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- *The Convention on the Rights of the Child in the 21st Century:
securing rights for children in an age of uncertainty*



***ILO standards on Child Labour
in relation with the CRC - Enforcement processes
and what family law specialists can contribute***

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What is child labour, and what are its worst forms?

The elimination of child labour is one of the four principles constituting internationally recognized core labour standards and enshrined in the Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Conference in 1998. In terms of the Convention on the Rights of the Child (CRC), Article 32 is the reference provision in this regard, establishing children's right to be protected from economic exploitation. It is safe to state that there exists a worldwide consensus on this principle.

However, when it comes to what exactly is the "child labour" to be abolished, or what is "economic exploitation", it is not easy to give a definition in a few words. It is often argued that certain types of work done by children are beneficial to their development and to becoming responsible adults. This is true. The ILO's appeal to eliminate child labour should not be misunderstood as a complete ban on any form of work by children – especially when a "child" is defined to cover under-18's. Action needs to be taken nevertheless against the unacceptable forms of exploitation facing millions of children in the world. How do international treaties respond to this issue? Article 32, paragraph (2) of the CRC explicitly calls for the setting of a minimum working age, with reference to "relevant provisions of other international instruments" – hence the need to look into ILO standards concerning child labour.

The principle of the effective abolition of child labour is inseparable from the belief that children's place is in school and not at work until they finish at least compulsory schooling. ILO Convention No.138 on Minimum Age (supplemented by Recommendation No.146) thus requires a general minimum age for work to be fixed nationally at a level not less than the age of finishing compulsory education, and normally not less than 15. The general criteria for setting minimum ages for different types of work can be summarized as follows:

Minimum age for employment or work – under ILO Convention No.138

	General	For developing countries
General minimum age (Article 2)	Not less than the end of compulsory schooling, 15 years or more	14 years ¹
Light work (Article 7)	13 years	12 years
Hazardous work ² (Article 3)	18 years (16 years under certain strict conditions)	18 years (16 years ³ under certain strict conditions)

¹ This is an option available to developing countries, but not an obligation. Some countries voluntarily choose to set a higher minimum age, e.g. at 16 years in Brazil, China and Kenya, while some of the most industrialized countries remain at the general level e.g. 15 years in Germany, Japan and Switzerland.

² The exact contents of hazardous work must be determined nationally after tripartite consultation (i.e. among the government, and workers' and employers' representatives).

The Worst Forms of Child Labour Convention (No.182) and Recommendation (No.190) were adopted unanimously on 17 June 1999. The gist of the commitments made by the countries ratifying this Convention⁴ is as follows:

1. They (C.182/R.190) cover *all persons under the age of 18*, in line with the CRC (Convention)’s definition of the “child,” and call for “*immediate and effective measures* to secure the prohibition and elimination of the worst forms of child labour *as a matter of urgency.*” The *immediacy* of the means has been emphasized.
2. The worst forms of child labour comprise: (a) slavery and forced labour, including child trafficking and forced recruitment for armed conflict; (b) use of a child in prostitution and pornography; (c) use of a child in illicit activities including drug production and trafficking; and (d) work likely to harm the health, safety or morals of children (hazardous work).
3. A wide range of issues under the ILO’s mandate have direct connections with CRC Convention - not limited to “economic exploitation” (Art.32 of CRC), but also use of children in illicit production and trafficking of drugs (Art.33), sexual exploitation (Art.34), trafficking in children (Art.35) and use of children in armed conflict (Art.38).

The above rules can be visualized in the following figure⁵ in function of the age of the child and the rough type of work or activities.

What is child labour to be abolished?

Children between the minimum age and 18				
Children between 12/13 and the minimum age				
Children below 12/13 years of age				
	Work ⁶ excluded from minimum age legislation	Light work	Non-hazardous, non-light work	Hazardous work (and also other worst forms of child labour)

Shaded area = child labour for abolition

³ The exceptional authorization of hazardous work from 16 years of age is not because of the under-development of the country, and is used often by developed countries to allow adolescents to be trained on the job for specific hazardous tasks.

⁴ C.182 has been ratified by **152 States**, including the US which has not yet ratified the CRC. C.138 has been ratified by **135 States** (as of 15 March 2005).

⁵ Adapted from figure 2 of the Global Report by the ILO “A future without child labour”, 2002

⁶ For example, household chores done by children in their own home, and work carried out in the context of education and training under protective conditions.

Selected topics (1): children in armed conflict

It was an epoch-making decision to include “forced or compulsory recruitment of children for use in armed conflict” among the definition of the worst forms of child labour under C.182 (Article 3(a)). This is especially noteworthy because international labour standards set by the ILO traditionally have not covered conditions of “work” in armed forces⁷ and its Convention No.29 on forced labour excludes compulsory military service as defined by national laws from the definition of “forced labour”⁸.

In clearly prohibiting forcible recruitment of children under 18 years of age into armed conflict, whether by the government or other armed groups, C.182 complements the CRC and its Optional Protocol on armed conflict. In this sense, C.182 goes further than the CRC itself in providing the cut-off age of 18 instead of 15. It has certain limitation in scope since it focuses on “forced” recruitment. However, the “voluntary” element for children in armed conflict needs special attention: as revealed in field studies, the fact that many children involved would say “yes, I volunteered” should not be taken at the face value and disqualify them for assistance and interventions. In addition, the image of “child soldiers” should not be limited to small children directly participating in combat. Children and adolescents are used not only as combatants but often as messengers, porters or cooks, or for sexual services.

In October 2001, ILO/IPEC, in collaboration with the ILO/InFocus Programme on Crisis Response and Reconstruction (IFP/CRISIS), launched the “*Sub- Regional Programme for the Reintegration of Child Soldiers and the Prevention of the Use of Children in Armed Conflict in Central Africa*”. Four countries of the region are participating in this programme: Burundi, the Republic of Congo (Congo), the Democratic Republic of Congo (DRC) and Rwanda. The following ten observations⁹ summarize the key findings concerning the situation of child soldiers in these four countries through field research in the form of ‘*rapid assessments*’ during the preparatory phase of the programme:

- Two out of three present or former child soldiers surveyed said that they took the initiative of enrolling themselves “voluntarily” —they were not kidnapped nor obliged to do so under threat. However, one cannot consider this to be a real choice on their part because the large majority of them were desperately searching for a means of subsistence and, in the context of war, this was the most plausible solution for survival.
- For many of the child “volunteers”, joining the armed group was an escape from a situation in which they were marginalized either at school or in the family. This explains why, in many cases, only one child in a family decided to enrol. These children, for whom the armed group represented an opportunity for social integration, generally say that the ambience in the group was good or even very good.
- Child soldiers who were kidnapped are treated much more harshly and sent into combat more rapidly than those who ‘volunteered’.
- Once in the armed group, children are treated in the same way as adults. They are real soldiers recruited for combat, but being insufficiently trained and equipped they are even more exposed than adults to all the dangers.
- In some countries, children easily switch from one group to another either due to opportunism or because they are forced to do so. Children who have escaped from one rebel group are ‘re-utilised’ by militia or paramilitary forces to break their loyalty to the rebel group. There are important differences between the situation of children according to the

⁷ For instance, ILO standards concerning the maritime sector usually exclude ships of war from their scope of application. Even the extent of applying freedom of association and right to organize to armed forces and the police is left to the discretion of each State under Convention No.87.

⁸ Convention No.29 Article 2(a)

⁹ “*Wounded Childhood: The Use of Child Soldiers in Armed Conflict in Central Africa*”, ILO, 2003, available at: http://www.ilo.org/public/english/standards/ipec/publ/download/wounded_execsum_en.pdf

- group to which they belong: living conditions are harder and relations between adult and child soldiers more violent in rebel groups than in the armed forces or militias.
- More than half the former child soldiers surveyed left the armed group of their own accord—most had to escape. In Rwanda and the DRC, organizations have played an active role in demobilizing children, particularly those who were part of the State army.
 - Former child soldiers typically experience multiple and deep physical and psychological trauma. Poor material conditions suffered during the time spent with the armed group makes them vulnerable to disease (infections, badly healed wounds, etc.). In addition, the violence they have been subjected to or have themselves committed renders their relations with adults and other children difficult. This must be taken into account while designing rehabilitation programmes for them.
 - Communities are not always willing to receive former child soldiers. Children who have never been recruited as well as adults have strong prejudices against them. More than 80 per cent of parents interviewed thought that former child soldiers represent a danger for the population.
 - Among the former child soldiers interviewed, 70 per cent were above 15 when they left the armed group. For those who are demobilized when they are young adults, there is a danger of feeling ‘infantilised’ by certain rehabilitation programmes.
 - Reintegration programmes must target simultaneously the youth, his/her family and the community to which he/she belongs. With all three, medium and long-term follow-up is indispensable if re-enlistment is to be avoided.

The proposals for action which emerged from this research¹⁰ include action of a preventive nature involving the families; helping vulnerable families to increase their income; offering counseling to families; and making parents aware of the danger of enrolment of children.

Selected topics (2): commercial sexual exploitation of children

Sometimes the question is asked: Does the ILO recognize prostitution as work, by including it among the worst forms of child “labour”? The answer is No. The Convention calls for immediate and effective measures to secure the prohibition and elimination of, amongst other things, the use, procuring or offering of a child (i.e. under 18) for prostitution, for the production of pornography or for pornographic performances. An ILO Report¹¹ during the elaboration of C182 indicated: “Child prostitution, child pornography and the sale and trafficking of children are crimes of violence against children. They must be treated as crimes... Yet while they are crimes they are also forms of economic exploitation akin to forced labour and slavery.” The ILO bodies which supervise the application of international labour standards had already been dealing with the issue of child prostitution in several countries under the Forced Labour Convention, 1930 (No.29), because it is not possible to conceive that a child had offered her/himself “voluntarily” to such activities in a valid manner. Other forms of illicit acts - e.g. forced labour - are dealt with in ILO standards with the sole aim of eradicating them. The inclusion of this issue in the scope of the new instruments was generally supported by ILO constituents throughout the process of elaboration.

By including commercial sexual exploitation in the definition of the worst forms of child labour under C182, the explicit requirements under the Convention regarding “immediate and effective measures” against it become binding on all the countries – so far 153 ILO Member States – that have ratified C182. This is important also for developed countries where child

¹⁰ Idem. pp-66-67.

¹¹ “*Targeting the intolerable*” – ILO Report VI(1) to International Labour Conference 86th session (1998) (English version, p.66)

labour linked to poverty may not be a major problem but increasing concern is felt e.g. over child pornography on the Internet, or child sex tourism by their nationals.

In terms of practical assistance to make such prohibition a reality in the countries that are committed to tackling the problem, ILO/IPEC has been offering a wide range of programmes and projects throughout the world including prevention, withdrawal, rehabilitation and reintegration. Here again, the families can and should be empowered for effective action against commercial sexual exploitation of children, from prevention to rehabilitation.

Selected topics (3): HIV/AIDS and child labour

The ILO recognizes that “HIV/AIDS has a direct impact on child labour. The tremendous pressure on households and families often forces children to work. As a result, it is difficult for them to attend school, they do not receive proper care and guidance, and easily fall victim to all kinds of exploitation.”¹² The ILO is responding to this pandemic through the ILO Programme on HIV/AIDS and the world of work¹³, with which IPEC is closely collaborating.

When withdrawing children from work, there is no need to distinguish child labour caused by HIV/AIDS from child labour caused by other factors. However, in preventing or providing alternatives to child labour, special attention to social assistance and other protection relating to HIV/AIDS could have decisive importance, especially in areas deeply touched by the pandemic and where children have in practice become the bread-winners of the family.

Child victims of commercial sex exploitation are among the most vulnerable to HIV/AIDS infection. Not only has the pandemic made child prostitution even more dangerous, but the completely unfounded belief that children are less likely to be infected with HIV/AIDS also has increased the demand for child prostitution. Urgent attention to HIV/AIDS, as both a cause and a consequence of child labour, is one of the emerging challenges for coming years. Research activities on the topic are under way.

ILO/IPEC Tripartite Workshop on the Impact of HIV/AIDS on Child Labour in sub-Saharan Africa (Lusaka, 6-8 May 2003) adopted a “Participants’ strategy paper” which recognized the following¹⁴ and called for further and intensified action on the prioritized areas in order to achieve a number of objectives and policy options:

In sub-Saharan Africa more than 11 million children are AIDS orphans, and by 2010 an estimated 20 million boys and girls will be either single or double orphans. The research findings from community-based and advocacy organizations, universities and international organizations ... confirm the link between child labour and HIV/AIDS. In fact, for a child, the loss of the mother or the father (or both) has a strong link to her/his economic exploitation, as orphans are twice as likely to work than non-orphans.

The HIV/AIDS-induced child labour problem poses a significant threat to the successful fulfilment of obligations and commitments created by international Conventions and agreements. Current strategies aiming to combat child labour do not adequately account for

¹² “HIV/AIDS: A threat to decent work, productivity and development” — document for discussion at the Special High-Level Meeting on HIV/AIDS and the World of Work, June 2000

¹³ See their website at: <http://www.ilo.org/public/english/protection/trav/aids/>

¹⁴ See Appendix 4 of “HIV/AIDS and child labour: A state-of-the-art review with recommendations for action - Synthesis report” at: http://www.ilo.org/public/english/standards/ipec/publ/download/hiv6_sub Sahara_en.pdf

this new problem; therefore, ILO/IPEC should assist member States, in coordination with different social partners and other international organizations, to pursue a strategy which:

- reinforces national and international commitments to combating HIV/AIDS-related child labour;
- identifies key areas of intervention and stimulates time-bound action from a gender perspective;
- fosters cooperation and communication between social partners, communities and NGOs;
- raises awareness of HIV/AIDS-related child labour through formal and non-formal education and sharing of information;
- reduces the risk of child labourers contracting HIV/AIDS.

Complementarity between the ILO process and the CRC

(1) ILO structure for enforcing its standards

There are two aspects to the supervisory process of international labour standards: Regular supervision and ad hoc procedures. First, *regular supervision* is based on Governments' reports received on actions they have taken to implement Conventions they have ratified. They must submit these reports to the ILO every two years, in the case of Conventions No.138 and 182. The independent Committee of Experts on the Application of Conventions and Recommendations reviews the reports and other information, such as a country's legislation, as well as employers' and workers' comments. If it is found that a country is not fulfilling its obligations under the Convention, the Committee may make a direct request for further information or publish an observation in the Committee's report urging that shortcomings are addressed. These comments can suggest not only legal review but also practical measures. The Committee's report is submitted to the International Labour Conference, where it is discussed by a tripartite committee comprising delegates from governments, employers and workers. Some selected cases are discussed in this forum to draw special attention of the governments to points on which measures need to be taken. Some cases of children's forced labour, for example, have received international attention this way.

Secondly, in case of acute problems or persistent non-observance of a ratified Convention, the ILO Constitution provides for *ad hoc procedures* to allow employers, workers and other governments to submit an allegation, called "representation" or "complaint", which will be examined by designated bodies. It can be highlighted that such ad hoc procedures and the involvement of the social partners – employers and workers – in the supervisory system constitute a valuable feature of the ILO standards, complementing more general instruments that do not have such a mechanism, such as the Convention on the Rights of the Child.

(2) Complementarity as to contents

The above explanation of what is child labour and what are its worst forms made it clear that ILO Conventions concerning child labour and the CRC complement each other. This is particularly true for the Optional Protocols to the CRC which deal with armed conflict and sexual exploitation – two important subjects among the worst forms of child labour. Furthermore, the ILO's comprehensive approach to the issue of child labour, in both its standards and technical cooperation, also offers a good example of the holistic view of CRC. The elimination of child labour requires comprehensive and integrated measures. In other words, child labour is unlikely to be eliminated without the advancement of other rights of the child. The best example is the promotion of the right to education (Art.28- of CRC). Child

labour is one great obstacle to the realization of education for all. In turn, the development of education services - affordable, of good quality and relevant to future decent work - is one of the most effective ways of preventing child labour while rehabilitating rescued child labourers and ensuring their social reintegration. Advance in the right to education therefore cannot but go hand in hand with the elimination of child labour. Similarly, children's right to enjoy the highest standard of health (Art.24 of CRC) is easily prejudiced if they are left to carry out work that is harmful to their health and safety.

(3) Complementarity between the monitoring structures

As a natural result of such close linkage in contents, the two systems of international monitoring – the CRC on the one hand and ILO Conventions on the other – benefit from each other's activities. The UN Committee on the Rights of the Child (CRC) participated in the consultation process that led to the adoption of C182 and also supported the ILO's ratification campaign for Conventions Nos. 138 and 182 by systematically recommending their ratification to countries that have not done so. In the practice of monitoring, information flows between the two systems in both ways: ILO to CRC – outstanding comments of the ILO supervisory organs, as well as IPEC activities in the country and other practical information help CRC examine the issues of child labour in detail when examining a report of a country; CRC to ILO – information supplied by governments to CRC in their reports has been extremely useful for the ILO, especially concerning the practice of child labour or economic exploitation, but also as it covers other aspects such as the definition of the child, education, sexual or other types of child exploitation and abuse. The reporting on the two Optional Protocols to the CRC has now been added to the monitoring of international instruments relating to the worst forms of child labour. If you check the comments¹⁵ made by CRC and ILO Committees on individual countries' application regarding child labour, the chance is high that the other body's findings and concerns are referred to and shared.

All these mechanisms should therefore be utilized to the maximum, taking advantage of the strong points of each system. C.182 should be referred to regarding all the areas covered, not limited to "employment" of children. For this purpose, it is important to raise awareness and to have C.182 correctly understood by all those who are active in these various areas for the protection of children's rights. Now that the ILO Convention No.182 has received such impressive formal commitments through ratification, these commitments must be translated into action and become the practice everywhere. This process will continue to benefit from the movement to promote CRC and at the same time make a great contribution to the advancement of children's rights.¹⁶

International cooperation (technical cooperation by ILO/IPEC)

The ILO itself has been assisting member countries in their fight against child labour through practical projects in the field, through its International Programme on the Elimination of Child Labour (IPEC), launched in 1992. The promotion of the Conventions and other advocacy activities are thus offering framework for action, and at the same time, have been

¹⁵ They are available on the Internet respectively from <http://www.ohchr.org/english/bodies/crc/index.htm> for CRC and <http://webfusion.ilo.org/public/db/standards/normes/index.cfm?lang=EN> for ILO standards (databases called ILOLEX or APPLIS).

¹⁶ See also Y. Noguchi, "ILO Convention No.182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child" in *The International Journal of Children's Rights*, Volume 10 No.4 (pp.355-369), 2002, Kluwer Law International

complemented by operation of programmes and projects for direct action. Two aspects of recent developments in IPEC's technical assistance are briefly presented here, as examples.

1. *Time-Bound Programmes*

The development of the *Time Bound Programmes* (TBPs) approach aims to help the national efforts to accelerate the process of eradicating the worst forms of child labour in the spirit of C182. This approach combines IPEC's past experiences of sectoral, thematic and geographically based projects; links the action against child labour to the national development effort as a whole – and to economic and social policies of every kind, from macro-economic performance to education and labour market policies. Strong emphasis is placed on mobilizing society and on engaging the top leadership of each country. A total of 19 countries have so far formulated national TBPs with the support of ILO/IPEC, as in the following table¹⁷.

Countries with IPEC time-bound support projects

	Africa	Arab States	Asia	Europe & Central Asia	Latin America
2001	Tanzania		Nepal		El Salvador
2002			Philippines, Bangladesh		Dominican Republic, Costa Rica
2003	South Africa, Senegal		Indonesia, Pakistan	Turkey	Brazil, Ecuador
2004	Ghana, Kenya, Madagascar	Lebanon	Cambodia		

IPEC Programme in South Africa and BLNS

So as to illustrate the TBP approach, let us have, as one example, a brief overview of the Programme Towards the Elimination of worst forms of Child Labour (TECL) in South Africa (SA), Botswana, Lesotho, Namibia and Swaziland (BLNS). All these countries have ratified C182 and also C138. The programme is aimed at offering tools for the states to take action on the worst forms of child labour (WFCL) within a defined period of time by:

- (1) Strengthening existing child labour action programmes – focusing on WFCL;
- (2) Gathering more information on specific WFCL areas of concern;
- (3) Leveraging resources;
- (4) Establishing linkages with other national policy and programme frameworks;

so as to achieve prevention, withdrawal, rehabilitation and protection of children who are old enough to work.

For instance, the component on South Africa comprises:

- Targeting roll-out of programmes / policies on poverty, employment & social matters
- Promoting new legislative measures
- Strengthening of national capacity to enforce legislative measures
- Increasing public awareness & social mobilisation

The principal approaches are i) *Mainstreaming* – i.e. emphasising strategies that will easily fit into broader programmes of government and other stakeholders, and ii) *Sustainability* – Both regarding individual pilots and overall strategy. Thus, emphasis for the implementation of flagship projects (pilots) is placed on local partnerships and alliances.

¹⁷ *IPEC Action Against Child Labour: Highlights 2004*. P.17, Table 1.

These *flagship projects* comprise:

Two projects aimed at testing, on a substantial scale, methodologies regarding three WFCL as have been identified in the Child Labour Action Programme (CLAP) as priorities:

- 1) Commercial Sexual Exploitation of Children (CSEC) & Child trafficking
- 2) Children used by adults to commit offences (CUBAC).

And another to address priority forms of child activities identified in the CLAP

- 3) The delivery of water to households far from the sources of safe water.

Development of policy component includes e.g. such matters as:

- Regulating hazards regarding work of children 15-17 years olds
- Research and policy paper on a follow-the-child system and monitoring of action taken on child labour
- Policy paper on a monitoring and evaluation system for CLAP
- Project scoping for appropriate educational intervention for out-of-school children

Research projects aim to cover such areas as:

- National survey on child labour
- Good practice study on work being done on child labour
- Rapid assessment on *scavenging* and waste recycling work by children
- Rapid assessment on WFCL in *commercial agriculture*
- Rapid assessment on *subsistence agriculture, child domestic labour*

Awareness raising projects consist of:

- ❖ Overall national awareness-raising campaign on child labour
- ❖ Awareness-raising activities on key WFCL, linked to pilot projects:
 - Child trafficking
 - CSEC
 - Children Used by Adults to Commit offences, or 'CUBAC'
- ❖ Specific awareness-raising activities: employers and workers:
 - Basic Conditions of Employment Act; and
 - Occupational safety measures to avoid workplace hazards especially in as far as under-18 workers are concerned

In addition to such country-specific activities, the programme also offers *Regional Activities*, in order to improve knowledge on child labour and WFCL of a sub-regional nature; and to render support and build capacity in the sub-region to enable concerted action against WFCL.

2. SIMPOC (Statistical Information and Monitoring Programme on Child Labour)

SIMPOC, which is a unit within IPEC, provides technical assistance to ILO member States to generate reliable, comparable and comprehensive data on child labour in all its forms. The assistance includes developing and implementing child labour surveys as well as enhancing capacity in ILO member States to collect, process, disseminate and analyse data on child labour on a regular and sustainable basis. New techniques for investigating the more hidden forms of child labour have also been developed. The data and qualitative information generated by the various SIMPOC instruments form essential inputs to child labour policies and programmes. Further, their availability promotes research and raises awareness of the problem of child labour. The data and studies are made accessible through various publications and a data repository on the SIMPOC website.

Six basic methods have been applied to generate child labour statistics and information: (a) National Child Labour Surveys; (b) the Rapid Assessment Methodology; (c) Baseline Surveys; (d) Establishment-based Surveys; (e) Street Children Surveys; and (f) School-based

Surveys. These child labour survey methodologies, however, are not mutually exclusive; instead they can be applied in a combined and complementary way.

Main findings from the Global Estimate

- **211 million** children (aged 5-14) are estimated to be in some form of economic activity, of whom **186 million** are in child labour to be abolished.
- To this, we should add **59 million** (aged 15-17) in work he or she should not be in.
- Therefore, 246 million children worldwide ($186.3 + 59.2 = 245.5$) are in child labour that needs to be eliminated, including about 180 million trapped in the worst forms of child labour.
- Among the worst forms, 170 million children are engaged in hazardous work, and 8.4 million children worldwide are trapped in the so-called unconditional worst forms (such as in debt bondage, armed conflict, sexual exploitation).
- The Asian-Pacific region harbours the majority of the 211 million working children, some 127 million. Yet the incidence of children taking up work at an early age is highest in the world's poorest regions, notably Sub-Saharan Africa where 29 percent of all children of the age group are working. The corresponding figures for Asia, Latin America and the Middle East & North Africa are 19, 16 and 15 per cent, respectively.

Source: *Every child counts – New global estimates on child labour*, ILO, 2002

<http://www.ilo.org/public/english/standards/ipecc/simnoc/others/globalest.pdf>

What are the particular roles that family law specialists can play?

❖ *Be aware and make others aware too*

What is child labour?

First of all, please always keep in mind what we mean by “eliminating child labour” – thus the need to draw a line between child labour for elimination and work done by children that is acceptable or even beneficial. Child “labour” also comprises issues that are not usually classified or regarded as “labour” matters, such as children in armed conflict and commercial sexual exploitation.

ILO standards on child labour, in particular Conventions No.182 on the worst forms of child labour and No.138 on the minimum age, are part of the internationally recognized fundamental principles and rights at work. They complement the CRC and both of its Optional Protocols, both in terms of contents of commitments legally made under them, and also through different sets of international monitoring mechanisms. If your country has not yet ratified both of the ILO Conventions Nos.138 and 182, you can check what the obstacles are and start participating in the campaign for ratification.

*Domestic child labour*¹⁸

Special attention of family law specialists should be drawn to domestic child labour – i.e. children employed as domestic servants, either too young or in conditions that would fall within the concept of the worst forms of child labour, for instance as a result of child

¹⁸ See “Helping hands or shackled lives? Understanding child domestic labour and responses to it.” at: http://www.ilo.org/public/english/standards/ipecc/publ/download/cdl_2004_helpinghands_en.pdf

trafficking, debt bondage, or carrying out work harmful for their health, safety and morals. This is a delicate issue, since domestic work or family chores performed by children include an extremely wide range of situations under varying conditions.

What is, and what is not child domestic labour First of all, *domestic work done by children within their own family* is in principle outside the scope of ILO standards. In contrast, *domestic work by children in someone else's household* should in principle be regulated like other "employment". It is usually regarded as part of children's normal development and learning household skills, therefore something positive, when parents encourage their children to participate in the family chores, e.g. making beds, setting the table, helping in the garden. Teenagers' baby-sitting or cutting the grass of a neighbour for pocket money outside school hours is not our concern here, either. The fact that such work is *not* part of child labour to be eliminated should not obscure our concern about slavery-like situations or other worst forms of child labour within private household – which is at the other extreme of the spectrum.

However, under C138, "domestic service" has been often quoted as *an example of permissible exclusion of limited categories from the general minimum age* under its flexibility clause (Article 4) and indeed many examples of such exclusion are found in national legislation. However, *dangerous or harmful work should not be excluded* (C138, Article 4(3)).

As to the coverage of C182, if someone asks: "Is domestic work of children covered by C.182?" Then, the answer will be "Yes, where it falls within any of the categories covered under Art.3." It may be the case for trafficked children, or situations of forced labour or practices similar to slavery. It is also worth noting that Recommendation No190 Para.3 (elements to be considered when determining *hazardous work* at the national level) includes some elements which may be relevant to domestic child labour: e.g. work which exposes children to physical, psychological or sexual abuse, work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Concerns over child domestic labour were frequently expressed during the elaboration of C182¹⁹. However, unlike sexual exploitation or child trafficking, there is no explicit reference to domestic work by children in the Convention itself. The heated debates reflected the difficulty of defining what is to be prohibited and eliminated as "child domestic labour". In the end, it is R190 that draws special attention to "*the problem of hidden work situations, in which girls are at special risk* (Para.2 (c)(iii))". Although this is not an explicit reference to domestic labour, it could be argued that child domestic labour is an example of such a situation.

So what should be the legal framework for child domestic labour? In short, it depends. The flexibility built in C138 leaves the choice open to the country whether to fix a minimum age for domestic employment or not, as long as it is not considered as hazardous work. C182, in contrast, does not allow exception even when the child is engaged in domestic employment. Therefore, governments should make sure that national provisions concerning trafficking, forced labour or other worst forms of child labour do not have a loophole regarding domestic work, and make sure they are effectively applied. When determining hazardous work under C138/182 nationally after tripartite consultation, domestic work should not be overlooked. It may be more fruitful to discuss domestic employment not as a whole but according to certain types – like live-in – or certain abusive conditions.

¹⁹ As shown in the Child Labour Committee's reports, in records of proceedings of 1998 and 1999 ILO Conferences.

As above, “child domestic labour” is usually understood as domestic work done by children in the employer’s household and not in their own family. Care should nevertheless be taken not to allow over-extended “family” or disguised “adoptions” hiding WFCL behind closed doors.

❖ *Use the knowledge on child labour in your profession*

Child labour occurring in “family” settings

It is important to remember that “child labour” is not only about children manufacturing goods in factories for export. In fact, despite the visibility of consumers’ concern over this issue, such type of child labour is estimated to constitute rather a small portion, at most 5 %, of child labourers in the world. The vast majority of children are working in agriculture or other family undertakings as unpaid family labour. Certainly, some forms of such work may be beneficial for children’s development and learning, and therefore do not form part of child labour to be eliminated. However, hazardous work or other worst forms of child labour must not be condoned, even if they occur in family settings. For instance, pesticides in family farms and solvents or glues for manufacturing in a house are as toxic, even when used by children next to their parents, as used by employed workers.

Action against child labour cannot therefore be accomplished only by “labour” related institutions, such as labour inspectorate, trade unions and business. Often, labour legislation excludes family undertakings or domestic work done in a private household from its scope of application, despite the fact that the majority of working children are found in family farms or family business. Commonly given reasons for such exclusion include the difficulty or even the undesirability of having law enforcement structure penetrating into private homes, and also the belief and assumption that parents or heads of the family are reliable protectors of children. Unfortunately, this is not always the case, or sometimes parents may not be aware of the potential harm of letting children work. Family law specialists may be the first one to notice a trace of exploitation or abuse occurring inside a family, and your action may rescue the child from toiling in a worst form of child labour.

Family law issues relevant to some forms of child labour

In addition to being aware of “family” as a possible setting for various types of exploitation that fall within the concept of child labour including its worst forms, we should remember that some issues of “family law” could have a more direct bearing on children’s vulnerability to them. The following is an excerpt from an ILO publication, “*Eliminating the worst forms of child labour under Time-Bound Programmes: Guidelines for strengthening legislation, enforcement and overall legal framework*”²⁰ of passages on national laws (Chapter 4) relating to family laws:

4.2.13 Customary family laws and practices (marriage and adoption)

Traditional customary laws govern marriage, adoption and fostering in many developing countries. While customary laws are recognized under a constitution, they are recognized to the extent that they are compatible with the provisions of that constitution. However, in many countries pernicious practices that subject children to slave-like conditions persist even in the face of specific legislation and government action to eradicate them.⁶⁰ The strengthening and effective

²⁰ Prepared for the ILO by Yaa Yeboah and Frank Panford. Full text available on the Internet at: http://www.ilo.org/public/english/standards/ipecc/themes/timebound/downloads/pp4_3en.pdf

enforcement of laws prohibiting such practices need to be reviewed if the worst forms of child labour are to be effectively eliminated.

Note 60: For example, "Trokosi", a practice by an ethnic group in Ghana that allows young girls to be placed in debt bondage by male members of their families under slave-like arrangements in which they are also at the disposal of the male creditor as wife is an example that has persisted despite being clearly unconstitutional and illegal. Other variants of debt bondage are known to exist in other areas of the world, including Southeast Asia. The practice can result in generations of children of the same family, in Trokosi predominantly girls, born into slavery and abused as child "wives", such abuse continuing into adulthood and for the duration of their lives.

4.2.14 Marriage

Some customary and religious practices under national laws of marriage permit girls to be promised or given in marriage without right of refusal and for in exchange for in money or payment in kind to their parents or guardians. Abusers of such practices may regard themselves as entitled to assume rights of proprietorship over the girl that can lead to trafficking and sexual exploitation particularly when the age gap between them is significant.⁶¹ This is especially pernicious where the marriage process disguises or lends an aura of legitimacy to sexual exploitation.

There are also cases where marriage under 18 confers a 'quasi majority' status on children, with the result that married minors are excluded from the benefits of child protection regimes. Such children, predominantly girls, may be vulnerable to abuse because of their relative lack of maturity when they assume substantial family responsibilities. Subsequently, they are more likely to fall victim to abusive conditions of work as domestic servants or in the sex trade. Thus, while a minimum age for marriage is not as such the concern of Convention No.182, it is considered that protecting vulnerable children, often girls, from early marriage and/or sexual activity is likely to result in reducing the risk of their falling into the worst forms of child labour and commercial exploitation.

Note 61: The Supplementary Convention on the Abolition of Slavery, 1956, Article 1(c) requires States to encourage the use of facilities to secure consent and to prescribe suitable minimum ages of marriage. In the case of MC Case No 700/99 (Sri Lanka) trafficking and rape charges against a husband failed on proof that the parents had given their consent.

4.2.15 Recommendations

- It should be an offence for an adult to have sexual intercourse with a child below a certain age (at least the age of puberty or possibly 16).
- Consideration should be given to raising the minimum age at which a person can contract a marriage to 18 years.

4.2.16 Adoption

Adoption and fostering are devices used to secure the better of children whose own parents are unable to look after them or those who are orphaned or otherwise neglected, abandoned or persistently ill-treated. However, they may also be used to disguise exploitation tantamount to trafficking or sale of children both within and across borders. Statutory adoption laws are circumvented as easily as more informal methods of customary adoption and fostering so prevalent in developing countries. The prime concern of adoption and fostering should be the welfare of the child involved. Despite attempts by the United Nations and European countries⁶² to establish international standards, intercountry adoption in most countries is dealt with under the ordinary and general legal provisions applicable to domestic adoptions. Rules fashioned for domestic situations lend themselves to abuse by unscrupulous international traffickers.

Note.62: Concern over the worldwide increase in the number of inter-country adoptions led to the United Nations adopting, in December 1986, the "Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally". The Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoption.

4.2.17 Recommendations

- All adoptions should be put on a formal statutory basis and their registration should be mandatory.
 - Additional safeguards should be instituted to deal with foreign adoptions.
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❖ *Network and link with other actors*

It is not possible to eliminate child labour, especially its worst forms, by the action of only an individual or one institution, however powerful and keen. Especially for ensuring sustainable solution, it is indispensable that various actors play their own roles in concerted manner.

There can be an enormous contribution made by family law specialists in all stages of measures against child labour: prevention, rescue and rehabilitation.

For example, IPEC experience in the fight against child trafficking²¹ (i.e. not only for the purpose of sexual exploitation, but also for labour exploitation such as commercial agriculture or domestic labour) highlights many ways in which family can in some cases be implicated in the ordeal, or effectively prevent or receive the rescued children. Regarding the durable solution, it has been remarked that: “*Family reunification is also important. Although it may not be possible to return a child to a family that rejects her/him, or where s/he is likely to be vulnerable to being trafficked again, return to the home community is considered an ideal outcome for many trafficked children.*” This is by no means exclusive to children rescued from trafficking, but also true for those withdrawn from any form of child labour, especially its worst forms. The crucial point, then, is to prevent the rescued child is falling into the same or even worse exploitation again, by offering alternatives to the family and education or training to the child.

What can be done?

We cannot eliminate child labour, especially its worst forms, only by legislating and prohibiting them. Convention No.182 is particularly action-oriented: it requires ratifying States not only to prohibit the worst forms of child labour in law, but to design and implement *programmes of action* to eliminate them as a priority; and to establish or designate appropriate mechanisms for *monitoring* implementation of the Convention. Ratifying States should also take *effective and time-bound* measures for prevention; provide support for the removal of children from the worst forms of child labour and their rehabilitation; ensure access to free basic education or vocational training for all children removed from the worst forms of child labour; identify children at special risk; and take account of the special situation of girls.

Child labour is inextricably linked with the question of development and poverty, as the Preamble of Convention No. 182 recognizes: “child labour is to a great extent caused by poverty and ... the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.” Thus, as one of the innovative features, the ILO instruments (C.182 and R.190) call for *international cooperation or assistance* in the efforts to make their provisions really applied, including support for social and economic development, poverty eradication and education. There is a confirmation that education is a key to break the vicious cycle of poverty and child labour.

Action against child labour, therefore, must be mainstreamed into national and international action to alleviate poverty and achieve decent work for adults everywhere. It is a complex issue, inseparably linked to social development. It demands a comprehensive and integrated

²¹ “Unbearable to the human hearts”, see reference list at the end.

approach, so as to break the vicious cycle of poverty, social inequality and child labour. However, it has been pointed out that even in a similar context of poverty determination to ensure education for all children at the national level political decision could make a huge difference to the fate of the children, especially regarding child labour. The same may be true at the level of individual families. Can family law specialists play some special role in such awareness raising?

Governments, trade unions and the business certainly play a central role in promoting and applying ILO standards, in the spirit of tripartism. However, Convention No.182 includes a provision explicitly requiring, as appropriate, the views of other concerned groups – i.e. other than the government, employers and workers – to be taken into consideration when designing and implementing programmes of action (Art.6, para.2 of Convention No.182). Recommendation No.190 (paragraph 2) further suggests that views of children themselves and *their families* should be taken into account in the same process. It also encourages sensitizing and mobilizing the general public, political leaders, parliamentarians and the judiciary, involving civic organizations, among many suggested practical measures (para.15).

Family law specialists should take an active part in wide partnerships and alliances, which are the driving force for sustained efforts to tackle the root causes of child labour. It is a sincere hope of the author that this paper will inform eminent family law specialists in a way which encourages them to take initiative and action against child labour, with an urgent focus on its worst forms.

For more information:

Please check the website of ILO IPEC – International Programme on the Elimination of Child Labour at <www.ilo.org/childlabour> for more information and a wide range of documents.

From the general ILO website< www.ilo.org>, you can also get information on international labour standards and "ILO Declaration on fundamental principles and rights at work".

For further reading, generally on child labour:

“Eliminating the worst forms of child labour - A practical guide to ILO Convention No.182” is a Handbook for Parliamentarians, jointly published by the International Labour Organization and Inter-Parliamentary Union:
http://www.ilo.org/public/english/standards/ipecc/publ/ipu_2002_gb_web.pdf

More generally on child labour, ILO Global Report “A future without child labour”:
<http://www.ilo.org/public/english/standards/decl/publ/reports/report3.htm>

“Child Labour: A textbook for university students” gives an inter-disciplinary overview:
http://www.ilo.org/public/english/standards/ipecc/publ/download/pol_textbook_2004.pdf

“Investing in Every Child – An Economic Study of the Costs and Benefits of Eliminating Child Labour” offers a perspective of long-term economic benefit of eliminating child labour:
http://www.ilo.org/public/english/standards/ipecc/publ/download/2003_12_investingchild.pdf

The 2002 report “Every child counts” summarizes the latest global estimate of the extent of child labour:

<http://www.ilo.org/public/english/standards/ipecc/simpoc/others/globalest.pdf>

The 2004 IPEC programme implementation report is available at:

http://www.ilo.org/public/english/standards/ipecc/publ/download/implementation_2004_en.pdf

“Eliminating the worst forms of child labour under Time-Bound Programmes: Guidelines for strengthening legislation, enforcement and overall legal framework” (*TBP Manual for Action Planning*, Paper IV-3)

http://www.ilo.org/public/english/standards/ipecc/themes/timebound/downloads/pp4_3en.pdf

“Wounded Childhood: The Use of Children in Armed Conflict in Central Africa”:

<http://www.ilo.org/public/english/standards/ipecc/publ/childsoldiers/woundedchild.htm>

Thematic publications:

A number of publications are available from IPEC Publication page by specific themes:

<http://www.ilo.org/public/english/standards/ipecc/publ/index.htm>

They include

“Unbearable to the human heart: Child trafficking and action to eliminate it”

<http://www.ilo.org/public/english/standards/ipecc/publ/childtraf/unbearable.pdf>

and several others referenced in the footnotes.

Several Working Paper Series

Regarding HIV/AIDS and child labour:

- ❖ Paper No. 1 :: Combating child labour and HIV/AIDS in sub-Saharan Africa
- ❖ Paper No. 2 :: HIV/AIDS and child labour in Zimbabwe
- ❖ Paper No. 3 :: HIV/AIDS and child labour in the United Republic of Tanzania
- ❖ Paper No. 4 :: HIV/AIDS and child labour in South Africa
- ❖ Paper No. 5 :: HIV/AIDS and child labour in Zambia
- ❖ Paper No. 6 :: HIV/AIDS and child labour in sub-Saharan Africa: synthesis report. A state-of-the-art review with recommendations for action. (2003)

Under Gender mainstreaming:

- ❖ Girl child labour in agriculture, domestic work and sexual exploitation: Rapid assessments on the cases of the Philippines, Ghana and Ecuador - Volume 1
- ❖ Girl child labour in agriculture, domestic work and sexual exploitation: a comparative analysis, cases of Ghana, Ecuador, Philippines - Volume 2
- ❖ Global child labour data review: a gender perspective - Volume 3
- ❖ A selected annotated bibliography on girl child labour: a gender perspective - Volume 4