods with labour from children.

These views corroborate Myers (2009) who dismissed ILO’s Convention 138 as being adopted out of fear of adults losing their work to children. In their analysis of Bangladesh textile industry, Boyden and Myers (1994) pointed out that employing children who earn less than adults for the same labour is seen by adults to be a threat to the adults’ economic welfare. Parents in a FGD generally argued that there was no competition with children for work, and in the words of one, the only labour where children were preferred was coffee picking, which adults did not like as it was time consuming (Parent, Personal Interview, 7th August 2016).

The researcher also sought to know the commitment of employers in the elimination of child labour and their greater role in collective trading in tea and coffee where most of the labour is at the farms and factories only act as collection centers. From the interview with managers at both the coffee and tea factories, I learnt that the collective agencies such as Kenya Tea Development Agency (KTDA) and coffee farmers saving and credit cooperative societies (SACCOS) in the area had signed up for child labour free certification (CLFCs) and as child labour free certified zones (CLFZs). In an interview with a factory manager in one of the fair trade certified coffee factories, he said his work is solely at the factory and chiefs should be able to visit farms and homes to monitor
whether children are engaged in waged work. This raises the question of whether international standards really work because if they did, getting to the root source of the labour would be a more ideal strategy for compliance by the owners of capital.

The same view was held by an officer from KTDA who observed that the factory had done enough to place posters at the tea collection centres to ensure that children are not seen at the tea collection centres (Employer, Personal Interview, 9th August 2016. These posters are shown in figures 3.3 and 3.4 in chapter 3. Most participants blamed the collective agencies for ‘not going an extra mile’ to supervise at the farms where children worked for wage. One parent (Parent, Personal Interview, 10th August 2016) branded the role of collective agencies in fair labour practice as stage managed at the factory to please quality assurance inspectors who only visit the factories and collection centres yet they very well knew that the children worked in the farms and some at very tough conditions.’

One child pointed out a case of a KTDA tea factory director who employed children in his farm, yet at the factory he is an enforcer of certification standards, contrary to what was expected of him and what his responsibility was in the area. (Child, Personal Interview, 11th August 2016). An assistant chief bitterly complained about the bracket ban of children from the coffee factory’s collection centre yet child labour continued in the farms where the coffee was being harvested from (Assistant Chief, Personal Interview, 8th August 2016). To him, the posters in figure 3.3 and 3.4 of chapter 3 did not ‘serve any sense’ but pushed girls to skip school to take care of toddlers who could not
accompany their mothers to ‘sell the coffee or tea.’ This was a gendered consequence of bracket ban by employers, overlooking the bigger picture.

Through this analysis, it emerged that collective agencies (as employers and agents of multi-national companies-MNCs) did not monitor standards all the way down to the farms and this fueled child labor in the area. I understood that children’s physique made them the preferred labour in some fields such as coffee picking and that the rights of an employer to dedicated performing workers was in direct competition with children’s protection from child labour. From this study, the need to hold employers and exporters of tea, coffee and horticultural crops accountable at the grassroots level going up to the national level is seen.

4.3.3 Schooling Opportunities and Child Labour

This research also sought to find out whether the schooling opportunities played a role in child labour. According to the international labour organisation (ILO), absenteeism is a determinant of child labour, where a child skips school in order to work (ILO, 2004). The research also sought to know whether family work caused absenteeism just like paid work. The researcher also later probed other reasons keeping children away from school, other than lack of school fees.

Kenya has a free primary education policy, therefore knowing the enrolment rate in the area of study is crucial to this study. From figure 2.3 in chapter two, an aggregate 79 per cent of the sampled children were enrolled in school but 21 per cent were out of school.
A parents’ FGD, applauded free primary education (FPE) as the main cause of high school attendance. The participants observed that FPE had managed to draw the younger children to school. However, access to secondary school level remained expensive for children from poor families. One of the parents made an issue with the constituency development fund (CDF) for lack of consistency in allocation and follow up funds after form 1 entry (Parent, Personal Interview, 6th August 2016). Another parent felt the provision of tuition fees in primary school was not enough since educational trips were crucial and these pushed the bills higher (Parent, Personal Interview, 7th August 2016). What emerges from the findings is that availability of schooling opportunities, high attendance rates and monitoring absenteeism is not enough to reduce child labour in the area. This is because the high statistics of employed children exists amidst FPE and a high enrolment rate. This makes one to seek reasons as why this is so despite the opportunities available.

This research was also concerned whether family work caused absenteeism. Figure 2.5 in chapter 2 showed that a high proportion, of children skip school to work at home. Boys recorded a slightly higher prevalence of such absenteeism, which are 47.3 per cent compared to the girl’s 46.7 per cent. Figure 2.7 of chapter 2 showed that 42.1 per cent of the girls and 55.6 per cent of the boys skipped school to do waged work. From the statistics, there were more girls skipping school to work at home, compared to those who skipped school to do waged work. The key informants attributed this to girls taking up babysitting chores for mothers as mothers worked, which one teacher wished could be sorted urgently as it was the major cause of absenteeism for primary going children. These
gender biases in child labour shall be tackled ahead in this chapter but what clearly emerges is that family work also caused absenteeism.

This research was also concerned with the cost of education in the different levels of schooling. Table 2.8 of chapter 2 showed that the number of hours worked increases with the age of the child. A parents’ FGD pointed out that the fees in secondary schools were much higher than primary schools and there was need to supplement for poor families. This offered some explanation on why the older children were more prone to waged work than the younger. The parents also complained about the constituency development fund (CDF) giving bursaries inconsistently. One parent (Personal Interview, 7th August 2016) said those intermittent bursaries caused child labour as they are not offered fully time and giving CDF at form 1 entry level only contributes to school’s dropout in second term of the first year. The parents rhetorically asked where those poor parents were expected to get the money for the other classes.

On the part of a senior CDF official, he admitted a flawed follow up system for needy cases such that these could be bypassed in future allocation unless the parent reports to them (Senior administrator, Personal Interview, 9th August 2016). The findings point to a flawed social protection system and compare with the KIHBS 2005/2006 report that the secondary school students were more prone to waged work than the primary school students (ROK & ILO, 2008) and Anyango-Kivuva (2006) that the real problem is not primary education but the costlier secondary education because poverty exists despite FPE. The findings also concur with Buchmann (2000) that dropping out of school to start
waged labour is uncommon in Kenya; rather poor performance and inability to bear the schooling expenses push the children to drop from school in order to work for wage. In explaining the vicious cycle that working children face while schooling, Heady (2003) and Patrinos and Psacharopoulos (1995) state that child labourers may be unable to complete schooling because of working to raise fees.

On the reasons for absenteeism, one teacher linked it to the belief that only formal education can help, instead of tapping talent and skills, informal education, vocational training and extracurricular activities (Teacher, Personal Interview, 7th August 2016). One chief observed that education had lost value in the area, made worse by the existence of bodabodas. This has caused boys in the area to believe that education is not important since no academic papers were needed for riding (Chief, Personal Interview, 12th August 2016). In the field, I met this 16-year-old bodaboda rider who said he knew what he did was wrong but did not feel like rejoining school as ‘that was not his calling.’ He pointed out that he found a lot of satisfaction in the business and had taken an extra task of learning bodaboda repair (Child, Personal Interview, Thursday, 11th August 2016. The figure below is a photograph of the boy.
This boy was categorical that education was not his calling and points to a need for incentives to keep children in school. This is especially possible in situations where one is not good in academic performance. In such cases, the other talents can be tapped so that they finish basic education and earn an academic certificate, which would ideally be reinforced by technical courses such as the boy’s mechanical course. This corroborates Bonnet (1993) that some children in Africa drop out of school to work since the school neither gives vocational skills, nor excites them or prepares them for the future. Parents’ in an FGD viewed lack of communal extracurricular activities during holidays as reason children worked for wage during the holidays. A few children in individual interviews and who had worked before said they found they had so much time during the holidays and one said, instead of playing all day, they thought they could earn extra money and pass time in waged work (Child, Personal Interview, 8th August 2016).
Most respondents viewed child labour as a leisure activity due to lack of communal leisure activities and as pointed out by the labour officer, lack of organised school-based holiday activities had pushed children to working for wage instead of staying idle that long (Labour Officer, Personal Interview, 12th August 2016). The data concurs with Siddiqi and Patrinos (1999) who listed lack of schools and sub-standard quality as the main driver of child labour. It also concurs with the United States Department of Labour (USDOL, 2011) who listed poverty and lack of schooling opportunities as major causes of child labour in Kenya.

What emerges is that there was high school attendance rate in the area but not absolute. Absenteeism was low. The other factors keeping children out of school working for wage are lack of school fees to a small extent, lack of money for extracurricular activities, lack of vibrancy in the education provided, poor attitude and loss of value in education, failure to manage talent, lack of organised holiday activities and failure to offer educational opportunities for those with special needs. The next section analyses how family size and structure affected children’s work.

### 4.3.4 Family Size and Structure

The researcher sought to know whether family size and structure affected children’s work in the area. From the questionnaire, the number of children found in the households helped assess the family’s size. Table 4.1 shows the findings.
Table 4.1 *Number of children in households*

<table>
<thead>
<tr>
<th>Number of Children</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>28</td>
<td>35.9</td>
</tr>
<tr>
<td>Two</td>
<td>40</td>
<td>51.3</td>
</tr>
<tr>
<td>Three</td>
<td>7</td>
<td>9.0</td>
</tr>
<tr>
<td>Over Three</td>
<td>3</td>
<td>3.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>78</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

(Source: Field Survey, 2016)

From table 4.1, 35.9 per cent of the households had only one child. 51.3 per cent of the homes had 2 children. 9 per cent had three children while only 3.8 per cent of the households had over three children. It is seen that majority of the households had only two children and the area generally reported a low birth rate because very few homes had three or more children. This corroborates the KIHBS report of 2008 which noted that there was a decline in fertility rate in Kenya (ROK & ILO, 2008). Though there was a low fertility rate in the area, children still worked for gain and there was need to probe why this was the case. This reminds about the various needs of children, presented in figure 4.1, most of which are not basic needs and anyway, from table 3.3 of chapter 3, 41 per cent of the children worked without parental consent. These the findings therefore contradict Patrinos and Psacharopoulos (1995) whose study in Paraguay used the same parameters and found that a bigger number of siblings increase the chance of a child working to supplement the family’s strained income. These findings digress from Becker
and Tomes (1976) who explained that the quality and quantity of children come at the expense of each other, a view supported also by Andvig, Canagarajah and Kielland (2001).

The data presented in table 2.6 of chapter 2 showed that the number of hours worked increases with the age of the child. From the interviews and observation, secondary school students were more prone to waged work than the primary school students, so families with more children in secondary school had a higher chance of reporting child labour. The finding compares with Vimefall (2011), who analysed data from Kenya to conclude that the probability of working increases with age of the child as productivity increases so. The area also manifested many girls skipping school to take care of infant siblings, what a teacher participant referred to as ‘little mothers’ (Teacher, Personal Interview, 7th August 2016).

The findings corroborate Patrinos and Psacharopoulos (1997) who used data from Peru and found that having younger siblings increases a child’s probability of working. The findings also tally with Edmonds (2006) who used data from Nepal to show that older siblings work more than younger ones and that the rate increases with family size and the difference is larger for girls than for boys. The findings also agree with a study on fertility by Lyod and Brandon (1994) which showed that each additional younger sibling significantly increases the probability that an elder girl will drop out of school to take care of that extra child.
This research also sought to find out if there is a link between a family’s structure and child labour. In figure 2.1 of chapter 2, it is seen that majority of the families, or 53 per cent were headed by both mother and father, 33 per cent were headed by mothers. Only 14 per cent of the family breadwinners were fathers. The proportion of female headed households was large, at 33 per cent, increasing the likelihood of the children being prone to child labour. A teacher illustrated how some children born out of wedlock and broken families resorted to waged work because of their situation. (Teacher, Personal Interview, 7th August 2016).

In another case, some child informants, who had been born out of wedlock by a single mother who re-married, confided they felt unaccepted by their ‘new father’. One boy disclosed he and his siblings felt safer and happier picking coffee than at home because ‘any new husband to the mother’ would be hostile to them as children from another relationship (Child, Personal Interview, 9th August 2016). This matched the findings of KIHBS report (ROK & ILO, 2008) which noted that 32.5 per cent of the working children were from female-headed households.

The other family characteristic that affected child labour was the presence of grandmothers. It was established that grandparents raised grandchildren after their parents married, died or simply absconded parental duties. Since the grandparents did not have an alternative way of taking care of such children, child labour became the only solution in the area. I observed that in all the homes where grandmothers were household heads, all the children had worked for wage. In an instance, as I interviewed a chief, I observed
a grandmother who had been summoned by the chief over the grand child’s truancy and suspected bhang (cannabis) peddling. The grandmother turned aggressive and was suicidal due to frustrations.

She narrated that she was hosting the child only because his parents had re-married elsewhere after separation and could not be accepted by either step father or step mother. The grandmother (Parent, Personal Interview, 9th August 2016) explained that she would rather die than raise a child whose father was alive but neglected his duties, putting the chief to task on why he had spared the child’s father. She threatened to kill herself if the office did not arrest these irresponsible parents, to forget her messed up life. She said she knew she had no legal duty to raise the child and referred the chief to the father for ‘child support as per the law.’

The grandmothers’ in Otele’s study (Otele, 2010) were taking care of OVCs from HIV/AIDs. This research did not highlight any HIV/AIDs orphans but showed that generally parental death or neglect, irrespective of the cause, had created OVCs and this interplayed with parental neglect and poverty to increase child labour in the area, because grandmothers raised the vulnerable grandchildren at a time when they also needed social protection and support.

In summary, size of family, structure of family such as being an older sibling or broken families and grand motherhood, increased the chance of children working for wage.
4.3.5 Characteristics of Parents

The researcher probed whether parents’ characteristics and attitudes towards education, life and children’s work increased child labour in the area. Data in table 2.2 of chapter 2 showed that there was a high number of household heads who had not completed primary education at 3.5 per cent and also those who had only completed primary school but did not proceed to secondary education at 41.9 per cent. Those household heads who completed secondary education but did not proceed to college were 21 per cent. Very few of the sampled heads of households had attained college education, at 2.6 per cent. This tells that the participants were generally less educated. A chief highlighted how illiterate parents encouraged child labour by accepting unjustified out of court settlements because of lack of understanding of the legal processes (Chief, Personal Interview, 13th August 2016). A teacher highlighted that illiterate parents attached less value to education therefore increasing dropout rates for children to start informal businesses (Teacher, Personal Interview, 7th August 2016).

Data in table 3.2 of chapter 3 showed that 56.4 per cent of the heads of households thought children should be allowed to work for wage, showing that the attitudes and views of parents and guardians towards labour and the job market played a crucial role in elimination of child labour. One chief (Chief, Personal Interview, 13th August 2016) complained that parents had pushed their teenage daughters to ‘indescribable’ child labour, which was a pity because much money flowed from horticulture in the area. As a result, some teenage girls had learnt prostitution at an early age, mainly those whose
mothers are also in the trade. As such, the mothers recruited their teen daughters into the trade without caring for their health or future.

In a second case of child prostitution pointed out by a teacher, the mother had recruited the daughter and received the proceeds despite running a boutique ‘for years’ (Teacher, Personal Interview, 11th August 2016). These findings concur with those of Buchmann (2000), who found that daughters of parents who thought that job opportunities are more limited for women have a lower probability of educating their children.

In a parents’ FGD, they highlighted how some parents in the area perceived rights as absolute and felt the community should not be concerned about their parenting, complaining that these parents turned abusive on being questioned about their working children. Participants also highlighted parents’ illiteracy as a cause of child labour. The parents’ education and attitudes towards education also determined if children worked. Another way that illiteracy affected child labour enforcement, a chief said is through unnecessary out of court settlement (Chief, Personal Interview, 13th August 2016).

The findings concur with Vimefall (2011) who used data from Kenya to conclude that one of the main determinants of working children in Kenya is the educational status of the head of the household. A 2012 rapid assessment of working children in Thika, Kenya linked illiteracy levels of parents with child labour. In this case, parents were so illiterate that they found no value in educating their children (Action for Children in Conflict, 2012). Emerson and Souza (2002) and Bhalotra and Tzannatos (2003) also concluded by
pointing at the relationship between illiteracy and child labour. Basu and Tzannatos (2003) illustrate how parents who have a higher level of education are also more likely to ensure that their children similarly receive good education, create a virtuous cycle and break dynastic traps of child labour.

Religion was another cause of child work. An assistant chief highlighted how parents neglected their responsibilities to participate in religious retreats and as a consequence their children worked to get school fees after being chased from school (Assistant Chief, Personal Interview, 8th August 2016). One parent highlighted how a neighbour’s child was involved in waged work during school time to raise school fees after being send away from school severally each term yet the mother frequently attended religious conventions (Parent, Personal Interview, 7th August 2016). A parents’ FGD in the same neighbourhood felt they had lost control of the religious parent, citing verbal abuse when they had tried to reach out.

From the interviews, imagined poverty and survival mentality by some parents was also highlighted as a cause of child labour. The issue, one parent said was that some parents seemed to live with a ‘fixed mindset’ that they should be helped (Parent, Personal Interview, 7th August 2016). One teacher pointed out that some parents hoped to get a full scholarship even when they could afford some money for fees (Teacher, Personal Interview, 7th August 2016). Closely related to this is alcoholism.
A chief illustrated how parents introduced their children to alcohol when too young, thus children turn to working for wage in order to buy beer and other alcoholic drinks (Chief, Personal Interview, 13th August 2016). The findings by Dybicz (2005) and Volpi (2002) linked parents’ alcoholism to children leaving home to work away from home or be street scavengers, my findings found parents’ alcoholism encouraged children to work in order to afford the alcohol, which was a double tragedy.

Parents’ hostility towards enforcers also emerged as a factor of child labour and a reason for non-enforcement of the laws. Despite the rights-based approach in the Children Act, where anything done for a child should be in the best interest of the child, parents, expected to do anything citing unhindered parental control with their children. One parent whose child would be chased from school for fees arrears and have that child work to raise fees objected to neighbours’ concerns by pointing out that the child was hers. Thus, according to this parent, neighbours should not interfere with her life even if she chooses that her child skip school to work and raise fees (Personal Interview, 7th August 2016).

One FGD by parents raised concern that the abusive parent was getting out of hand and needed law enforcers to protect the child. A teacher explained her discomfort ‘being seen by parents to overstep her mandate’ when she followed up child labour related absenteeism (Teacher, Personal Interview, 7th August 2016) and another had been told by a parent to ‘mind his own business’ (Teacher, Personal Interview, 12th August 2016). Another teacher said she well understood her role to guide in school but felt that outside school, she could be beaten by such parents, giving an instance when the mother of a
child who had confessed to trading in prostitution assaulted a teacher because of showing care and concern to the child in school (Teacher, Personal Interview, 10\textsuperscript{th} August 2016).

The hostility did not come from the parents but the community at large. A labour officer explained how risky it got sometimes to visit homes because neighbours could raise an alarm, frustrating a possible arrest (Labour Officer, Personal Interview, 12\textsuperscript{th} August 2016). The union representatives explained how worse it got for them in home inspections and ‘they could never identify invisible domestic work without police protection’ because sometimes, enforcers would be attacked by the community (Union Officer, Personal Interview, 12\textsuperscript{th} August 2016). This hostility strengthened the view of child labour as a societal issue than criminal and by a people who believed they had solutions within the local community.

4.3.6 Parental Control versus Child Independence

The research also sought to know whether children had informed parents before working for wage and whether this affects child labour. Table 3.3 of chapter 3 showed that 41 per cent of the children worked for wage without parental consent, displaying child independence. I called this child-controlled labour. In contrast, 59 per cent had their parents’ consent before working, showing obedience to parents’ guidance. This will be called parent-controlled labour. The rate is high and tells me that a good number of children had chosen to work without the parents’ knowledge. This is made worse by lack of protective wear in as shown in figure 2.9 of chapter 2 were 69 per cent and the many hazards in table 2.8 of chapter 2. This also overrules the assumption in section 88 of the
Employment Act, that children do not make labour decisions on their own and thus only parents and employers are legally liable for unlawful employment.

These findings compared well with that of Bwibo and Onyango (1987), who in an informal study of early school dropouts in Kenya found out that 41 per cent of the boys and 52 per cent of the girls decided to work on their volition without parental guidance. The data above sharply contrasted with that of Siddiqi and Patrinos (1995) on South Asia, who found that only 8 percent of the work decisions are made by the children alone. How can one explain this sharp contrast of the two continents? The parental duties are not taken the same way in the different continents, where it seems in Kenya, there is dwindling parental consent and children are too independent. Neither Bwibo and Onyango nor Siddiqi and Patrinos explored why children made the decision to work on their own. This research further explored the reasons why children worked for wage without parental consent. From the interviews, the main reasons given are parental neglect, loss of parental control, failure by parents to provide for entertainment or fashionable clothes, truancy in children, misunderstanding of child participation and unguided child independence.

In this research, the question of whether children had a voice in their employment choices was also asked. The responses are in figure 3.1 of chapter 3 and indicated that 69.23 per cent of the children felt they had a voice and 30.77 per cent felt they did not have a voice in employment. In the interviews with children, a few of them stated they had a choice of employer and type of work done. One child emphasized he even choose which days to work as a casual worker and which ones to rest (Child, Personal Interview, 12th August
The views of parents in a FGD were that too much space had been opened for children and the much needed balance between child participation and parental control was lost.

One parent raised concern that children had taken child participation too far, by ‘chanting about their rights’ to parents and teachers ‘even when being asked to do basic chores to prepare them for the life ahead, for survival and general life skills (Parent, Personal Interview, 7th August 2016). A teacher aired the same sentiment and emphasized the need for child rights clubs so that children learn their rights ‘responsibly’ and advocated for a balance between empowering children and teaching them defiance, allowable child work and child labour so that children learn to grow up as responsible citizens (Teacher, Personal Interview, 7th August 2016). Another parent said children were slowly failing to do expected house chores under the disguise of child labour, giving an example of her 7-year-old child who belted out ‘haki yetu’ slogan when asked to sweep their ‘small cubicle’ kitchen.

Although the adults seemed to have a problem with child participation, the children generally felt empowered. One child felt empowered as a school captain but argued he lacked an option out of child labour as he worked mainly to supplement family income (Child, Personal Interview, 8th August 2016). Another child felt empowered in child labour because he did not work for gain each day, he skipped some days so that he could rest and he could also choose a good employer, leaving out the bad (Child, Personal Interview, 12th August 2016). From figure 3.2 in chapter 3, the percentage of children
who felt that waged work should be allowed was 36 per cent. Compared to adults’ view on the same question, table 3.2 in chapter 3 showed that more parents, 56.4 percent thought children should be allowed to work for wage.

The labour officer felt children do not have a voice in child labour; that Government’s interventions on salaries and working conditions are more efficient way of protecting children (Labour Officer, Personal Interview, 12th August 2016). She said no community forums to articulate child labour issues had been organised in the county and when they happened, there is a perception in Africa that a child ‘should be seen and not heard, thus cannot speak or represent others despite the law providing for child participation. The community, she argued reported a flawed understanding of child participation whereby child should be seen and not heard. The findings underscore the need to balance between the competing interests, of children’s rights and parents’ involvement as pointed out by Mahbubani (1992) to ‘meet halfway’, otherwise ‘modernize’ but not ‘westernize’ in order to balance the interests of western and non-western countries.

One chief argued that the trend of children finding employment on their own ought to be clarified as that is common and as long as the chiefs do not have the goodwill of parents, child labour prosecution was bound to fail because the employer's defence was that the child looked for the work on their own (Chief, Personal Interview, 12th August 2016). The key informants held the same view, that child independence caused exploitative labour and wished children would agree to work under the guidance of parents for fairer terms. The labour officer and the children officer both highlighted how the standards of
proof in child labour issues, beyond reasonable doubt are hard to prove since child labour happens mainly without coercion and parties choose an out of court settlement (Labour Officer, Personal Interview, 12\textsuperscript{th} August 2016; Children Officer, Personal Interview, 10\textsuperscript{th} August 2016).

Previously, child work emerged as the preferred work amongst employers also because children were perceived to be more hardworking, honest and posing youthful energy compared to adults. From figure 4.1 in this chapter, the various uses of cash earned by children tell more of the expectations of children as key players in the enforcement chain. All these show that children are key players in child labour. Space should be opened for their participation so as to empower them, not misuse them in instances where they must work. What emerges is that child independence caused child labour in the area. The dwindling parental control and unguided child participation also exposed children to exploitative work. There was a very thin line between the community’s understanding of children’s ‘unguided’ independence and child participation. The attitudes of children towards child labour also played a role in children’s employment in the area. Due to time limitation and scope, the researcher was not able to analyse the labour migration patterns in child-controlled labour, opening room for further research.

\textbf{4.3.7 Community’s Perspectives and Child Labour}

Chapter 2 presented statistics on child labour and chapter 3 critically analysed the conventions. Since the overall objective of chapter 4 is to probe why child labour persists despite the existence of laws, there is need to now examine whether the cultural aspects
of the community such as common beliefs, traditions, taboos and stigma, customs and myths had an impact in children’s work in the location of study.

There were views from the community that child labour elimination was too foreign, an ‘mzungu’ idea and majority perceived its elimination as *ukoloni mamboleo*. A sub-chief supported this argument that child labour is a fallacy of western countries and too alien in Africa (Assistant Chief, Personal Interview, 7th August 2016). He said the fallacy may not work because family work was a way of life for children in the area and emphasized it was tough balancing between what is allowable and what is hazardous work. A chief (Chief, Personal Interview, 7th August 2016) emphasized:

> Family work should be encouraged because it helps children become responsible...raising docile children is an abomination here. We cannot allow it here but will guard children’s safety as they work.

A teacher was also of the view that child work is a way of life in Africa and asked for a balance between child labour and child protection, so that children grow up as children gaining life skills. The teacher (Teacher, Personal Interview, 11th August 2016) quipped that enforcers should not lose sight that in Africa, a child is owned by the community and must learn the community’s skills such as work, that Africans should not pretend to copy western ideas as if tyir did not have their own values before being colonized.

In one interview with a chief, I met his 3 assistant chiefs and 2 elders conducting a chief’s *baraza*. The chief’s *baraza* was a forum used by the chiefs to consult their team of experts.
to resolve the community’s issues openly and fairly. The *baraza* viewed child work as a critical part of growing up, gaining crucial life’s skills, that children would not be accepted to the society if found to be lazy. The chief emphasized how the community encouraged children’s hard work and not laziness (Chief, Personal Interview, 8th August 2016). This view was also supported by children who pondered on what they would do without extra work during weekends and school holidays, lamenting that this would push them to be too lazy, a life they would not choose.

One child normalized child work as the ‘custom in the area for children to work’ and said he knew he would be considered ‘abnormal’ if he did not work (Child, Personal Interview, 11th August 2016). An Assistant chief (Assistant Chief, Personal Interview, 8th August 2016) emphasized the role of life skills passed through family work, that marrying off girls before they learnt how to cook for their husbands was considered a taboo in Africa, similarly a teenage boy must be able to milk a cow before dawn to show bravery.

The assistant chief expounded how in the area a girl must learn how to cook and do house chores before completing primary school as a general rite of passage. Child work, to some extent was considered a ‘rite of passage’ and concurs with the findings of retired Justice Ang’awa in the case of Joseph Maraka Adoro versus Paul NjogoKihara, Nairobi High Court Civil Case Number 238 of 2004 (Kenya Law Reports, 2004). In this case, a 9-year-old minor had been injured whilst using a grass shredder and the Judge stated:

“To my mind there is nothing wrong for children to work to earn a vocation during their spare time in order that they become responsible citizens. A child who works
does so as part of his or her education… on the other hand the work exceeds the children’s rights to education, to play … then this becomes child labour…whoever is responsible should be compelled to stop and if they don’t, are punished.”

The finding also concurs with Bass (2004) and Punch (2003) that while children’s farming and weaving may be abhorrent in some dwellings, elsewhere, they are integral parts of a child’s proper upbringing and education thus their labour is not defiant but cultural.

Some participants expressed fear on the formal court system, that it was too ‘colonial, unfriendly, imposing and intimidating’ and they preferred a ‘less complicated local’ system. The community perceived interventions within the local administration as better than formal judicial system because of locals’ attitudes towards courts and the offenders in child labour matters mainly live in the same community or are family.

When probed further, one parent (Parent, Personal Interview, 6th August 2016) explained they meant ‘a regulated procedure involving the people and places they are familiar with, not the courts which one did not even know how to bow to and makes one feel like fainting each time they appear. The labour officer also thought interventions within the local communities are better than formal judicial system because of locals’ attitudes towards courts and the offenders in child labour matters mainly live in the same area or family thus need for community harmony (Labour Officer, Personal Interview, 12th
An assistant chief (Personal Interview, 8th August 2016) thought child labour elimination is such a western idea and perceived it as neo-colonialism dismissing them this way:

we cannot live like the *mzungus*; this is *ukoloni mamboleo*...we do not need ‘ambulances’, we can handle our ‘patients’ through our own ‘traditional medicine.

He elaborated that he was not talking about sickness literally but how rescue ambulances are too efficient in the western world yet the reality on the ground in Africa is different. Africans sort their problems differently and we should not just ‘follow the *mzungus* buses’ but should see how we can protect the children without losing the African values. This is in line with Mahbubani (1992), about a halfway meeting point in child protection. This finding also concurs with Huntington (1993) that the world’s conflicts are not so much to do with clash of ideologies but clash of 8 listed civilizations, including the African. Huntington also illustrates the minority place that non-western civilizations face in the global order, that the west uses international institutions to run the world in ways that maintain western predominance, protect western interests and values.

Most of the adult participants complained about criminalizing their ‘way of life’ under the disguise of child labour elimination. A chief thought that handing over of a custodial sentence to a parent of a child involved in child labour under section 127 of the Children Act or section 65 of the Employment Act was counterproductive and out of reality because the parent needed to ‘return home and take care of the child’ or be rehabilitated in to the community (Chief, Personal Interview, 12th August 2016). The view was
supported by the children’s officer who also thought social realities should not be ignored in sentencing for child labour (Children’s Officer, Personal Interview, 10\textsuperscript{th} August 2016).

The children’s officer highlighted how she had intervened for a 12-year-old girl employed as a housegirl. The mother and the employer were both charged with child cruelty and neglect under section 127 of the Children’s Act: the mother for exposing a child to be in need of care and protection under section 119 (e) and (g) and the employer for employing an unemployable child under section 119(o). They were both found guilty. On recommendations that the mother needed to go back home and raise her children, she was sentenced to a non-custodial sentence of probation and the employer was fined Kenya Shillings twenty thousand. In the view of the children’s officer, that fine was reasonable since her office looked for a ‘win-win’ solution for the parent, child and employer. The parent and child are related and most of the employers live within the same community thus reduce communal tension.

In the same argument, a probation officer emphasized social realities of parents branded as wrong doers yet is still biological parents of those charged (Probation Officer, Personal Interview, 9\textsuperscript{th} August 2016). She said her office mainly advocated for non-custodial sentence for parents so as to be able to ‘raise children at home and not in prisons’. She was more concerned with after-care services for parents and working children (especially worst forms of child labour) to avoid a relapse. The labour officer said had not prosecuted for child labour in 5 years and wished labour cases were sorted out of court (Labour Officer, Personal Interview, 12\textsuperscript{th} August 2016). The divisional police had not received a
complaint on child labour in a year and one officer quickly said she would be out of order to ‘chase’ the cases from homes or farms as that was outside her mandate (Police Officer, Personal Interview, 12th August 2016). The labour officer and the union representatives explained how risky it could get to visit homes because neighbours could raise an alarm or get violent thwarting an arrest and protecting their own because of perceptions of child labour as a civil societal problem than criminal and making an issue with ‘criminalization of a way of life’ (Union Officer, Personal Interview, 12th August 2016; Labour Officer, Personal Interview, 12th August 2016).

The construction of what child labour was clearly different between the international organisation as global duty bearers and the local community and the government as local duty bearers, reinforced by the rights holders (children) equally thinking that child labour should be allowed. This in itself reinforced this research’s primary theory—constructivism. It is what it is. For the local communities in the site of study, their way of life was paramount and took offence at the criminal nature of child labour.

The participants also highlighted the gaps between the prosecution and the grassroots’ team because the community thought child labour was a societal problem than criminal and which did not have to rely on formal court processes to solve. The children officer observed that child labour exists but is rarely prosecuted because of social realities such as poverty and she raised concern that only one case of child labour had been prosecuted in the year (Children officer, 10th August 2016), which she said was caused by viewing child labour cases as civil and not criminal, worsened by ‘reluctant complainants and
witnesses’. This concurs with Alston (1989) and White (1996) that criminalizing of the
offenders to the ILO’s Convention 138 rather than assuring social protection made the
convention to be viewed as short sighted and bigoted to the realities of life of children.
Bhalotra and Heady (2003) protested banning child labour as it was likely to push them
to underground work because of criminalizing child labour. Seiichi, Kana and Phoumin
(2013), Black (2003), Bachmann (2000) and Miljeteig (2000) concluded that child labour
interventions must fit with the socio-cultural and political realities of the children’s lives.

The finding on societal concerns of criminalization of their ‘way of life’ corroborate
Anyango-Kivuva (2006) who criticised the United Nations convention on the rights of
the child (UNCRC) boasting of being ‘adaptable’ while in reality it imposes social
expectations and restrictions that are contrary to the cultural norms of what the society
expects of a child or how the society defines a child. The views that child labour ban is
such an alien idea in Africa and perceived as a form of neo-colonialism digress from
who found out that child labour persists even in wealthy western countries, not a preserve
of the south or the poor.

The views that child labour laws were criminalizing their known way of life made the
participant community feel it had solutions to their problems and given the chance, they
could meet in kamukunjis to create and enforce communal MOUs and pacts with the help
of courts and other authorities. They however expressed concern that the chiefs’ barazas
frustrate the formal justice system since there were no structures to run them, leaving
them to the ‘will and whims’ of the chiefs. One child submitted that enforcement and sharing on village by village basis could help, as people in the locality knew who employs children (Personal Interview, 11th August 2016). The labour officer highlighted how standards of proof in child labour—beyond reasonable doubt is hard to prove because child labour happens in most cases without coercion and parties more often than not live in the same community and want an out of court settlement instead of criminal processes. The suggestions to involve local communities in child labour disputes point to traditional dispute resolutions mechanisms (TDRMs) where the locals are formally guided to solve their problems within their community, using localised approaches. The TDRMs are provided for in article 159 of the Constitution of Kenya.

The participants highlighted how stigma associated with children born out of wedlock as a cause of child labour in the area; the children would not be accepted in the event of parents marrying. One such instance was a child who opted to live with his maternal grandmother than be 'tortured' by his step-mother (Child, Personal Interview, 9th August 2016). The boy had turned to bhang (cannabis) peddling in the evening after school. The children born out of wedlock in other times would be left at the care of grandparents, whose ability to raise a child would be diminished because of old age, left without an option than to introduce the children to paid work. The burden of grandmothers raising their grandchildren is highlighted elsewhere in this work. Related to bearing children out of wedlock is teenage pregnancy, which was also highlighted as a cause of waged work, not so much of the pregnancy but the stigma in the close family not accepting children born out of wedlock. The union official explained how the stigma pushed the majority
teen mothers to work as house girls where they would be accepted with their own kids than face rejection by family (Union Official, Personal Interview, 12th August 2016). The official also blamed the government for not providing a supportive system to allow the affected teenage mothers resume school after delivery. The researcher did not encounter any literature on stigma from teenage pregnancy and child labour.

To summarise, the perception of child work and resultant child labour as a way of life in Africa and an education ‘rite of passage’, the community’s perception that banning child labour was criminalizing their way of life, views that the child labour narrative is a form of neo-colonialism, viewing courts as too formal, unfriendly and intimidating and finally the stigma associated with teenage pregnancies, all affected implementation of child labour conventions. The next section analyses how gender interplays with child labour.

4.3.8 Gender Biases in Child Labour

In order to understand which gender was more prone to child work in the area and the reasons, this study looked at gender biases for working children in the area. The first analysis was the sex of those children who had worked for wage. Figure 4.3 displays the variation.
From figure 4.3, 69 per cent of boys worked for wage and 31 per cent of the girls worked for wage. This means that more boys were working for wage than girls. In chapter 2, the findings were that there were gender variations in absenteeism. Figure 2.7 of chapter 2 showed that 42.1 per cent of the girls and 55.6 per cent of the boys had skipped school to work for gain. The contrast points that, boys were more likely to skip school to do waged work compared to girls. The two findings bring out waged work as a boys’ issue than girls’. Key informants viewed the cause as boys being perceived to be more energetic especially the area being a predominantly rural agricultural zone where manual work is done, boys were preferred than girls. An employer described how the coffee farmers preferred boys to girls because the boys were considered stronger for manual work. One boy (Child, Personal Interview, 12th August 2016) narrated that:

the same day I told you, my father was ‘not given coffee picking work’ because he is old and weak, my sister was also turned away for being too soft…that she should go fetch water and such lighter duties meant for girls. Other girls have also been ‘chased away from the coffee farms.\[151\]
This finding tally with the KIHBS report, that child labour affected more boys than girls; where out of the total number of working children recorded, 52.9 per cent were boys and 47.1 per cent were girls (ROK and ILO, 2008). These findings also support Bradley (1993) who stated that boys were more likely to work when the family lives in the rural areas than urban.

In figure 2.6 of chapter 2, the sectors where waged work was found were highlighted, that there were slightly more boys in the agricultural sector at 53 per cent compared to girls at 47 per cent. The domestic sector had 27 per cent boys and 73 per cent girls. The reverse was nearly accurate in the transport sector with 28 per cent girls and 72 per cent boys. In transport, the two genders had a nearly equal representation of waged workers across genders, unlike domestic and transport sectors which had a sharp contrast. So, by sector, some sectors such as transport attracted boys mainly, while others such as domestic work attracted girls. One chief joked how girls will never ride bodabodas unless they ‘changed the sex to be boys’ (Chief, Personal Interview, 8th August 2016). This study concurred with the findings by KIHBS (ROK & ILO, 2008) whose report showed that the ratio of girls employed in activities traditionally dominated by boys such as construction, mining and quarrying was low and that girls mainly did social and personal services especially domestic work, and hairdressing. Since the data showed a distinction of labour between girls and boys, my work to an extent aligns with Tickner (1992) on her view that international politics has always been a gendered activity, since policy making has been largely conducted by men. My research study did not identify child labour as a girls’ only problem, predominantly failing to tally with Tickner (1992) as this research found out that boys were mainly delving to child employment than girls.

The parent’s gender also seemed to interplay with child labour in the area. Figure 2.1 of chapter 2 shows that there was a large proportion of female headed households in the area, which was 33
per cent. Majority of the families which participated in the study (53 per cent) were headed by both mother and father and only 14 per cent of the family breadwinners were fathers. A high number of single mothers was seen. There is a likelihood that the children may be prone to child labour based on the KIHBS report which noted that 32.5 per cent of the working children were from female-headed households (ROK & ILO, 2008). This finding, in itself, alienated this work from feminism theory and created a discourse on empowerment of the boy child such that where they have to work, then only allowable work in their best interests will be taken and will be protected as children in order to enjoy childhood.

The area also manifested ‘girls only’ related family work due to gender clustering of some family work. Most chiefs and teachers raised an issue that some girls could skip school to raise infants/toddlers as their mothers worked. One teacher confirmed a case of absenteeism where the child was ‘being used’ by the mother to ‘baby sit’ her infant sibling as the mother ‘worked for unga’ mainly in farms (Teacher, Personal Interview, 7th August 2016). On questioning one such parent, she argued that the child was not employed but minding the baby with close supervision of the mother (Parent, Personal Interview, 9th August 2016). The mother assumed that only actual waged work was child labour yet ILO places work related absenteeism as an indication of child labour (ILO, 2004).

This finding concurs with Vimefall (2011), and Alston (1989) that having a working mother increases the probability of a girl working but had no impact on boys because the girls carried the burdens of their mothers and often stood in the gap for their working mothers at home. It also concurred with Reynolds (1991) who found out that during the farming season, in her study village, whilst women spent 20 per cent of their waking hours caring for infants and small children, girls in the 4-8 years’ age brackets spent 56 percent of their waking time this way, whilst
boys in the same age group worked only 26 per cent of their waking time. Bradley (1993) explained the phenomenon, that the most important of the cultural factors and norms that pull children towards the labour force in Africa as the women’s shouldering the larger number of economic tasks in African agriculture.

Using data from 91 societies in the world that focus on task assignments amongst both adults and children, Bradley found that children of both sexes did more of women’s tasks than those of men. Dankelman and Davidson (1988), state that, in sub-Saharan Africa, women are responsible for more than 80 percent of agricultural production. Andvig, Canagarajah and Kielland (2001) show that as children grow older, they tend to do more of the tasks of the adults of the same sex; that because the women are doing a larger share of the time-consuming tasks, child labour becomes largely an issue of girls’ labour.

In summary, more boys had worked for wage than girls. More boys than girls skipped school to work for wage. Child employment was largely a boys’ issue than girls. The traditionally male dominated sectors had more boys and the female dominated sectors had more girls. Gendered family work was seen such as baby sitting for girls and ‘hard manual work’ for boys such that the gender of head of the household influenced child labour. These findings did not support the view of child labour as girls’ issue only and alienated the primary focus of the study from the feminism theory.

4.3.9 Religion and Child Labour

In this study, religion emerged as an aspect of children, parents and also employers influencing child employment. Figure 4.1 of this chapter shows the usage of money by the children who worked for wage. 2.56% of the children had used the wage to donate to religious charity. In an interview, a 14-year-old child narrated how a religious order of his church supports a charity
where children raised funds and visited the needy and because he did not expect money from parents, he had to work for wage (Child, Personal Interview, 11th August 2016). The child said ferrying stones in a *mjengo* left him too tired and he missed playing with peers.

A religious parent had abdicated her responsibilities and instead of raising fees, said she opted to participate in frequent religious retreats (Parent, Personal Interview, 7th August 2016). The child was involved in waged work during school time to raise school fees after being excluded from school more than once a term. An FGD for parents in the same neighbourhood felt they had lost control of the religious parent, citing verbal abuse in instances when they had tried to talk to her about school fees and the hazards of waged work. The religious parent thought she should be left alone to run her life the way she wanted without being pushed by anyone. An employer of a 12-year-old girl in the area praised God for the delivery of the worker by the child’s mother that the girl was ‘a blessing specially delivered from above because God loves me’ (Employer, Personal Interview, 13th August 2016).

These findings concur with Anyango-Kivuva (2006) who focused on overreliance of donations from the church and tensions between communities and the Catholic Church because of land ownership, which she argued would determine the community’s poverty levels in the future and had a bearing on child labour. Anyango-Kivuva recommended further research on the role of the church and child labour from a property ownership perspective. Generally, religion is practised in faith-based organisations, making them a key player in child labour enforcement. It is not about the state and the parent wielding absolute power over children. Children equally are independent and the faith-based organisations complicate the equation and alienate this study from focusing primarily on realism theory of international relations. This leaves a gap for further research on
direct religious participation and the role of faith-based organisations in reducing child labour in Kenya.

4.4 Conclusion

From this chapter, what stood out as the main cause of child labour in the area of study was competition of the various needs of children and the community with the rights of children. Unguided child independence also stood out as a cause of child labour in the area. Communal myths and beliefs about the formal justice system (FJS), that child labour elimination is a neo-colonialist criminalization of their way of life also affected implementation of conventions. This places this research work within the theoretical framework of constructivism theory and politics of conventions and suggested the use traditional dispute resolution mechanisms (TDRMs) in child labour disputes. This approach is supported by the constitution of Kenya and the conventions. Chapter 2, 3 and 4 have presented the findings on each of the research questions, interpreted the findings and analysed them by comparing and contrasting the work with the existing literature. In the next chapter, the researcher shall discuss the data obtained and answer each of the research questions to detail and either prove or reject the assumptions as the discussion also places the work within theories of international relations.
CHAPTER FIVE: COMPETITION OF NEEDS AND CHILD LABOUR

5.1 Introduction

The three research questions sought to answer the prevalence of child labour in Kenya, the extent to which conventions are effective in Kenya and the factors influencing implementation of these conventions in Kenya. In chapter 2, 3 and 4, I presented, interpreted and analysed collected data using the proposed research methodology. The current chapter discusses the finding of each research question to detail. I shall re-raise the research questions and restate the objectives by discussing the findings of each, then comparing and contrasting the findings with existing literature. This part shall underscore the dominant findings and position them within theories of international relations then underline the primary theory.

5.2 The Glare of Child Labour in Mathira Constituency

From the first research question, I investigated the prevalence of child labour. To answer this, I used three indicators, which are the number of children involved in unlawful employment, the sectors they worked in (manifestations) and also the consequences (hazards) for the working children.

The first indicator was to get the number of children in unlawful employment. To get the economically active children, I simply asked the sampled children if they worked for wage. Table 2.5 of chapter 2 showed that 91 per cent of sampled children had worked for wage and 9 per cent had not worked for wage. It was difficult to analyze the aggregate number of children involved in child labour because the Employment Act, being the one
that domesticated the International Labour Organization (ILO) conventions in Kenya failed to define child labour. It only sets the thresholds for allowable employment of children, unlawful employment of children and the worst forms of child labour (WFCL). This is the reason why out of the economically active children, I analyzed pointers of unlawful employment.

The Employment Act bans employment of children below 13 years. I therefore analyzed those children who worked for wage but were below that age. Table 2.6 of chapter 2 showed that 20.5 per cent of the economically active children were less than the minimum age for work in Kenya. For children aged between 13-16 years, only apprenticeship and light work is allowed. The problem was assessing the number of children who had been in light work. In the Employment regulations, 2014, only the agricultural sector limits the hours to 2 hours. The ILO uses 2 hours as the general threshold for light work (ILO, 2004). I generally adopted the 2 hours as the general threshold since the research was in a predominantly agricultural zone. This is the basis under which I analysed those economically active children within that age that had worked for more than 2 hours and from table 2.6 in chapter 2, found 34.6 per cent. For children above 16 years, regular work is allowed as long as it is not harmful. Once again that was a problematic and I analysed those children in the 3rd category who worked beyond 8 hours, which are considered regular hours. From table 2.6, those over 16 years, which age category employment is allowed generally and who worked more than 8 hours (overtime) were 7.7 per cent.
Further data analysis in Table 2.7 of chapter 2 showed that in aggregate, 62.8 per cent were involved in what is classified in the Employment Act as unlawful employment for any of the 3 reasons. Either the children are not allowed to work at all because they are less than 13 years, or if they are between 13 and 16 years they are doing work beyond 2 hours and thirdly, those above 16 years but were working overtime. 28.2 per cent of the children were involved in allowable employment and 9 per cent did not work for wage. This finding of a high prevalence of unlawful employment of children, otherwise known as child labour, was corroborated by data from households’ heads and interviews from most informants, who pointed to continued child labour in the area including worst forms of child labour (WFCL).

The second indicator of child labour that I used in this research was manifestation of child labour. In the study, I asked the kind of waged work that children did. Figure 2.6 of chapter 2 showed that the sampled children had worked for wage in four main sectors of the economy, which are domestic, agricultural, commercial and transport. Generally, most of the sampled children were in the agricultural sector, be it tea, coffee, farming, grazing, pruning or horticulture. The findings concur with those of the 2005/2006 KIHBS report which recorded that the largest employer was the agricultural sector, having absorbed 79.5 per cent of the working children. These findings also concur with Anyango-Kivuva (2006) who presented data from the same county as my site of study and identified coffee picking by children from the many coffee estates around Nyeri town.
This study was guided by the literature on the gendered variation of work for children. On this basis, I analysed whether gender played a role in the area. From figure 2.6 of chapter 2, the domestic sector had 27 per cent boys and 73 per cent girls whereas the reverse was nearly accurate in the transport sector with 28 per cent girls and 72 per cent boys. The agricultural sector had 53 per cent boys and 47 per cent girls. The commercial sector had 58 per cent boys and 42 per cent girls.

It’s seen that the agricultural and commercial sector had a nearly equal representation of waged workers across both genders. There was a sharp contrast between girls and boys in the domestic sector and the transport sectors. My own observation showed that girls did more domestic work such as fetching water and babysitting than boys. The findings indicated that girls mainly did domestic work while boys were mainly engaged in the transport sector, mainly bodaboda riding and as matatu conductors. These findings concur with those of KIHBS report that the proportion of girls employed in activities traditionally dominated by boys such as construction, mining and quarrying was low and that girls mainly were engaged in social and personal services work especially in domestic, hairdressing and beauty shops. This study showed that even boys worked and that child labour was predominantly a boys’ issue in the area. Therefore, these findings detached the study’s primary focus from feminism as this theory could not fit as the primary focus. The feminism theory associates global issues with gendered perspectives. Feminists elaborate on gender division of work, see patriarchy as a feature of capitalism and mainly presuppose that child labour is a girls’ issue.
The third indicator of child labour that this research looked at was in terms of hazards or consequences. I sought to know whether children working at home or for wage outside home were provided with protective wear. Figure 2.9 of chapter 2 showed that majority, 69 per cent of the working children were not provided with protective clothing. Only 31 per cent were provided with protective clothing. In the questionnaires, I also probed the problems encountered at work in order to assess the adverse effects of child work in the area. A higher number of children, 34.6 percent sustained cuts and bruises. 28.2 per cent encountered backaches and headaches. 18 per cent of the working children encountered verbal abuse. 14.1 per cent had colds, flus and chest related illnesses while 5.1 percent had insect bites. In this study, table 2.8 of chapter 2 showed that 100 per cent, or all the sampled children had been exposed to harm though not necessarily being in strictly hazardous occupations. These findings sharply contrast with the KIHBS report, that only 14.74 percent of the working children were doing hazardous work.

I went ahead to enquire why all children in the site of study had been exposed to hazards. One of the participant parents was a nurse who indicated that the cold weather reported in the Mount Kenya area had adverse effects on the working children, mainly through colds and flu. She feared that when children pick dew infested tea and coffee on early mornings and without protective water proof gears, this could cause numbness and hurt their nerves, cause colds, flu and chest infections. The working conditions of the agricultural sector, which mainly employed children, were likely to expose them to tools such as pangas and fork jembes. The nurse also highlighted the suicidal tendencies of one child worker who had withdrawn from the friends due to the strenuous upbringing.
That was corroborated by a parents’ FGD. A participant child explored the loneliness in children working amongst adults and not peers. From the findings, children had suffered psychological consequences from child labour, as narrated by some of them and as pointed by the only medic parent. Since this study was not a medical study, this left a gap of research on psychological hazards of child labour.

Looking at the ILO regime on child labour, there was need to assess cases of worst forms of child labour (WFCL). In determining whether child labour was regular form of child labour or as worst form of child labour, I was guided by section 54 of the Employment Act, which defines worst form of child labour as employment, engagement or usage in any activity comprising of 4 things, which are slavery or human trafficking, child prostitution or use in pornography, drug trafficking and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child. The first 3 are what ILO classifies as unconditional worst forms of child labour, so fundamentally at odds with children’s human rights that they are absolutely prohibited (ILO, 2004).

The fourth one is not definite and depends on judgment of enforcers at the national level. In this research, I encountered unconditional WFCL such as child prostitution, bhang (cannabis) peddling and bar attendants. I was reminded by the chiefs that children are easier targets for highly criminal activities as they are easily trusted and not easily suspected. Other than being WFCL, bar attendants, yet it is illegal under the Alcoholic
Drinks Control Act for exposing children to alcohol, demanding extra concern by duty bearers.

In summary, the three findings to the first research question supported the assumption that there was a high prevalence of child labour in Mathira Constituency. Whether you look at all economically active children (91 per cent), or you look at those in unlawful employment (62.8 per cent), both figures are much higher than that in the 2005/2006 KIHBS report which was 14.7 per cent and an additional 10.7 per cent who ran their own businesses (ROK & ILO, 2008). This research findings concur with USDOL (2011), that there was a high number of working children in Kenya, at 64.8 per cent but much higher than the recent ILO finding, that Sub Saharan Africa, has the highest child labour rate in the world at 21 percent (ILO, 2013).

I questioned how this variance was so high compared to previous research and amidst free primary education (FPE), Conventions and local laws. The high prevalence rates could be attributable to the high labour demands in tea and coffee farming which is the main economic activity in the area. The KIHBS report (ROK and ILO, 2008) pointed that working children were mainly from the rural areas, with (88 per cent. This could offer another explanation as Mathira Constituency is mainly rural. Labour in the small scale agricultural farms is also easily available. The high statistic could also be due to majority of the children interviewed had worked for wage during school holidays and not school term.
These findings on high prevalence also lead me to question whether the rights-based approach for human rights has a place in Kenya and whether these rights are mere paper rights. Withdrawing children from paid work may be counterproductive because of the socio-economic realities pushing them to paid work. From chapter 3 and 4, the communities also seemed to support child labour as a way of life, skills building and vocation. The position of the community to support child labour without looking at the best interests of the child also stands questioned because culture should not be repugnant to justice. A balance is critical so that as these children work, the community will also look into their welfare to reduce hazards and mitigate consequences. Guided by Mahbubani (1992), I observed that if the communities could only oppose what they branded as the western culture in child labour, then they can balance the interests, to ‘modernize’ but not ‘westernize.’ This could be one step toward child labour eradication in Mathira.

Throughout the study, a question emerged if the duty bearers were convinced that the right to protection from child labour exists in the first place. The laxity exhibited showed otherwise, that we were far from realising the right of the child to be protected from exploitative child labour. These rights appear as mere paper rights because in a rights-based approach, the duty bearers are supposed to focus on severe breaches even if very few children are affected (Jonsson, 2003). Jonsson contrasts how other approaches focus on less severe rights violations affecting many children. The fact that unconditional WFCL were identified in the locality creates urgency for the enforcers to be keener in enforcement so that such work is stopped without bargaining or delay.
The glaring statistics, manifestations and consequences of child labour presented paint a different picture far distant from the utopia of liberalism. There is much more to unveil behind the glare. Generally, the assumption by liberalists that laws work perfectly is challenged in this work because liberalism theory builds international order to bring a very perfect world, which from the findings had clearly not been achieved as children are still in a ‘jungle’ and not a ‘zoo’, detaching the primary focus of the study from liberalism theory. If liberalism theory was to make sense in this research, there should not have been reported a single instance of child labour. The high prevalence of child labour in the area helped explore the reasons why this is the case yet laws are in place.

5.3 A Crime or a Way of Life? The Clash on Child Labour

The second research objective was to analyse the extent to which the child labour conventions are effective in Kenya. To achieve this, I critically analysed the contradictions and gaps in these conventions and local laws, assessed how well the conventions had been assimilated in to the Kenyan legal system, the challenges in enforcement and how much they had been accepted by the participants. I also generally sought views about these laws.

From observation and analysis of the child labour laws in Kenya, there were ambiguous definitions, contradictions and gaps in the laws, duplicity and generally intolerance to child labour laws in Kenya. On lack of clarity and ambiguity of child labour laws, the legal definition of light waged work, harm and the worst forms of child labour (WFCL)
in the Employment Act remains problematic and contradictory. The fifth schedule of the Employment (General) Rules lists agricultural work not exceeding 2 hours as light work. However, the other jobs listed as light work (school-based work, newspaper delivery, shop keeping, domestic hair dressing, ‘light’ office work, car washing by hand in private homes and waiting on tables) are not limited by hours.

In one instance, commercial hair dressing and domestic work is considered hazardous and in another, domestic hair dressing is allowed as light work. The latter can only mean family work then. Schedule 4 lists activities that are considered WFCL. Only the harm (to health, safety and morals are considered) and leaves out what ILO terms as unconditional WFCL (slavery and use in armed conflict, prostitution and drugs). The process of issuing permits for 13-16-year-old workers would be tedious and seemed to have been crafted with corporate employers in mind since issuing permits in small scale farms for casual work may be tedious. The drafters seem to have ignored the high percentage of child labourers in the agricultural and other informal sectors where casual work is the norm and contracts are not issued.

As a duplication and contradiction of the laws, the penalties for child labour under the Children Act and the Employment Act are different. Section 127 of the Children Act gives a maximum five years’ sentence or maximum fine of Kenya Shillings Two Hundred Thousand for child labour. Rule 16 of the Employment (General) Rules 2014 gives a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding six
months or to both. For WFCL, section 65 of Employment Act provides a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both. If a child is killed or suffers any bodily injury, the employer shall, in addition to any other penalty, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both and the whole or part of the fine may be applied for the benefit of the injured child.

This inconsistency has the potential to place enforcers in a state of confusion as the various laws leave enforcers unsure which Act to use. The accused persons may not accept the harsher provisions and the victim may not accept the lenient one. The findings established that some experts/enforcers did not know which of these to use and even not being aware of some of these provisions. The return of cases from the court station showed that there were many children abuse cases in the area yet on physical verification of the facts in files, a few of the child abuse charges were about child labour. This is because police perceive child labour to be a minor offence, not a felony. The probation office affirmed that they mainly charge parents with child abuse and child neglect under the Children Act, rather than the Employment Act as they find the Employment Act too complex.

The laws concerned with child labour set a number of enforcers and unfortunately, less effort seem to have been made to build consensus so that they deliver as a team for the best interests of the child. The employment Act acknowledges police officers (the rank
of inspector and above) and labour officers in prosecuting worst forms of child labour under section 54 (1) and section 64 lists the penalties for WFCL. In contrast, the children Act recognizes police officers, administrative officers, children’s officers, approved officer, chiefs and labour officers as enforcers. The Employment Act left out children’s officers, chiefs and other key child protection officers. Leaving these crucial officers from the enforcement processes of the Employment Act leaves a lot to be desired.

The children officers are the primary child protection officers and very crucial components in as far as child labour is concerned. Chiefs have a better view of the issues in the grassroots and are the ‘eye’ of the government. The Children Act was enacted long before the Employment Act and had made a provision for child labour prevention and prosecution. Failing to harmonize the two laws leaves a lot to be desired and points to lack of harmony from the draftsman. They did not look at the bigger picture and perhaps the Employment Act was hurriedly enacted without considering all things that should have been looked at. There is need to harmonize these two laws and align them with the Constitution since the Constitution was promulgated later.

The other challenge with the laws is that the local child labour committees (LCLCs) are not provided for under the Employment Act or the regulations despite an administrative note from the ministry of labour to enforce them. An administrative note is a mere guide on work operations and is not a law. Little effort has been made to either amend the Employment Act to include LCLCs or even enforce them (using the circular). Participants
made an issue with DCLCs and LCLCs not being fully implemented at the local level. The county labour officer pointed that though the Nyeri County Child Labour Committee (CCLC) had been constituted, it had not met in 3 years as there were ‘no resources to run it’, staff were limited and she did not have sub county labour officers to assist. None of the 6 participant chiefs knew about LCLC. Teachers and FGD parents welcomed the LCLC as it would reduce blame from them to a committee, reduce tensions between enforcers and parents. Seeing that the area advisory council (AAC) had already been set in the Children Act, an Act that was actuated way before the Employment Act, much thought should have been given to allow AACs in the Employment Act, or even better off introduce the sector specific LCLCs. Once again, there is a strong case for harmonization of all child labour laws.

The child labour policy was only passed in parliament in October 2016, a decade and a half after it had been drafted in 2001. The informants gave the reasons for the delay as inter-ministerial tension, confusion in chain of command and general apathy. The informants also expressed their views that other policies, generally but not specifically providing for child labour had also caused the delay in enforcing the draft child labour policy, which duplication according to the informants, caused more harm than good because of lack of clear ‘chain of command’. With many enforcers in place, less effort had been made to build consensus amongst them. Others had been attacked whereas other enforcers thought chiefs stood a better chance to enforce as they ‘work on the ground.’
These findings are not far off a parliamentary session in 2008, where the minister of labour, responding to a question about child labour in central province, stated that he knew LCLCs had not been implemented in all areas but challenged MPs and other ‘likeminded people’ to implement (ROK, Parliament, 2008). The minister also said he knew that no case of child labour had been prosecuted by his officers and that prosecution was a last resort as his ministry had adopted a multi sectored approach. This shifting roles to the MPs and well-wishers even when the law was clear on the ‘enforcers and not ‘any volunteer’ in such matters shows extreme laxity of enforcers and is likely to affect enforcement.

Such over reliance on well-wishers had been highlighted by the county labour officer in this research- that her office relied on well-wishers to run most of their programmes. USDOL (2011) questioned the commitment of the Kenyan governments in implementation, labelling the government’s reliance on volunteers to set up LCLCs as counterproductive apathy. The laxity generally exhibited by enforcers in the site of study shows that we are far from realising the right of the child to be protected from exploitative child labour.

This research has made a strong case for harmonization of the child labour laws, including all enforcers in the enforcement circle to complete the circle, give statutory power to LCLCs, educate the community on need for enforcement and the intrinsic balancing act
between community participation and child protection, and finally consensus building for all the enforcers and stakeholders for effective implementation of laws.

To assess how the participants had accepted the child labour laws, in the questionnaires, each participant child and head of household had been asked whether they thought children should be allowed to work for wage. In figure 3.2 of this chapter, the percentage of children who felt that waged work should be allowed was 36 per cent. In table 3.2 of this chapter, data showed that 56.4 per cent of the household heads indicated that waged work should be allowed. Earlier, the children had been asked whether they would work for wage even if provided for. Table 3.1 showed that 38.5 per cent of participant children indicated they would work for wage even if provided with basic needs. These findings show that the participants generally did not accept the child labour laws or put in other words, child labour was not perceived as a ‘wrong.’

The findings also opened interview discussions from both children and the other informants on whether children should be allowed to work for wage. In the interviews, the participants challenged the practicability of the courts in eliminating child labour. Courts were viewed to be very complicated, colonial and imposing and that they ignored the local realities. The participants connected the courts and the laws to neo-colonialism. Even in a chief’s baraza involving a chief, three assistant chiefs and the village elder, they ‘trashed’ the prosecution of child labour offences and argued that enforcement of such laws that are ‘neither here nor there’ should be left to ‘a locally managed outfit’. The
group’s preoccupation with mzungus was so loud that they argued the ukoloni mamboleo ended only on paper but in practice such ‘unrealistic’ laws were a sign of the same phenomenon. In a different interview, a chief elaborated the way Wanjiku had a perception that in every court appearance, they could be jailed on ‘one petty mistake such as not bowing’. The key informants held such a loud view that child labour should be addressed locally with guidance and not the court corridors.

The participants did not take well, the fact that a parent or an employer could be jailed for allowing a child to build life skills, or otherwise branding it as ‘criminalizing their way of life’. On their part, there was a clear difference between unconditional worst forms of child labour and other work which could be ‘beneficial’ to the child. That is why they instead advocated the use of a ‘locally managed outfit’ because within their villages, they argued they knew what was extreme and what was not. A good example is the case of the 80-year-old grandmother, who illustrated how even in the independence era, children were protected from extreme child labour with the help of a more localised monitoring system and not the courts, which anyway were few then.

In the area, child labour was perceived to be a societal issue than criminal and by a people that believed they had solutions within the community. Some participants made an issue with criminalizing their society’s way of life. A chief thought that handing over of a custodial sentence to a parent of a child involved in child labour under section 127 of the Children Act or section 65 of the Employment Act was counterproductive and out of
reality because the parent needed to return home and take care of the child or be rehabilitated. The view was supported by the children’s officer who also thought social realities should not be ignored.

In her view, child labour exists but is rarely prosecuted because of social realities such as poverty and her office looked for a ‘win-win’ solution for the parent and child. She raised concern that only one case of child labour was prosecuted in a year, which she attributed to child labour being considered civil and not criminal, worsened by ‘reluctant complainants and witnesses’. The laxity exhibited by enforcers in the site of study showed that we are far from realising the right of the child to be protected from exploitative child labour.

This also highlighted the gaps between the laws and the enforcers because the community thought child labour was a societal problem than criminal and did not have to rely on court processes. This is consistent with Alston (1989) and White (1996) that criminalizing of the offenders to the ILO Convention 138 rather than assuring social protection made the convention to be viewed as short sighted and bigoted to the realities of life of children and likely to push them to ‘underground’ work.

It is this feeling that child labour laws were criminalizing their way of life that made the participant community feel it had solutions to their problems and given the chance, they
could create and enforce communal memoranda of understanding (MOU) and pacts with the help of authorities and well-structured kamukunjis and barazas. They however expressed concern that the chiefs’ barazas usurp the powers of the formal justice system since there were no structures to run them exposing them to run at the will and whims of the chiefs, making conventional justice system not work. One child submitted that enforcement and information sharing on village by village basis could help, as people in the locality knew who employs children and who does not.

The labour officer highlighted how standards of proof in child labour—beyond reasonable doubt is hard to prove because child labour happens in most cases without coercion and parties more often than not want an out of court settlement instead of criminal processes. The fact that these views were also held by enforcers leaves a lot to be desired because enforcement then remains a great challenge as there is not drive from the duty bearers, who are expected to be proactive in a rights-based approach.

These views of child labour as ‘societal issue and way of life in the local community’ concurred with those of a Judge in a previous case of Joseph Maraka Adoro versus Paul Njogo Kihara, Nairobi High Court Civil Case Number 238 of 2004. In that case, a 9-year-old minor shredded his arm while operating a grass shredder machine, Justice Ang’awa noted that the children’s officer had not pursued the matter after the accident but only ensured the child was treated and enrolled in school. These are only rehabilitative remedies for the child. They do not compensate for pain and suffering (damages) or reprimand the employer under the Employment Act. The parent sued in a civil case and
the judge awarded damages, as she expounded that children’s work was a way of life, to earn life skills and ‘an extra coin’. Similarly, in B.A.A versus Republic, Kakamega Criminal Appeal Case Number 250 of 2010, the accused was charged under section 127 (1) (b) of the Children Act that she lured a 14-year-old child out of school for child labour, causing the child to be in need of care and protection. The accused pleaded guilty at the Magistrate’s court and was sentenced to three years’ imprisonment. The judge reduced the term to 6 months, which the appellant had already served despite the law providing a maximum five years’ sentence or fine of Kenya Shillings Two Hundred Thousand. This shows the leniency in which child labour cases are taken with even by enforcers.

During a session in parliament in 2008, the minister for labour, while answering a question about child labour in central province stated he knew that no case of child labour had been prosecuted in Central Province by his officers (ROK, Parliament, 2008). The minister emphasized that the prosecution in child labour cases was a last resort as his ministry had adopted a multi sectored approach. The government representative bears a lot of weight on how lightly child labour is taken in Kenya and that there is almost no place for formal court system in child labour disputes. Generally, enforcement was at a very minimal level, if at all, corroborating the views about finding solutions within the communities.

The suggestions by the participants that had previously been confirmed by the minister, to involve local communities in child labour disputes point to alternative justice system (AJS/IJS/CJS) specifically, for the locals to be formally guided by the judiciary in solving
their problems within their localities. The possible way forward would be the involvement of local child labour committees (LCLCs) and for all issues the area advisory council (AAC). There is therefore a need to first, legitimize LCLCs at both national and local levels into the Employment Act so that they do not remain administrative measures by the ministry of Labour. Secondly, adding chiefs into the LCLCs as the grassroots representatives, and thirdly, operationalize the LCLCs and AACs fully up to the locational level. One chief did not know what LCLC is, though was receptive about its formation as long as a stipend as an incentive is allowed, overzealously taking notes about the composition and the mandate.

The view to introduce AJS/ IJS/CJS and implement the LCLCs and the AACs is not out of context but in line with article 159(2) of the Kenyan Constitution, that traditional dispute resolution mechanisms (TDRM) should be embraced in adjudicating disputes in Kenya as a means of alternative dispute resolution (ADR). A judicial officer confirmed that the judiciary was rolling out a plan to formalize the AJS/IJS/CJS so that the localised process is given structure deemed fair by the people. This resonated with the State of the Judiciary and Administration of Justice Report, 2013-2014 that the need to initiate, promote and interface traditional justice system with the judicial system could not be gainsaid and there was need to generate possible models, laws or policies to implement AJS in Kenya (ROK, 2014).

In fact, in the 2014-2015 report, the court user committee in Karatina highlighted that ADR had been adopted in the area (ROK, 2015). AJS/IJS/CJS is also in tandem with the
devolution under the new Constitution of Kenya where power has been devolved, section 14 and 15 of the National Government Coordination Act, 2013 which created the national government service delivery co-ordination units, down to the counties, sub counties, wards, locations and to the sub-location level. Section 48, 52 and 53 of the County Governments Act, 2012 (No. 17 of 2012) created the county governments’ decentralized units up to the village level. It is that power, which the participants wished to have, even in child labour elimination.

The problem is not more to do with the wording of the international conventions and domestication than it is to do with implementation of local laws. Kenya prepared a national plan of action and presented its first report even before it enacted the Children Act, 2001, a position that draws the curiosity of scholars such as Onyango and Lynch (2006) who argue it shows eagerness to comply with international law. This also fluctuates the arguments regarding coercion and non-participation in drafting of United Nations convention on the rights of the child (UNCRC). From the findings, having laws is not enough. Preparing plans of action or presenting reports may be a mere show of friendship in the international arena, with less goodwill to act on the real problem. Enforcement is more critical since children work at the local level and implementation strategies would have to be thought through at that level. The laxity that was seen by most enforcers’ calls for much more profound methods of enforcement and a community outreach to sensitize the people on the much-needed balance between preserving their culture and protecting children. This is because we are in a state that ascribes to the universal declaration of human rights and the rights-based approach is not optional.
This begs that one ponders whether the African nations customised the international law to suit their ‘place’ and reduce the clash of civilisations spelt out by Huntington (1993). Huntington observes that the world’s conflicts are not so much to do with clash of ideologies but clash of 8 listed civilizations, including the African one. Huntington’s work asserts the place of culture in the global order and illustrates the minority slot that non-western civilizations have in the global order, that the West uses international institutions to run the world in ways that maintain and protect western predominance, interests and values. Weber (2005) points out that Huntington’s contributed to the modernization and development debate by tackling the clash of civilizations head-on, focusing on how order could be achieved within developing states because identity had failed to universalize itself by assimilating differences, yet the third world states and cultures persist in being different from first world.

What emerges from these discussions and the views presented is that rights are as important as their practical implementation. I now revisit the question of whether conventions can be enforced in the same way globally. There is also need to ask what options are available for non-western states. What is to happen whilst the social, political, economic, and cultural differences of third world states are not naturally adapting to the social, political, economic, and cultural identity of first world states and when the weak states are so parallel to the hegemons? Mahbubani (1992) offers 3 options, which are supported by Huntington (1993). Both Mahbubani and Huntington argue that the non-western states can opt out of participation with dangerous repercussions. In addition, they
can also attempt to join the West and accept its values and institutions which is called ‘band-wagoning’ or they can attempt to balance the West and cooperate with each other against the West whilst preserving indigenous values and institutions, that is modernize but not westernize.

What and where is the balance? How can it be achieved? Kaime (2009) suggests supplemental family networks to mitigate the effects of shrinking resource networks and the absence of credible partners to carry the burden traditionally borne by the extended family system. Kaime’s suggestions were based on the South African system that included friendships, communal relationships and informational networks. In this research, a strong case has been made by participants for alternative justice system (AJS/IJS/CJS) as a way of solving child labour disputes within the communities, guided by the courts for legal structure.

In summary, there were gaps and contradictions in the conventions and local laws. Child labour laws had not been fully accepted and participants complained about criminalization of their way of life. The struggle for the non-western nations to affirm and support their culture was seen in the study because the community believed the western ideas were being imposed on them in the name of child labour laws. The finding on the second question supports the research’s assumption that conventions were less effective in the area. This finding to some extent explains the high prevalence of child labour in chapter 2 and previous section 5.2.
Having critically analysed the laws and institutions that exist (the international regime) to reduce child labour in chapter three, the finding challenges the liberal institutionalism theory because the high prevalence of child labour existed amidst the international regime and the well-known local child labour laws. Liberal institutionalism claims that international institutions help promote cooperation between states through creation of regimes enjoying commonality, specificity and autonomy (Jackson and Sorensen, 2003). The problem with the liberalism theory is idealism- the utopia like assumption that collective normative values and standards set by IGOs such as the ILO work always. This idealism detaches this study from liberalism theory in that the number of children engrossed in child labour is still high.

The lack of a global government and culture hinders the effectiveness of international organizations in enforcing standards due to state sovereignty and the different social-economic realities seen in this study. Child labour persists even with existence of ILO showing that existence of conventions is not enough to reduce child labour and other views should be sought on how to get children out of the ‘jungle’ of child labour to a ‘zoo’ of child protection. This finding about effectiveness of the conventions helped discuss the third research question and objective in the next section because clearly having laws is not enough but enforcing them with wholistic understanding of the push and pull factors in the area of study is more critical in getting children to the ‘zoo’ of child protection.
5.4 Competing Needs of Children

The third research objective sought to examine the factors that influenced implementation of international child labour instruments in Kenya. To answer this, the factors were examined in three ways, first how the children used the wage, secondly the reasons pushing children to work and thirdly, why the instruments were not working in the area. Children were asked how they used their wage. 4 reasons emerged and were presented in figure 4.1 of chapter 4. Figure 4.1 shows that majority, 53.34 per cent used the money earned to watch videos, entertainment and also visiting nearest towns. This was called the voice of entertainment. 39.82 per cent used the money to pay school fees, buy ‘unga’ and clothes. This was called the voice of basic needs. 4.28 per cent used the cash to start income generating projects such as buy seedlings for farming, chicken and rabbit rearing. This is the voice of vocation, life’s skills and talent management. 2.56 per cent donated the wage to religious charity. This is the voice of religious participation. The 4 voices are the major reasons pushing children to paid work in the area as they are the direct answers from the children on use of wage. However, this study would not have been complete without hearing the views of the community about child labour. The next section discusses each of these voices to detail.

5.4.1 Basic Needs

Figure 4.1 in chapter 4 showed that 39.82 per cent of the waged children used the cash to buy basic needs such as fees, food and clothing, mainly because these were not being
provided at home, pointing to a need associated with poverty. Children expect to be provided with basic needs; otherwise they turn to waged work to afford them. On the options available, the key informants thought there seemed to be no other option left since it was better for a child to work and ‘look for unga’ than die of hunger’. Some termed waged work for children as a form of ‘avoiding death from hunger’ since the realities dictated some of the children to work.

In chapter four, this study highlighted the limitations of social assistance in the area and opened recommendations for rethinking welfare cushions in Kenya. On the interplay between child labour elimination and survival, some scholars argue that even the most basic survival for some child employees is possible only by virtue of the work they perform (Myers, 2001; Nimbona and Lieten, 2005 and Levison, 2009). More often than not, the children see child labour as the solution to their economic situation and not the problem (Grier, 2004). Using data from of an artisanal gold mining site in Ghana, Okyere (2013) concluded that poverty was not only a cause of child labour but a mere catalyst. Okyere thought the children’s own priorities were addressing the hazards they faced due to poverty, rather than the hazards they faced due to child labour.

Denying the children access to work, regardless of what this is, may not necessarily improve their lives but may rather worsen it (Connolly and Ennew, 1996). Boyden and Myers (1994) give an example of a case in Bangladesh where child garment factory workers were laid off violating child labour conventions. Contrary to expectations of the enforcers, the children’s hardships drove them into other occupations worse than garment
or carpet weaving. Dessy and Pallage (2005) point out that solely using legislation such as the ILO convention 182 to eliminate child labour without looking at the situation broadly may do more harm than good. Dessy and Pallage caution banning the worst forms of child labour without taking appropriate steps for economic and social empowerment arguing that this may have adverse effects on the well-being of families. These findings and this long literature was the basis of recommending a rethinking of the social assistance programmes in Kenya so that all circumstances are looked. This also makes a strong case for decent work programmes so that where children are forced by circumstances to work, then they are fully protected.

Clearly, poverty was not the only force because some of the uses for the money are non-essentials basic needs such as the child who used money to buy ‘more exciting foods’ or the one who bought ‘more fashionable’ clothes. This was consistent with the findings by Bhalotra and Heady (2003) that greater poverty does not necessarily lead to greater child labor. Literature has shown that child labour persists even in the ‘upper’ classes (Nguyen & Quan, 2003). This work collaborates McKechnie and Hobbs (1999) who gave empirical evidence from Britain, a western civilization that had not managed to remove children from child labour despite a very strong social-economic cushion given to families. In fact, McKechnie and Hobbs illustrated how authorities in London treated work by school aged children as a reality of life.

In this study, basic needs contributed to a not so high percentage of the reasons for children’s work. A clear demarcation on economic classes was seen. Chiefs’ children did
not work but on the other hand chiefs generally thought it was ‘a great thing’ for children to work for wage, which was contradictory. Though economic classes were well set in the area, this study also identified children of the wealthy who worked for gain and even ‘poor’ children who worked for other reasons other than basic needs, alienating this work from primarily focusing on Marxist theory of international relations. The Marxist theory emphasizes on the economic classes struggle between the owners of capital and the workers yet it is seen in the findings that the clamour for basic needs was not the only driver of child labour; there is more to it.

5.4.2 The Need for Vocation, Skills Gaining and Talent Management

As highlighted, poverty was not the only driver of child labour in the area. Figure 4.1 showed that 4.28 per cent of the children had used their income to start income generating projects, such as goat, rabbit and chicken rearing. This showed that, after all, waged work was not a bad thing for them as they were gaining skills in tending the animals.

The community generally believed that children should work hard to gain skills for the future. Laziness was discouraged. In fact, the community protested that stopping children from working for wage was ‘criminalization of their way of life’. Waged work was considered a way of passing time during school holidays and leisure time. Children expected that beyond the basic needs, leisure time activities should be provided and their talents tapped fully. Child employment offered that. A ‘supervised’ and balanced waged work was also viewed as a way of shielding children from bad habits when left at home.
alone. The parents preferred to have them on coffee farms so that they could learn to work gradually, not by design but by default.

The views also that children had so much time during the holidays and instead of playing all day, they thought they could earn extra money while ‘passing time’, makes child employment turn to be their leisure time activity. This also reinforces the view that child labour is a way of life. There is a need to rethink the education and talent management chances for both the talented and challenged students such as the dyslexic.

5.4.3 The Need for Fashion, Leisure and Entertainment

From figure 4.1, 53.34 per cent of the children who worked for wage, which is majority, used the money for entertainment and fashion items, video shows and peers visits to the nearest town. From the interviews, children also disclosed they needed to keep up with the peers in dressing. This is consistent with the expectations of children that over and above the basic needs, they will be provided for with entertainment and fashionable wear.

5.4.4 The need for Religious Participation

Figure 4.1 showed that 2.56 per cent of the wage earned by children was donated to religious activities. This draws some discord between religious and legal expectations. The question of whether the donations are expected to be made by the parents or the children’s work was not answered as it would have been out of scope of this research. For this scholarship, the discord points to the need for multi sectored approach in enforcement
rather than relying on government agencies alone and opens further studies on religion and child labour.

This research therefore identified one motivation for waged work as religion. Who would have thought that faith-based organisations are drawn to this discourse, no matter how remote they would look, especially if you look at child labour as a criminal activity. The thought of priests in the dock for violating child labour laws would seem like a contradiction if you look at religion holistically. The findings of this research have unveiled the complex web that child labour is embedded, that faith-based organisations also have a role to play in implementation of laws. The fact that child labour happens under the watch of various actors such as religious organizations and is enforceable at the local level rather than states disapproves the realism theory which focuses on state’s power and duties rather than multi- sectored approach. The realism theory presupposes that states are the main actors in the global arena and that it is all about their military and economic power. Child labour is far from this in that most of it is obscured and enforcement is done at the grassroots involving a web of stakeholders other than the state. For this reason, this study could not fit in the realism theory.

In concluding children’s motivation to work, all the reality voices emerging had a role in fuelling child labour despite existence and participants’ general knowledge of the laws. Financial safety nets cannot be ignored, so are the other motivations because one aspect of human rights will be compromised if another is ignored. All children’s rights are crucial and none can be ignored at the expense of the other in a rights-based approach. The realities in Mathira constituency helped question the utopic assumption by liberalism
theory that there is universal peace through provision of rights. This research’s findings correlate with Okyere (2013) and White (2009) who viewed the boundary between harmless ‘‘child work’’ and harmful ‘‘child labour’’ as problematic because their social realities increased child labour.

This study supports the view that universal peace is far from reality because of various competing needs, lack of which fuels child labour. The rights-based approach in liberal institutionalism theory must also address other rights such as financial assistance and empowerment (safety nets for the poor), entertainment and leisure, fashion, religion. Human rights interplay like a spider’s web. There must be harmony in the various strings of needs of children, for there to be the world peace purported to exist from the liberalism theory.

5.4.5 Emergence of Child Controlled Labour

In the questionnaires, children were asked whether their parents had allowed them to work for wage. This was to assess instances whereby children worked for wage without the consent of their parents. Table 3.3 of chapter 3.3 shows that, 41 per cent of the children worked for wage without parental consent. This challenges the assumption in section 88 of the Employment Act that children do not choose to work for wage. The fact that children have proven through this study that they make labour decisions on their own, means a lot more thought should be given to the framing of that section of the law and also involving them using the child participation principles set out. Anyango-Kivuva
(2006) criticizes the denial of the right to decide to work as this denial ignores that children take pride in owning things they have bought with their own money, arguing all that was needed was protective working terms.

This is child independence and can be contrasted with child participation whereby the waged work is done with the full knowledge of the parent but the child would be empowered in knowing fair terms. Figure 3.1 of chapter 3 indicated that 69.23 per cent of the children felt they had a voice. My perception was that the children had delved into child labour without the guidance from the guardians and the protection of the state officers that could allow them get fair terms. The rate is high, considering the number who reported they were not provided with protective wear in figure 2.9 (69 per cent) and the 100 per cent adverse effects in table 2.8. It is this naivety, which comes with childhood that should be cushioned. Though other participants, except the key informants seemed to have a twisted understanding of child participation, child participation cannot be ignored because the children seemed to hold their destiny in their own hands and they are a factor that contributed to child employment in the area. With the finding on elusive parental control or child independence; there is need to rethink the place of the child offender in child labour because eliminating it will also mean involving the key people. In this case, the child emerged as a key person in choosing whether to work or not. Once again, the realism theory is challenged because in addition to the state, children also have a role in realizing their rights and in making their own choices.
5.4.6 The Need for Community Participation

In chapter three, through the analysis of the conventions, the unique inclusion of community participation in enforcement of children’s rights was included. Article 5 of the United Nations Convention on the Rights of the Child (UNCRC) and article 31 of the African Charter on the Rights and Welfare of the Child (ACRWC) allow children to thrive and be protected within their communities. The challenge is that these communities may hold views that negatively affect implementation of the rights. The previous sections pointed out the communities’ views of child labour laws as criminalizing their way of life largely affected the implementation of conventions in the area. It is not enough to think of criminality of child labour without looking at the motivation and causes of child labour. There is need to balance between autonomy of states, respect for culture and human rights.

Child work may be part of the culture in Africa but ensuring that these children are not taken advantage of is more critical. States should not be reckless in allowing gross harm to children in the name of ‘way of life’. It is that balance between children’s rights and parents’ involvement that was suggested in line with Mahbubani (1992) to ‘modernize’ but not ‘westernize’ in order to balance the interests and ‘meet halfway’.

If on one hand child labour is outlawed but on the other context, child work is a way of life in the African culture, which right is right and which way is the child supposed to go? Thompson (1992) explored the dilemma for children under ACRWC, where article 31(a) and (d) requires children to assist family when in need and preserve and strengthen
African cultural values in his relations with other members of the society. There is need for an ombudsman to see that these cultural values are in the best interests of the child. According to Thompson, the construction of children’s rights in the cultural context raises the question of what is beneficially beneficial. This view is supported by Sloth-Nielsen (2008) that the benefit of breaching children’s rights in the name of communal ethics and culture should be assessed and guarded in the same manner as the benefit to the extended family. Kaime (2009) suggests solutions derived from practising communities’ supplemental welfare networks for the children’s survival and development, giving examples from South Africa, such as formal church groups, informal gossip networks and communal water or beer points.

Looking at these perspectives in the Kenyan context, the community believed the fight against child labour could be better won through involving the local communities. This will allow them to use traditional dispute resolution methods (TDRMs) to adjudicate child labour disputes as they believed they would balance all the interests. Under the Kenyan system of administration, such would be the national child labour committee (NCLC), county child labour committees (CCLCs), sub county child labour committees (SCCLCs) and the local child labour committees (LCLCs), as discussed before.

The findings to the third research question supported the assumption that perspectives of the local communities about what constitutes child labour, dwindling parental control and children’s independence influenced implementation of child labour conventions in Kenya. Constructivism theory was relevant in probing the extent of implementation of
conventions because conventions are presented as universal standards or laws applied in local situations but have not succeeded to eliminate child labour. The local conception of these standards in this research’s instance did not agree with the global understanding of the same.

This research contributes to the constructivism theory of international relations; that social reality such as the international system does not exist objectively outside, instead it is socially constructed and that it exists in so far people have a shared understanding of it (Onuf, 1989; Wendt, 1992). Constructivists view international law’s real force as its ability to reshape the discourse of state conceptions about what is possible and desirable in international relations (Cohen, 2009). In this study within international relations, constructivism has helped the researcher’s understanding of international law and the fact that far from domestication, effectiveness is a totally different thing and the communities will not comply with the international laws for as long as their social norms do not agree with it. To the ILO and other IGOs, child labour is criminal. To Africans, it is a way of life that they strongly feel should not be criminalized, making a strong case for AJS so as to secure the best interests of children in the process. This was not isolated to the grassroot community but also the key informants. These perspectives locate this study in constructivism theory of international relations in that the local communities do not see the ‘wrong’ in regulated child labour, instead they condemn the invasion of their lifestyle.

5.5 Conclusion

In summary, the findings supported the three research assumptions. There was a high prevalence of child labour in that 91 per cent of the participant children were found to
have been employed for wage in the study period. Not all those in that category were involved in strictly what is defined as child labour. 62.8 per cent were employed in what is strictly known as child labour. That is still a glaring percentage and reflects on how much awaits to be done to protect children so that when they work for wage, they are also protected. Child labour conventions were less effective. The findings highlighted contradiction, gaps and duplication of the child labour laws. Participants greatly supported children’s employment in the area. They thought that child labour should be allowed without hindrance and that affected enforcement. The factors that influenced implementation of instruments in the area of study are dwindling parental control, the emergence of child-controlled labour and the communities’ belief that child labour laws were criminalization their way of life, yet to them it was a social issue that could be sorted within the communities. Child labour was a reality in that community, worsened by the readily available labour in the agricultural sector.

The community felt that child labour should be addressed with their full participation in alternative justice system but guided by the courts and other concerned authorities. The findings point at three gaps for further research on child labour. There is need for further research on psychological consequences of child labour; labour mobility for children in rural areas and the role of faith-based organisations in child labour. The next and last chapter of the study gives a summary of findings, concludes this work and make recommendations.
CHAPTER SIX: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter presents a summary of findings, conclude the thesis and make recommendations.

6.2 Summary of Findings

There was a high prevalence of child labour in the site of study. 91 per cent of sampled children had worked for wage. 62.8 per cent of the sampled children were involved in what the Employment Act refers to as unlawful employment’ or otherwise known as child labour. Children worked in the domestic, agricultural, commercial and transport sectors. There were children less than 13 years who worked for wage, a category that should not be employed at all. There were also 13-16-year-old children doing work outside the legal definition of allowed light work. Some family work fell within the definition of child labour, for causing harm to the children. 24.7 per cent of the sampled children worked above 8 hours, which is over time by statutory hours. The hazards met by the working children in the site of study were cuts and bruises, colds and flu, backache, headache and psychological abuse. This study presented a few cases of unconditional worst forms of child labour, such as child prostitution, bhang (cannabis) peddling and bar attendants. On gender analysis, child labour emerged as a boys’ issue mainly than a girls’ issue and detached this study from feminism theory as the primary theory.
International instruments and local laws are not fully effective in the study site, a local area where they are enforced. Though laws existed and were known, they were duplicated and created different multiple enforcers for the same task, causing tension amongst enforcers and lack of harmony in their beat. There were gaps in enforcement of the laws mainly because child labour was perceived to be a way of life and a societal issue. The participants protested that child labour elimination criminalized the community’s way of life. The participants thought solutions to the problem would be found within their communities and using alternative justice system (AJS) not courts and formal criminal justice systems so that they can apply their nurturing mechanisms, guided by the judiciary to balance the interests of all concerned.

From the research, it is seen that the rights conferred by conventions to children are in competition with other rights. Through child labour, the sampled children were able to meet their various needs and that was the social economic reality on the ground because welfare and other cushions were not provided for. The right to food, clothing and shelter (basic needs), life skills, vocation, talent management and a harmonious life within communities, the right to fashion, leisure and entertainment and the right to religious participation competed with the right to be protected from child labour. This begs the question ‘which right is right?’ Perspectives of the local communities in Mathira constituency about what constitutes child labour contrasted the statutory definition of child labour. Despite a statutory guide of age and allowable work by ‘lightness’ and school status, any family work was understood to mean light work in the area. The
community understood any waged work done during school holidays to be allowed yet some could be hazardous.

The community understood child labour elimination as a western neo-colonialist idea which did not tally with their way of life, that it criminalized the community’s way of life. This coupled with dwindling parental control worsened by children’s independence, all influence implementation of international instruments in Kenya. Generally, the community suggested that they had solutions within their nurturing systems to protect children from exploitative work, without unreservedly bowing to their former colonial masters or band-wagoning.

6.3 Conclusion

Child labour is highly prevalent in the site of study. With this glare, there is need to adopt strategies of implementation that get to the grassroots (bottom-top approach) so as to assure decent working conditions for those children that must work and to map out worst forms of child labour. International instruments are not fully effective in eliminating child labour. Community perspectives on what constitutes child labour, perceptions of child labour as a societal issue than criminal, branding child laws as a form of neo-colonialism, dwindling parental control and related child independence all influenced implementation of labour laws in the area. There is need to rethink the strategies so that they are sensitive to the socio-economic realities in the global south and balance all the needs of children. Many of the participants supported child labour to be allowed and did not perceive child
labour as criminal. In fact, they went ahead and offered solutions such as the alternative justice system.

This construction by society of what child labour is and their ownership of the child protection system placed this research work within the constructivism theory of international relations. It is seen that the international community may define child labour as criminal as they wish but as long as the local community perceive it as something else, enforcement will always remain a challenge. This calls for a balance of all interests, which is global order, children and the communities they live with using localised, not universal solutions. This study contributes to the constructivism theory and has opened ground for further research on psychological effects of child labour, labour migration and religious participation looking at the role of faith-based organisations in child labour.

6.4 Recommendations

The research makes recommendations to policy makers, nongovernmental organisations (NGOs) and civil society, households’ heads and communities and to the academia.

6.4.1 Recommendations to Policy Makers

The statutory definition of light work and harm should be clarified in the laws of Kenya so as to limit hours for all sectors and describe harm. There is need to define child labour according to effect on child, not only employment because family labour can turn hazardous.
With the duplication, contradictions and gaps in laws highlighted in this study, there is need harmonize all laws concerned with child labour, mainly the Employment Act, the Children Act, Basic Education Act and the Penal Code so as to clearly define child labour, enforcers, duty bearers and set clear penalties. Chiefs should be added as enforcers within the Employment Act since they play a crucial role at the grassroots in a bottom-up approach. Child labour laws should be reviewed to tally with the new Constitution, 2010 and harmonize with the County Governments Act, 2012 and the National Government Coordination Act, 2013 so that decentralization of enforcement is made possible up to the grassroots.

Child labour committees (CLCs) should be given statutory backing, therefore include them in the main child labour laws; clarify guidelines on their functions, composition and frequency of meetings so that they do not remain administrative measures as is. These will be CLCs at the national level (NCLC), then county’s (CCLC), Sub-County’s (SCCLC), ward’s (WCLC), and location’s (LCLC) in a bottom-top and not top-bottom approach. Absenteeism under the Basic Education Act should be dealt with using the same approach. This will harmonize the functions of various duty bearers in a multi sectored approach so that the common purpose of eliminating child labour is achieved and good intergovernmental relations are maintained.

With the help of the Judiciary, traditional disputes resolution mechanisms (TDRMs) should be adopted in resolving child labour disputes. Where matters get to court, court users’ committees should sensitize the people on benefits of the formal system of justice
using communal forums so as to demystify courts and how the formal and informal systems of justice complement each other rather than compete. Within the judiciary, witness protection system, safe houses, hostels and children homes should be provided for especially for cases of worst forms of child labour (WFCL) and invisible forms of child labour so as to get and preserve sensitive information.

Enough resources should be allocated for human resource and capacity building, infrastructure, awareness raising, sensitization and other soft needs of all enforcers. There is need to allow access to information, training on performance standards, ethics and integrity for duty bearers. Welfare cushions, financial training and empowerment projects to tackle inter-generational cycles of poverty are recommended for the community. The National Safety Net Program (NSNP) should be expanded to all needy situations to cushion the poor.

Alternative forms of education for the dyslexic, such as vocational skills centres and revival of village polytechnics should be provided. Talent management and mentorship should be done so that no talent is wasted. Education should be made more vibrant, teenage mothers and school drop outs should be enrolled back to school and socially protected. The right of child participation should be respected and supported so as to help the children raise their voices in child friendly forums, get fair working terms so that their youthful energy is not exploited.
6.4.2 Recommendations to NGOs, CBOs and FBOs

Social partners should supplement the already meagre resources, offer cash transfer programs for the poor and vulnerable in the community, offer psychosocial support for mental illnesses, stigma and trauma, raise awareness generally and bridge inequality gap. The faith-based organizations should take an active role in child labour issues as social partners so as to clear beliefs that hinder child labour elimination. Employers have a crucial role in providing fair terms for employed children and elimination strategies.

6.4.3 Recommendations to Communities and Household Heads

Parents should take full parental control but balance that with the children’s right to child participation so that their youthful energy is not exploited in the name of child independence when they defy parents and find paid work on their own. Child participation through child friendly forums such as child rights clubs in schools will enable the children raise their voice for fair working conditions and other matters that concern them. Families’ should stop exploitative work within family work. With support from the judiciary, communities should actively participate in the AJS/IJS/CJS as a means of resolving child labour issues. Community psychosocial support for nurturing victims of mental illnesses, the vulnerable, stigma and trauma victims should be set up in villages.

6.4.4 Recommendations to Researchers

The identified areas for further research are the psychological effects of child labour, children’s labour mobility and the role of faith-based organizations in eliminating child labour.
REFERENCES


______. (2010). Accelerating Action against Child Labour. A global report under the


“Rethinking the Sovereign State Model”. In Review of International Studies 27: 17–42.


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APPENDIX A 1 HOUSEHOLDS’ QUESTIONNAIRE

PART A: INFORMATION SHEET

My name is Mercy Wanjiku Kareithi, a student taking a Master of Arts degree in International Relations and Diplomacy at Kenyatta University, Kenya. I am researching on child labour in Kenya in order to complete this course and also help the country look for solutions to reduce child labour. My focus area is Mathira Constituency.

I please request that you participate in this research by accepting to fill this questionnaire. I will be looking for the household’s structure, characteristics, the children’s living conditions, education, their work, working terms and conditions. The questionnaire takes about 30 minutes to complete and has two parts. Part A is addressed to the head of household. Part B is addressed to the children under 18 years. The information is sensitive. Please do not include your name in the questionnaire. Whatever information you provide will be kept strictly confidential and will not be shown to other persons. It will be for academic purposes only. Participation in this survey is voluntary and you can choose not to answer any individual questions at any stage. I welcome you and hope that you will participate, since your views are important and will form part of the report. I will share with you the findings of the study after.

If you need assistance to fill the questionnaire, I will be glad to support you. Would you please spare the time to help me with my research? If yes, it also means that I may need information from child participants in your household and do request that you fill the informed consent form separately. Thank you.

MERCY WANJIKU KAREITHI
CANDIDATE C50/CTY/PT/25445/2011
DEPARTMENT OF DIPLOMACY AND INTERNATIONAL RELATIONS
KENYATTA UNIVERSITY
PART B: ADDRESSED TO THE HEAD OF THE HOUSEHOLD

1. Demographic Information of household (from oldest to youngest)

<table>
<thead>
<tr>
<th>No.</th>
<th>Status or title in family</th>
<th>Age (years)</th>
<th>Sex</th>
<th>Marital Status</th>
<th>Level of education</th>
<th>Occupation</th>
</tr>
</thead>
<tbody>
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<td>1.</td>
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</tbody>
</table>

2. Who is the household’s bread winner?

- Father
- Mother
- Both father and mother
- Other relatives and well wishers

3. What was the average income of the bread winner/s per day in Kenya Shillings?

………………………………………………

4. (a) Has any of your children aged under 18 years helped with some kind of work at home?

- Yes
- No

(b) If yes, how old are the children, what is their sex and what kind of work?

<table>
<thead>
<tr>
<th>Age (years)</th>
<th>Sex</th>
<th>Kind of work</th>
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</tbody>
</table>
(c) Did any of your children who worked at home skip school or school related activities while doing the work at home?

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<tr>
<td>Yes</td>
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<tr>
<td>No</td>
<td></td>
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</tbody>
</table>

(d) Give reasons........................................................................................................

5. (a) Has any of your children aged under 18 years worked for wage?

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<tbody>
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<td>Yes</td>
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<tr>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

(b) If yes, how old are the children, what is their sex and what kind of work?

<table>
<thead>
<tr>
<th>Age (years)</th>
<th>Sex</th>
<th>Kind of work</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

(c) Did any of your children who worked for wage skip school or school related activities in order to do the waged work?

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</thead>
<tbody>
<tr>
<td>Yes</td>
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<tr>
<td>No</td>
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</tbody>
</table>

(d) Give reasons........................................................................................................

6. (a) For the children working for wage, did you allow them to work?

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</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
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<tr>
<td>No</td>
<td></td>
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</tbody>
</table>

(b) If the answer is no, who informed them of the work’s availability?

........................................................................................................................................

7. What are the reasons children work for wage without the parents’ knowledge or consent?

........................................................................................................................................
........................................................................................................................................

8. What are the reasons children work for wage generally?

........................................................................................................................................
........................................................................................................................................

9. (a) Should children be allowed to work for wage generally?

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<tbody>
<tr>
<td>Yes</td>
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<tr>
<td>No</td>
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</tr>
</tbody>
</table>

(b) Give reasons........................................................................................................

214
PART C: CHILDREN (UNDER 18 YEARS).

1. Demographic information
   (a) What is your age in years?
   
<table>
<thead>
<tr>
<th>Under 13</th>
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<tbody>
<tr>
<td>13-16</td>
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<tr>
<td>16-18</td>
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</tbody>
</table>
   
   (b) What is your sex?
   
<table>
<thead>
<tr>
<th>Male</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Female</td>
<td></td>
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</table>
   
   (c) Do you go to school?
   
<table>
<thead>
<tr>
<th>Yes</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>No</td>
<td></td>
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</tbody>
</table>
   
   (d) If yes, which class are you in? ........................................
   
   (e) If no, give reasons........ ....................................................
   .................................................................................................

2. (a) Do you engage in some kind of work at home?
   
<table>
<thead>
<tr>
<th>Yes</th>
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</thead>
<tbody>
<tr>
<td>No</td>
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</tbody>
</table>
   
   (b) If yes, what kind of work? .....................................................
   
   (c) Have you ever skipped school or school related activities to work at home?
   
<table>
<thead>
<tr>
<th>Yes</th>
<th></th>
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<tbody>
<tr>
<td>No</td>
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</tbody>
</table>
   
   (d) Give reasons................................................................................
   .................................................................................................

3. (a) Do you work for wage?
   
<table>
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<tr>
<th>Yes</th>
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<tbody>
<tr>
<td>No</td>
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</tbody>
</table>
   
   (b) If yes, what kind of work? .........................................................
   
   (c) If yes, did you skip school or school related activities to work for wage?
   
<table>
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<tr>
<th>Yes</th>
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<tr>
<td>No</td>
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</table>
(d) Give reasons

4. (a) Did your parents allow you to work for wage?

| Yes | No |

(b) If the answer to the above is no, who informed you of work?

........................................................................................................................................

5. How much were you paid per day in Kenya Shillings?

.................................

6. Who kept the money paid for your waged work?

.................................

7. How many hours in a day did you work for wage?

| Less than 2 | 2-8 | Over 8 |

8. How did you or family use the money you were paid?

........................................................................................................................................

9. (a) Would you work for wage if you were offered food, clothes, shelter, school fees, medical cover and entertainment?

| Yes | No |

(b) Give reasons ........................................................................................................

........................................................................................................................................

10. (a) Were you offered protective clothing and tools when you worked either at home or for wage?

| Yes | No |

(b) Give reasons ........................................................................................................
11. (a) Tick if you have experienced the following problems at work either at home or for wage?

<table>
<thead>
<tr>
<th>Condition</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chest infections and cold related illnesses</td>
<td></td>
<td></td>
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<tr>
<td>Backache and headache</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bites- Insect, spiders, snakes or other</td>
<td></td>
<td></td>
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<tr>
<td>Cuts and bruises</td>
<td></td>
<td></td>
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<tr>
<td>Verbal abuse, torture and others</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(b) If the answer is yes (tick) to any above, were you treated?

<table>
<thead>
<tr>
<th>Answer</th>
<th></th>
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<tbody>
<tr>
<td>Yes</td>
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<tr>
<td>No</td>
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</table>

(c) If you were treated, who paid for the treatment?

<table>
<thead>
<tr>
<th>Payor</th>
</tr>
</thead>
</table>

(d) If you were not treated, explain.

12. What are the reasons children work away from home for wage without the parents’ knowledge or consent?

...........................................................................................................................................

13. What are the reasons children work for wage generally?

...........................................................................................................................................

14. (a) Should children be allowed to work for wage generally?

<table>
<thead>
<tr>
<th>Answer</th>
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<tbody>
<tr>
<td>Yes</td>
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<tr>
<td>No</td>
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</table>

(b) Give reasons.

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15. (a) Do you have a voice or say in child labour? That is do you feel empowered to choose better terms and conditions of the work you did.

<table>
<thead>
<tr>
<th>Answer</th>
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<tbody>
<tr>
<td>Yes</td>
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<td>No</td>
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</table>

(b) Give reasons.

...........................................................................................................................................

Thank you for completing this Questionnaire; I greatly appreciate your time.
APPENDIX A2: INFORMED CONSENT FORM

I, a parent/guardian confirm I have been asked to give consent for my daughter/son to participate in this research study which will involve her/him filling either a questionnaire or a being interviewed or both. I have read the information, or it has been read to me, touching on: introduction to the research, the purpose of the research, the type of research technique, the instruments to be used, mode selecting the participants, voluntary participation, the procedure involved and duration of getting the information, risks and discomforts, the benefits of the research, non-payment, sharing of research findings, assurance of confidentiality, the right to refuse or withdraw at any stage of the research and details of contact person for this research have been given. I have had the opportunity to ask questions about these and any questions that I have asked have been answered to my satisfaction. I consent voluntarily for my child to participate in this study.

Print Name of Parent or Guardian __________________
Signature of Parent or Guardian__________________________ Date _________________
Day/month/year

If the parent/guardian is illiterate:
A literate witness shall sign (this person should be selected by the participant and should have no connection with the research team). Participants who are illiterate should include their right-hand thumb print as well.

I have witnessed the accurate reading of the consent form to the parent of the potential participant, and the parent has had the opportunity to ask questions. I confirm that the individual has given consent freely.

Name of witness_________________________ AND Right thumb print of participant
Signature of witness_________________________
Date ____________________
Day/month/year
Statement by the researcher/person taking consent:

I have accurately read out the information sheet to the parent of the potential participant, and to the best of my ability made sure that the person understood all the information in the information sheet. I confirm that the parent was given an opportunity to ask questions about the study, and all the questions asked by him/her have been answered correctly and to the best of my knowledge, information, belief and ability. I confirm that the individual has not been coerced or unduly influenced into giving consent, and the consent has been given freely and voluntarily.

A copy of this Informed Consent Form has been provided to the parent or guardian of the participant on___________
Name of Researcher/person taking the consent________________________

MERCY WANJIKU KAREITHI
CANDIDATE C50/CTY/PT/25445/2011
DEPARTMENT OF DIPLOMACY AND INTERNATIONAL RELATIONS
KENYATTA UNIVERSITY
APPENDIX A3: INTERVIEW GUIDE FOR CHILD PARTICIPANTS

PART A: INFORMATION SHEET

My name is Mercy Wanjiku Kareithi, a student taking a Master of Arts degree in International Relations and Diplomacy at Kenyatta University, Kenya. I am researching on child labour in Kenya in order to complete this course and also help the country in finding solutions to reduce child labour. My focus area is Mathira Constituency.

I please request that you allow your child to participate in this research by accepting to be interviewed either individually or in a focus group discussion. I will be looking for information on their work and that of other children, their views on this work and the working terms and conditions. The interview takes about 30 minutes and some interviews may be recorded on a voice recorder. The information is sensitive. Whatever information the child provides will be kept strictly confidential and will not be shared with other persons. It will be for academic purposes only. Participation in this survey is voluntary and the child can choose not to answer any individual questions or participate at any stage. I welcome you and hope that you will participate, since your views are important and will form part of the report. I will share with you the findings of the study after.

Would you please give consent for your child to help me with my research? Thank you.

MERCY WANJIKU KAREITHI
CANDIDATE C50/CTY/PT/25445/2011
DEPARTMENT OF DIPLOMACY AND INTERNATIONAL RELATIONS
KENYATTA UNIVERSITY
PART B: INTERVIEW QUESTIONS FOR CHILDREN

1. What do you know about family work that children do at their homes?

2. Do you think there a difference between family work and what is generally referred to as child labour?

3. Please identify 4 types of waged work that children do in this area.

4. Highlight the greatest hazards for working children in this area.

5. There are many international conventions about child labour, for example the United Nations convention on the rights of the child and the international labour organization’s convention 182 on worst forms of child labour. What do you know and think about them?

6. There are laws of Kenya on child labour, for example the Children Act and the Employment Act. What do you know and think about them?

7. Do you think children have a voice or say in child labour? That is do you think children feel empowered to choose better terms and conditions of the work they do?

8. What is your understanding of light work for children?

9. Explain whether children should be allowed to work for wage.

10. What encourages children to work for wage in this area?

11. What encourages children to work for wage without their parents’ permission?

12. What can be done to reduce child labour?
APPENDIX A4: INTERVIEW GUIDE FOR ADULT PARTICIPANTS

1. What is your involvement in child labour matters in this area?
2. What do you think of the work done by children in their homes?
3. Do you think there is a difference between family work that children do at their homes and what is generally referred to as child labour?
4. Please highlight 4 major sectors known for employing children in your area.
5. What are the greatest hazards for working children in your area?
6. There are many international conventions about child labour, for example the United Nations convention on the rights of the child and the international labour organization’s convention 182 on worst forms of child labour. What do you say and think about them?
7. There are laws of Kenya on child labour, for example the Children Act and the Employment Act. What do you say and think about them?
8. How do you understand child participation or children’s voice in child labour?
9. What is your understanding of light work for children?
10. Explain whether children should be allowed to work for wage
11. What encourages children to work for wage in this area?
12. What causes children to work for wage without parents’ permission in this area?
13. What have you done to reduce child labour in your area?
14. What challenges do you face in reducing child labour in your area?
15. What do you say about culture in relation to child labour?
16. What can be done to reduce child labour generally?
### APPENDIX A5: SCHEDULE OF INTERVIEWS

<table>
<thead>
<tr>
<th>Index</th>
<th>Informant</th>
<th>Type of interview</th>
<th>Tally</th>
<th>Date of interview: 2016</th>
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<tbody>
<tr>
<td>1.</td>
<td>6 children</td>
<td>Individual</td>
<td>6</td>
<td>6&lt;sup&gt;th&lt;/sup&gt; - 13&lt;sup&gt;th&lt;/sup&gt; August</td>
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<td>2.</td>
<td>6 children</td>
<td>FGD</td>
<td>12</td>
<td>7&lt;sup&gt;th&lt;/sup&gt; August</td>
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<tr>
<td>3.</td>
<td>6 parents</td>
<td>Individual</td>
<td>18</td>
<td>6&lt;sup&gt;th&lt;/sup&gt; - 13&lt;sup&gt;th&lt;/sup&gt; August</td>
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<tr>
<td>4.</td>
<td>6 parents</td>
<td>FGD</td>
<td>24</td>
<td>6&lt;sup&gt;th&lt;/sup&gt; &amp; 7&lt;sup&gt;th&lt;/sup&gt; August</td>
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<tr>
<td>5.</td>
<td>6 teachers</td>
<td>Individual</td>
<td>30</td>
<td>6&lt;sup&gt;th&lt;/sup&gt;, 7&lt;sup&gt;th&lt;/sup&gt;, 8&lt;sup&gt;th&lt;/sup&gt;, 10&lt;sup&gt;th&lt;/sup&gt; and 13&lt;sup&gt;th&lt;/sup&gt; August</td>
</tr>
<tr>
<td>6.</td>
<td>6 chiefs, asst. chiefs &amp; elders</td>
<td>Individual</td>
<td>36</td>
<td>8&lt;sup&gt;th&lt;/sup&gt;, 9&lt;sup&gt;th&lt;/sup&gt;, 11&lt;sup&gt;th&lt;/sup&gt; &amp; 13&lt;sup&gt;th&lt;/sup&gt; August</td>
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<tr>
<td>7.</td>
<td>2 senior public administrators</td>
<td>Individual</td>
<td>38</td>
<td>9&lt;sup&gt;th&lt;/sup&gt; August</td>
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<td>8.</td>
<td>2 children officers</td>
<td>Individual</td>
<td>40</td>
<td>10&lt;sup&gt;th&lt;/sup&gt; August</td>
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<tr>
<td>9.</td>
<td>2 labour officers</td>
<td>Individual</td>
<td>42</td>
<td>12&lt;sup&gt;th&lt;/sup&gt; August</td>
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<td>10.</td>
<td>2 police officers</td>
<td>Individual</td>
<td>44</td>
<td>12&lt;sup&gt;th&lt;/sup&gt; August</td>
</tr>
<tr>
<td>11.</td>
<td>2 judicial officers</td>
<td>Individual</td>
<td>46</td>
<td>12&lt;sup&gt;th&lt;/sup&gt; August</td>
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<tr>
<td>12.</td>
<td>4 employers</td>
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<td>50</td>
<td>8&lt;sup&gt;th&lt;/sup&gt;, 9&lt;sup&gt;th&lt;/sup&gt; &amp; 13&lt;sup&gt;th&lt;/sup&gt; August</td>
</tr>
<tr>
<td>13.</td>
<td>2 employer organisations</td>
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<tr>
<td>14.</td>
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<td>15.</td>
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<td>9&lt;sup&gt;th&lt;/sup&gt; August</td>
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<td>16.</td>
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<td>17.</td>
<td>6 AAC members</td>
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<td>18.</td>
<td>6 LCLC members</td>
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## APPENDIX A6: WORK PLAN

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<tr>
<td>Proposal preparation</td>
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<td>Corrections of errors &amp; 1st defence to dept.’</td>
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<tr>
<td>Proposal perfection &amp; 2nd defence to BPS</td>
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<td>Registration &amp; approval by SHSS &amp; NACOSTI</td>
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<td>Data analysis &amp; compiling thesis report</td>
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<tr>
<td>Examination, approval and presentation of thesis report</td>
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**APPENDIX A7: BUDGET**

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<th>COST (Kshs.)</th>
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<td>b) Reproducing 22 copies× 50 pages @ Kshs. 3/=</td>
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<td>c) Spiral binding 23 copies @ Kshs. 50/=</td>
<td>1,150.00/=</td>
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<td>d) Travelling and miscellaneous expenses</td>
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<td><strong>2. Data collection and analysis</strong></td>
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<td>e) Data collection</td>
<td>20,000.00/=</td>
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<tr>
<td>f) Books and reading materials</td>
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<td>g) Data analysis and computer runtime</td>
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<td>h) Questionnaires</td>
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<td><strong>3. Draft Thesis report for examination and oral presentation</strong></td>
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<td>i) Printing 230 pages × 3 copies @ 20/=</td>
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<td>j) Spiral binding 3 copies @ 250/=</td>
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<td><strong>4. Thesis Report</strong></td>
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<td>k) Printing of 242 pages × 7 copies @ Kshs. 20/=</td>
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<td>l) Book binding 7 copies @ Kshs. 1,000/=</td>
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<td>m) Miscellaneous expenses</td>
<td>5,000.00/=</td>
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<td><strong>GRAND TOTAL</strong></td>
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APPENDIX A8: MAP OF KENYA, NYERI COUNTY ZOOMED.
APPENDIX A10: APPROVAL FOR RESEARCH- KENYATTA UNIVERSITY

KENYATTA UNIVERSITY GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke  P.O. Box 43844, 00100
Website: www.ku.ac.ke NAIROBI, KENYA
                      Tel: 810901 Ext. 57330

FROM: Dean, Graduate School DATE: 7th April, 2016
TO: Ms. Birethi M. Wanjiku
       C/o History, Archaeology & Political Studies Dept.
       Kenyatta University

SUBJECT: APPROVAL OF RESEARCH PROPOSAL

This is to inform you that Graduate School Board at its meeting of 27th January, 2016 approved your Research Proposal for the M.A. Degree, Entitled “Child Labour in International Human Rights Law: Local Communities’ Perspectives in Kenya, 1979-2015”.

You may now proceed with your Data collection, subject to clearance with the Director General, National Commission for Science, Technology & Innovation.

As you embark on your data collection, please note that you will be required to submit to Graduate School completed supervision Tracking Forms per semester. The form has been developed to replace the progress Report forms. The Supervision Tracking Forms are available at the University’s Website under Graduate School webpage downloads.

Thank you.

EDWIN OBUNGU
FOR: DEAN, GRADUATE SCHOOL

cc. Chairman, History, Archaeology & Political Studies Dept.
Supervisors:
    1. Dr. Joseph O. Wesonga
       C/o History, Archaeology & Political Studies Dept.
       KENYATTA UNIVERSITY
APPENDIX A11: RESEARCH CLEARANCE PERMIT - NACOSTI

CONDITIONS:

1. You must report to the County Commissioner and
   the County Education Officer of the area before
   embarking on your research. Failure to do that
   may lead to the cancellation of your permit.

2. Government Officers will not be interviewed
   without prior appointment.

3. No questionnaire will be used unless it has been
   approved.

4. Excavation, filming and collection of biological
   specimens are subject to further permission from
   the relevant Government Ministries.

5. You are required to submit at least two (2) hard
   copies and one (1) soft copy of your final report.

6. The Government of Kenya reserves the right to
   modify the conditions of this permit and its
   cancellation without notice.

THIS IS TO CERTIFY THAT:

MS. MERCY WANJIKU KAREITHI
of KENYATTA UNIVERSITY, 106317-102
Nairobi, has been permitted to conduct
research in Nairobi, Nyeri Counties
on the topic: CHILD LABOUR IN
INTERNATIONAL HUMAN RIGHTS LAW:
LOCAL COMMUNITIES PERSPECTIVES IN
KENYA, 1979-2015
for the period ending:
23rd May, 2015

Applicant's Signature:

[Signature]

Director General
National Commission for Science, Technology & Innovation

Permit No.: NACOSTI/P/16/30758/11075
Date Of Issue: 24th May, 2016
Fee Received: Ksh 1000