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In the child's best interests? Legislation on children's work in rural Ethiopia

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Abstract

An abolitionist approach to children's work bans all work; a regulatory approach bans harmful work and regulates other work. I argue for a regulatory approach, using the "least restrictive alternative" test commonly applied in law. I contend, however, that definitions of harmful work must appropriately specific to local contexts and informed by the views of working children. I support this with a case study of a village in Ethiopia, where the current abolitionist approach is overly restrictive. However, a regulatory approach based on international definitions of harmful work would probably not protect children against some harmful work. Children and their parents have a better understanding of which work is harmful, so local definitions ought to be the basis of regulatory legislation.

Keywords: children's work, child labour, hazardous work, Convention on the Rights of the Child, Minimum Age Convention, International Labour Organisation

Introduction

In the last forty years, there has been extensive debate about whether international legal standards and domestic law should abolish all children's work, or rather ban harmful work and regulate other work. I outline current international legislation. I then describe a common legal test for whether legislation is justified: if the state limits people's rights to achieve a social purpose, the limitation should be the least restrictive means of achieving that purpose. I argue that this idea is useful to summarise criticisms of an abolitionist approach made by abolitionists and practitioners, and to justify a regulatory approach.

Furthermore, I argue that a regulatory approach will be most successful if definitions of harmful work are based on local understandings of harmful work for children and include the views of working children. This builds on arguments in Bourdillon *et al* (2009a).

I then present a case study of an Ethiopian village where a high proportion of children aged 11 to 12 do paid work. The case study supports my argument that an abolitionist approach in a developing country context fails to protect children's best interests. Ethiopian law does not allow children younger than 14 to work. One employer obeys the law and will not hire children. The work children could do for this employer is not harmful (according to children), so the law is overly restrictive.

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Because existing legislation is so broad, there is little capacity to enforce it. Other employers are able to allow children to do work which children identify as harmful. Children thus end up working in harmful, less regulated jobs. I argue that legislation should take a less restrictive approach, allowing children to work unless work is harmful. Local understandings of harm, often expressed by working children themselves, would be a good basis for definitions of harm.

Current legislation on children's work

Bourdillon et al. (2009a) differentiate between abolitionist and regulatory approaches to children's work. The International Labour Organisation (ILO) Minimum Age Convention No. 138 (1973) is abolitionist: it prohibits children younger than 14 from working, with the exception of chores, work on family farms, and work for educational purposes (Myers, 2001). Children from 12 to 14 years of age can do light work that is unlikely to harm their health, development, or education. In practice, registering light work is so complicated that countries seldom undertake the process and light work remains technically illegal (McKechnie and Hobbs, 1999).

The United Nations (UN) Convention on the Rights of the Child (CRC) (1989) takes a more regulatory approach. Article 32 requires countries to protect children from exploitation and prevent them performing work which is hazardous or harmful to their education, health or development. Otherwise, it permits non-harmful work by allowing states to regulate hours and conditions of employment. The CRC does require states to set a minimum age of employment but does not itself set the age (Myers, 2001: 49). Thus states can choose either to allow non-harmful work or to follow an abolitionist approach and ban all work by setting a high minimum age.

Harmful work is further defined in Convention 182 on the Worst Forms of Child Labour, which bans specified "worst forms" of work (such as slavery or prostitution) and work which harms the health, safety or morals of children. ILO Recommendation 190 defines harmful work specifically as work which exposes children to physical, psychological, or sexual abuse; or work which is performed in dangerous places, with dangerous machinery, in an unhealthy environment, and/or under difficult conditions (e.g. for long hours). Countries are required to provide further details to define harmful work (Bourdillon *et al.*, 2009b: 22).

All three treaties are in force concurrently. Myers (2001: 44) notes that treaties have weak powers of enforcement. However, they reflect a degree of international consensus on best practice, which countries do not like to flaunt openly. Countries often model their own laws on international ones. International legislation establishes criteria for international action, such as bilateral trade restrictions or labelling of products as 'child-labour-free'. Their implications are thus worth considering.

Ethiopia ratified Convention 138 in 1999, Convention 182 in 2003 and the CRC in 1991 (International Labour Organisation, 2010). Article 36 of the Constitution takes a more regulatory stance and is similar to CRC Article 32. Article 89(2) of Labour Proclamation No.377/2003, in contrast, bans children under 14 from employment.

The legislation banning children's work has not been successfully enforced: the 2001 Ethiopian Child Labour Force Survey finds 62.4 per cent of rural 10- to 14-year-olds are involved in economic activity, including subsistence work but excluding chores (Central Statistical Association, 2003: 60). Only 6.8 per cent work for pay, although this estimate may not adequately capture seasonal or casual paid work.

The least restrictive alternative

Domestic law in many countries protects human rights, which governments are only allowed to limit under certain conditions. These conditions are articulated most clearly in constitutional law in Canada (*R v Oakes*, 1986) and South Africa (*S v Zuma and Others*, 1995), although similar conditions are found in cases in the United States (Spece, 1988) and in international legal standards (Sykes, 2003).

One of the most important conditions is that any limitation of a human right must “impair the right in question as little as possible” (*R v Oakes*, 1986: 2). In common legal terminology, the limitation must be the “least restrictive” limitation. “When an alternative regulation unquestionably achieves a clearly stipulated regulatory objective at equal or lower cost to regulators while imposing a lesser burden on some other valued interest (free speech, free trade, or the like), the alternative is ‘less restrictive.’” (Sykes, 2003: 404).

This condition is based on the idea that government “should not gratuitously or unnecessarily inflict harm or costs” and should use “alternatives that minimise intrusions on individuals touched by the state’s action” (Spece, 1988: 146). The principle is applied to assess many rights limitations, including discrimination based on sex (Spece, 1988) and limitations on freedom of speech; movement of the mentally ill (Chambers, 1972) and trade (Sykes, 2003).

For a variety of reasons, children do not have the same rights as adults. In the early 1970s, child rights NGOs and legal scholars criticised international law for being limited to rights which protect children (Hafen and Hafen, 1996: 461). They argued that the agency of children should be recognised and that children should have some right to take part in decision-making about their lives (Miljeteig-Olssen, 1990: 149).

The drafters of the CRC took account of these criticisms and recognised a number of “individual personality rights”, such as freedom of speech and religion. Furthermore, in Article Twelve, the CRC gives children capable of forming their own views the right to express those views in matters affecting them (Cohen, 1993: 19). If institutions override children’s wishes, it must be to protect the child’s best interests (Hammarberg, 1990: 99). Children’s views are not given the same weight as adults: the CRC recognises that children have “evolving capacities”, so children’s views are given weight in accordance with their age and maturity (Cohen, 1993: 19). The CRC begins to recognise that children, like adults, derive value from the freedom to take decisions about their lives. Accordingly, the idea that legislation affecting children should be the least restrictive possible can be applied to legislation affecting children, including legislation on children’s work.

Criticisms of the abolitionist approach

The idea of the least restrictive alternative is useful to summarise criticisms made of abolitionist approaches by anthropologists and practitioners since the 1990s. One such criticism is that not all work done by children is harmful. The idea that work is inappropriate for children is based on cultural constructions of childhood specific to contemporary North America and Europe (Boyden, 1997; James and Prout, 1997), but work often has substantial benefits. Work teaches skills (Boyden et al., 1998: 266), builds children’s sense of efficacy (Liebel, 2004) and gains children respect from society (Woodhead, 1998: 56, 73). A ban deprives children of these benefits and causes embarrassment and distress by criminalising children (Boyden *et al.*, 1998). The classification of all work as inappropriate for children is overly restrictive.

A second, related, criticism is that abolitionist legislation is an overly costly way to prevent some forms of harmful work. Imposing abolition requires extensive state capabilities, such as large labour inspectorates (Myers, 2001: 46), which developing countries generally cannot afford. In 2000, there

were only 50 labour inspectors in the Ethiopian formal sector (Government of Ethiopia, 2008: 3). Bans on children's work are difficult to implement in societies which think some types of work are appropriate for children and vital for children's development (Liebel, 2004; Rogoff, 1991: 191). In such societies, regulation enjoys "at least a modicum of social credibility and legitimacy" (Bequele and Myers, 1995: 26-7), so citizens are more likely to comply with the law and report infringements.

In contrast to an abolitionist approach, Article 32 of the CRC upholds the idea that legislation should be the least restrictive possible. The CRC requires states to limit certain types of work which are harmful to children, but allows countries to allow other types of non-harmful work.

Local definitions of harmful work

Bourdillon *et al.* (2009b: 23) argue that, for a regulatory approach to be most effective, definitions of work should be as locally specific as possible. Local definitions can account more accurately for the characteristics of particular tasks in the local economy. In contrast, national legislation may be overly restrictive because it may be difficult to distinguish at national level between harmful and non-harmful work.

In some instances, national legislation may not be restrictive enough, Myers (2001: 43) highlights that the source of harm is often the social relations surrounding work, such as adult disapproval of the child's occupation. Such social relations may be specific to a culture and location and will only be captured by local definitions (White, 1999).

Finally, I would argue that the CRC emphasises the importance of including children's perspectives in legislation which affects them. Although children can participate in national processes to develop legislation, there are not recognised structures for children to select representatives, and children's unions often don't have a wide enough membership base to represent working children effectively. Local definitions can more easily capture the perspectives of working children in a particular locality (Bourdillon *et al.*, 2009b: 22).

Methodology

Young Lives is a study of children in four countries funded by the UK Department of International Development. In Ethiopia, it is run by a partnership between the University of Oxford and the Ethiopian Development Research Institute. One thousand children and caregivers were surveyed in 2002/3, when the children were eight years of age, and again in 2006/7, when they were twelve. I used the survey data to select a site for a qualitative case study and to select interviewees.

To choose the site, I followed Ragin (1992) and Yin (2003), who argue that it is possible to make a theoretical argument about a phenomenon from a single case if there is logic to the case selection. One such logic is to select an extreme or atypical case of a phenomenon that displays the characteristics of a phenomenon particularly vividly. I selected Leki, the case study village, because it has the highest percentage – 51 per cent – of children doing paid work among the rural sites in the sample. Across all the Young Lives rural sites, 10.58 per cent of children are involved in paid work.

I designed and observed research carried out in Oromiffa by research assistants. I selected 24 children for focus groups based on their sex, working status, and schooling status. Each group participated in two exercises (Orkin, 2008). One activity was from Woodhead *et al.* (1998), asking children to rank activities they did on various criteria, such as which work was most tiring or best paid. In the second exercise, which drew on the Young Lives qualitative protocol (Camfield *et al.*, 2009), children discussed the characteristics of children who did well or badly at school. With an assistant I conducted semi-structured interviews with 17 children. I selected ten children for follow-up interviews and home observations, and also interviewed the parents of these ten children. I also

interviewed teachers, the chairperson of the *Kebele* (the lowest level of local government), the manager of the NGO providing irrigation services, and managers of vegetable farms.

Different kinds of paid children's work in Leki

The case study village, Leki,² is four hours drive from Addis Ababa. It has a steady water supply and is close to urban markets. The village economy is agricultural and until recently was subsistence-based. In 2002, an NGO recruited farmers to form irrigation co-operatives to farm and sell vegetables and a commercial farm exporting vegetables was established. A large flower farm was established in 2007.

In another paper (Orkin, 2008), I identified three characteristics that children disliked about work: if it was tiring, if they felt employers treated them unfairly, or if their work harmed their schooling. Work that affected their schooling included work during the term; work that was scarce, so that children worried about finding work instead of focusing in class; and work that could not be divided into small chunks of time, so children missed school to finish work.

The following sections analyse different motivations for work, followed by different types of paid employment available in Leki, how they are regulated, and whether children feel such work is harmful.

Motivations for work

Demissie and Senayit are two children who did the most paid work of the children interviewed. Demissie, who is twelve, attends school and is in fifth grade. He also undertakes a variety of paid work, such rowing passenger boats, selling fish, and planting and collecting vegetables. With the proceeds, he buys food, books, shoes, and clothes. His mother says if he did not work "I may face a problem to buy him clothes...and to feed him".

Demissie feels obliged to support himself: he says of a working child "ultimately it is his duty to do these jobs". When asked who decides whether he must work, he says, "I do things by my own self. They [his parents] do not tell me what to do."

If he does not succeed in his ambition of becoming a teacher, he would like to be a vegetable farmer, as he has learned how to farm vegetables. Other boys also said working on vegetable farms had taught them about irrigated farming. Girls said that it is necessary to have both knowledge of housekeeping and a "profession" like vegetable farming that generates income (Girls' Group Two, 13 August 2008).

Senayit was due to start Grade Five in 2008. Her parents are both seriously ill. She is old for her class because she stopped school for a year when her mother first became ill, because her parents could not afford to buy stationery. She does domestic chores for two to four hours each day. She works two full days on vegetable farms on weekends and sometimes works before or after school. Senayit buys pens and exercise books with her wages.

When asked how she would remove an obstacle that prevented her completing education, she said "I will reside with my parents and work on vegetables until the obstacle will be removed." She acknowledges that her work enables her to pay for her school supplies, but still says that the negative effects of her work on her schooling outweigh its positive impacts. Unlike Demissie, she does not feel able to refuse to work, saying "If they [my parents] order me to work, I work. I cannot disobey them."

Work for commercial farms

²Pseudonyms are used for places, employers and children to protect children's anonymity.

The commercial vegetable farm hires 65 permanent labourers and up to 1000 casual labourers during harvesting. This was the major commercial employer the children mentioned.

The farm manager was interviewed with three other people present and stated that the casual workers were aged between 16 and 22. However, when asked confidentially, he said that children younger than 16 years of age are often used, but only for half a day's work.

One of the farm foremen, interviewed separately, estimated that 10 to 15 per cent of the harvest workforce is children. Children are used to do work "for which they have the capacity", such as scaring birds away and collecting vegetables. Children are only hired if they are strong enough: children reported being turned away because they were too small.

Children particularly dislike this work. It is very tiring: children said it was beyond their capacity and that constant stooping gives them back pain (Girls' Group One, 13 August 2008). Supervisors are widely perceived as unfair: one child speaks of having his pay docked after being wrongly accused of eating an ear of maize, and two other children told similar stories.

This work was identified in ranking exercises as interfering most with schooling. Boys said that they struggled to follow classes if they had done tiring work before school (Boys' Group One, 22 August 2008), and Senayit said she is too tired to do assignments when she comes home from work. Children also worry about finding work. Employment is for a day at a time. Children are only likely to get one or two afternoons of work a week and "compete over the work" (Boys' Group Two, 22 August 2008). Senayit said, "I think about my payments while I am in class or about doing the work while I am studying; this definitely affects my learning."

The piece-rate system the vegetable farm uses also affects schooling. Workers are paid for weeding a certain area or for transplanting or harvesting a certain number of plants. They are not paid until this piece of work is finished:

Children are given 20 rows of onions to seed. It takes a day to complete the 20 rows. This may keep students from going to school (Girls' Group Two, 15 August 2008).

Moreover, one girl said:

If we fail to finish the work we are assigned to, the organization does not allow us to go home. Sometimes they beat us and instruct us to finish the work.

This structure of pay affects children's schooling. Senayit "was absent many days. I cannot tell you how many days". She is also often late and is locked out of school, which affects her results:

If we support ourselves by working as daily labourers ... we may score less on tests for the fact that we did not fully attend the lessons.

The vegetable farm does not acknowledge that it is employing children. It thus does not have to design the work to be compatible with children's schooling. The farm manager said the children work for half a day. However, the farm foreman says that there is no system in place to monitor whether individual children are actually leaving work to go to school (when school is in the afternoon) or only arriving after lunch (when school is in the morning). This is "the responsibility of the parents". However, given how difficult it is to get work, once children are hired for the day they are likely to work a full day. There is also no regulation of working conditions or structure to resolve disputes about pay.

Work for other families

Through the irrigation co-operative, 99 Leki farmers out of 285 have irrigated land. These households produce their usual maize or *teff* harvest and then an additional crop of vegetables. It is sometimes necessary for families to hire casual labour at harvest time. The irrigation NGO manager says that labourers are mainly youngsters who are not “from families in the group.” They are the poorer children in the community, whose families do not have irrigated land.

Working for families is much less tiring than working on commercial vegetable farms. Tariku says,

The works in the commercial farms are difficult, and you can't take a break, you have to work all the ten hours in the sun. But with the individual farms you can take breaks and go home earlier.

Families do not use the piece rate system. One girl said,

The commercial farms calculate the payments by machines...But with the individual farms, you can earn whatever you do, half day or full day. If you fail to finish you come back to doing it the next time.

This flexibility is compatible with school attendance. Four girls said they chose only to work for individual farmers. Senayit prefers to work for individuals but works for commercial farmers because she needs the money. Her parents said,

Organizations pay us eight birr for half a day, but the work is tedious and far away. The private individuals pay little, but their work is light. Therefore, it is better for Senayit to work for them.

The NGO does not offer any institutional protection to children, which can lead to abuse by individual employers. Senayit says that the person she worked for withheld some of her payment. She did not take any action, but has not worked for him again. Demissie said one man disputed how much he had worked and underpaid him. He “got angry” but did not take further action.

The NGO advises farmers to work only with their own family and if necessary with children and discourage them from hiring adults for fear of incurring large wage bills. The NGO manager does not think that this is problematic:

Even children from age 10 can be involved in activities ... It is a matter of protecting them from being involved in activities that are bad for them.

Work in the PSNP

In 2005, the Ethiopian government introduced the Productive Safety Net Programme (PSNP). In the programme's major component, chronically food-insecure families do unskilled work for daily wages (Government of Ethiopia, 2004: 4). Roughly half the 510 households in Leki are involved. Households register a certain number of participants, each of whom works for five days work a month. Poorer households can register more participants. Only adults aged 16-60 are supposed to work in the PSNP.

In practice, children older than ten are allowed to replace family members who are sick or busy with other work. Demissie is not registered for the safety net, but his father and other family members are; and Demissie says he “work[s] there representing him” if his father is busy doing other work. Senayit also substitutes for her parents as they are usually too sick to work.

Children did not describe this work as harmful. Tasks are not strenuous: both Senayit and Demissie weed, plant seedlings, and trim hedges. There were no complaints that the “employer”, the *Kebele*, was unfair. Finally, work does not interfere with schooling. PSNP work is largely done in the rainy

season between June and September when food scarcity is greatest (Brown *et al.*, 2007), which is also the long school vacation. Allowing children to participate ensures that families complete their work quota and receive their income.

Work for flower farms

The flower farm employs adults for picking and sorting roses. According to the children, the farm hires secondary school students over 16 over the summer holidays, but does not employ children. The farm manager stated that overseas buyers do not want to buy flowers from a firm which hires child workers.

Children consider flower farm work to be one of the better options available in the area, even though it is not accessible to them. Flower farm work is not tiring and work is available throughout the year rather than only at harvest. Children who look older often queue up with other workers hoping to be selected for daily contract jobs.

If children could be employed legally, they would get further benefits. Employees and family members get free, high quality health care and education from the company school and hospital. Daily wages are the same as on the vegetable farms. After working on daily contracts, workers can be hired for month-long contracts, preventing worry about finding work. For students, work is organised over the holidays to avoid interfering with schooling. Children did mention, however, that workers at the farm are exposed to hazardous chemicals and are not provided with safety gear.

Discussion

What does the case study show regarding regulation versus abolition of children's work, the possible relevance of local definitions of work, and the role of children's views? Firstly, there are clearly different forms of employment which cause different levels of harm to children because of the types of tasks to be done, how employment is organised and relationships between children and employers. Some types of work in their present form are harmful to children, such as piece rate work on commercial vegetable farms. Equally, there is some work, such as work on the PSNP, for other families or on the flower farm (if protective gear were available), which is not harmful.

The least restrictive way to protect Leki children from harmful work would be a regulatory approach. Harmful work should be prohibited. In cases where work causes little to no harm, limiting work is overly restrictive. It has negative effects on children by denying them the benefits of work. Children use their wages to buy school materials and to look after themselves. Children see work as a way of overcoming obstacles to their own progress. Work teaches skills and enables children to contribute to the family, which is part of being a "good" child (Abebe and Kjørholt, 2008; Camfield and Tafere, 2009; Poluha, 2007).

Secondly, in deciding how to legislate about children's work it is important to consider the practical difficulties of imposing a ban on children's work when social norms permit children's work and the state has limited capacity. The state is unlikely to succeed in implementing a ban, so children inevitably work. The state loses the opportunity to regulate children's work. In Leki, much work which is currently harmful could be modified by regulation to mitigate the harm, rendering prohibition unnecessary. Regulations could require employers to structure piece rate pay to allow half-day work, to give children regular breaks, and set up dispute resolution structures.

There is also no coherent assessment of the relative harm of different types of work at a community level which prioritises children's best interests. The only restrictions in place are set up ad hoc by local employers, each of whom has different interests and none of whom is prioritising the interests of children. The flower farm prohibits children's work, but because of concerns about marketing. The vegetable farm allows children to work and ensures children are strong enough for particular tasks,

but has a pay structure that damages children's schooling. The NGO encourages children's work but does not have structures to protect children. The result of Ethiopia's abolitionist stance in practice is that children are prevented from doing some less harmful, more profitable work, and the work which children are able to do is often harmful because it is not appropriately regulated.

However, thirdly, it is not clear that a regulatory approach using nationally-set criteria would successfully limit harmful work. ILO Recommendation 190 on harmful work would prohibit tiring work and situations where employers treated children unfairly, because there are provisions targeting work under difficult conditions or work that exposes children to abuse. However, work paid on a piece rate system or work during term time would not be prohibited under Recommendation 190, although these were the most harmful to schooling in Leki. Regulation would be unlikely to take account of social relations around work, although in this community work for other families is considerably safer for children than work on commercial farms.

I would accordingly argue that, to be in the child's best interests, national government should draft regulatory legislation but draw on communities to define harmful work. Children and parents already have clear understandings of how harmful different types of work are. Basing prohibitions and regulations around these understandings would ensure that prohibitions were appropriately targeted. Communities are also more likely to agree with such restrictions, and employers to enforce them. National government could of course set guidelines for characteristics of work that communities should consider when defining harmful work.

Finally, interviews with children demonstrate that children have the capacity to participate in local discussions of children's work. They are fully aware that some of the work they do harms them, but have to make difficult decisions under constrained circumstances. They are neither helpless victims nor reckless truants: they understand the implications of their decisions and can clearly articulate their perspectives.

Conclusion

This article has argued that national legislation on children's work should be altered to a regulatory framework that permits children to engage in non-harmful work and that harmful work should be defined at local level with the participation of children.

Leki is an extreme case of children's paid work. However, the factors which result in a high proportion of children working – the PSNP and the introduction of irrigation – are likely to affect increasing numbers of communities in rural Ethiopia. The PSNP now reaches 11 per cent of the population (Woldehanna, 2009). It is unclear whether children are often allowed to work in the PSNP: Sharpe et al (2006) found that age limits were largely obeyed, but a qualitative sub-study undertaken in Young Lives sites found that children worked in the PSNP in Leki and in sites in Amhara and Tigray (Emirie *et al.*, 2009).

Commercial agriculture is increasingly common. The Ethiopian government has prioritised production of cash crops for export and subsidised foreign investments in agriculture (Byerlee *et al.*, 2007). Donors have built irrigation infrastructure for small-scale farmers, which has increased the prevalence of irrigation (International Fund for Agricultural Development, 2005). Research in coffee-producing areas shows that, where commercial agriculture exists, children are heavily involved in commercial production on top of their domestic responsibilities (Abebe and Kjørholt, 2008). Nearly half of the children involved in coffee production do not attend school or drop out during the harvest. Thus it is likely that the trends visible in Leki will increasingly affect other rural communities.

In many countries the capacity of local government to manage a process of discussion of children's work would be in doubt. However, *Kebeles* are present in each village and have become increasingly powerful. They manage a number of local processes, including deciding on which families are PSNP

beneficiaries. They have received increased funding since the 2005 elections, when donors began to channel money directly to local government (Aalen and Tronvoll, 2008: 117). The success of any effort to define harmful work at the local level and to include children's voices will depend largely on the extent to which grassroots local institutions become involved in community efforts, whether children's work becomes an issue in the media and above all whether meaningful authority is given to local governments.

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