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AND APPLICABLE PERSPECTIVE IN VIETNAM**

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## **Abbreviations.**

### *English Abbreviations.*

**UN** – The United Nations.

**WB** – The World Bank.

**ICJ** – The International Court of Justice.

**ILO** – The International Labour Organization.

**IPEC** - ILO's International Programme on the Elimination of Child Labour.

**UNICEF** –The United Nations Children's Fund.

**ICC** - The International Criminal Court.

**NGO** – Non-governmental Organization.

**UDHR** – The Universal Declaration of Human Rights, 1948.

**ICRC** – The UN Convention on the Right of the Child, 1989.

**ICEDAW** - The Convention on the Elimination of Discrimination Against Women, 1979.

**ICCPR** - The Covenant on Civil and Political Rights, 1966.

**ICESCR** - The International Covenant On Economic Social Cultural Rights, 1966.

**C.** - ILO's Convention No. (for example, **C.38** - ILO's Conventions No. 138, 1973).

**R.** - ILO's Recommendation No. (for example, **R.190** - ILO's Recommendation No. 190, 1999).

**MOLISA** - The Ministry of Labour, Invalids and Social Affairs (of Vietnam).

**MOH** - The Ministry of Health (of Vietnam).

**MOET** - The Ministry of Education and Training (of Vietnam).

**MOJ** - The Ministry of Justice (of Vietnam).

**MPS** - The Ministry of Public Security (of Vietnam).

**CPFC** - The National Committee for Population, Family and Children (of Vietnam).

**VWU** - The Vietnamese Women's Union.

**CDC** - The National Committee on Drug Control (of Vietnam).

**CEMA** – The Committee on Ethnic and Mountainous Affairs (of Vietnam).

**GSO** - The General Statistics Office (of Vietnam).

### *Vietnamese Abbreviations.*

**VND** - Vietnamese Dong (Vietnamese currency).

**BGDDT** – The Ministry of Education and Training.

**BLDTBXH** –The Ministry of Labour, Invalids and Social Affairs.

**BTP** – The Ministry of Justice.

**CP** - Chinh Phu (The Government).

**ND** - Nghi Dinh (Decree).

**QD** - Quyét Dinh (Decision).

**TT** - Thong Tu (Circular).

**TTg** - Thu Tuong (Prime Minister).

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## Introduction.

Child labour is one of the most concerns of humankind in terms of human rights in recent years. Many international law instruments among which ILO's Conventions No.138 and No.182 are the most important ones now deal with this problem.

So far, many countries, including Vietnam, have ratified or acceded international treaties relating to child labour problem. In despite of that, child labour is still widespread in over the world and Vietnam is not an exception. There are two main reasons, *inter alia*, for that situation. Firstly, since the international law standards on child labour are not included in only one treaty but in many, it is quite difficult for countries to comply with them properly. Secondly, child labour is a very complicated problem so in order to deal with it effectually, it is required that countries have to implement related international standards in conformity with their own economic, social and cultural circumstances.

The present work will give a survey of ILO's labour standards on child labour, which can be considered as the most important international law standards on this problem, and applicable perspective in Vietnam.

The first purpose of this thesis is to generalize and analyse the system of ILO's labour standards on child labour, which mainly provided in C.138 and C.182. The second is based on analysing the current situation and related domestic legal provisions to work out recommendations on perfecting laws and policies on child labour of Vietnam in conformity with the relevant international standards and its economic, social and cultural context.

Although ILO's standards on child labour as well as relevant provisions in Vietnamese legislation are the main contents, some additional questions such as the theoretical aspects and practical situation of child labour in the world and in Vietnam which would help to explore more systematically, logically and scientifically the aforementioned matter are also included in this thesis.

The thesis contains three chapters excluding some subsidiary parts.

**Chapter I** intends to make an overview of the child labour problem. It is concerned about concepts, characteristics, forms as well as the current situation, causes and consequences of child labour. This is the set-out chapter; a step in preparing the 02 followed ones. Therefore, it has a relatively important role to play.

**Chapter II** is entirely devoted to explore ILO's attempt to deal with the problem of child labour. In this chapter, the system of international labour standards on child labour provided by the ILO are generalized and analysed. While this chapter mainly focuses on C.138 and C.182, it also mentions some other related international treaties which adopted by the ILO and the UN. Because of its key role, this chapter covers the most length of the volume of the thesis.

**Chapter III** is also a crucial chapter of the thesis. In this chapter, Vietnamese legal regulations relating to child labour problem are systematized and analyzed. In addition to that, the factors which strongly affect the situation and process of elimination of child labour in Vietnam are also examined. Finally, based on all knowledge and information gained, the recommendations for amendments and supplements of existing national laws and policies relating to prevention, prohibition and elimination of child labour in Vietnam are worked out.

# Chapter I. An Overview of Child Labour Problem.

## I.1. Theoretical Aspects.

### 1.1. Acceptable and Unacceptable Work for Children.

Child labour is a phenomenon that has been in existence for long in all societies, seriously affecting the life and development of children. However, until the 1980s the problem of child labour just was recognized and drawn attention from the international community<sup>1</sup>.

The child labour's intricacy is fundamental cause for the above delay. The fact shows that in all societies children have been and are engaging in different work. This does not always bring in negative impacts, but in opposite, is helpful for physical, mental and moral development of children providing that the work that children carry out is suitable to their mental and physical capacity. Therefore, some people and even societies hold the opinion that it is necessary for children to work; but they do not realize that in numerous circumstances, children have to carry out heavy and hazardous work which strictly affecting their survival and full development or have to work at too early age or engage in work which consume too much time depriving their childhood and opportunities of education.

Thus, in order to learn about concept of child labour, the core point is to distinguish the acceptable and unacceptable work which show different effect on children.

It is not an easy task to differentiate the two aforementioned types of work since they are both abstract; however, it is possible to do so, by clarifying and comparing their positive and negative characteristics to survival and development of children as presented in *Table 1*<sup>2</sup>.

### 1.2. Concept of Child Labour.

So far, there has been no an established definition of child labour. In fact, it is very difficult to define a common definition of child labour since the border line between acceptable and unacceptable work for children is substantially vague which subjects to customs, practices of peoples and socio-economic conditions of respective countries. Nevertheless, based on the analysis done in the item (1.1) and relevant international references, it is likely to work out a concept, in which main manifestations of this phenomenon can be singled out, as follows:

*Child labour is a term that refers to the state of children (who are under the age of 18) intentionally or unintentionally involved in heavy or hazardous work, which are harmful to their physical, mental, spiritual, moral and social development; or engaged in work at too early age, which deprives their childhood, opportunities and time necessary for education, recreation and entertainment<sup>3</sup>.*

<sup>1</sup>See also: *Child Labor: Targeting the Intolerable*, Report VI(1) to the 86th International Labor Conference, 1998, pages 5-6.

<sup>2</sup>For the comparative analysis of acceptable and unacceptable works for children, see also: *Child Labor in Domestic Service* (Trade Union Manual-Methods and Strategies for Policy Development and Action Plans), Bureau for Workers Activities, ILO, 1998, page 1.

<sup>3</sup>For concept of child labor, see also: *Trade Unions and Child Labor*, Series of Booklets, Bureau for Workers Activities, ILO, 2000, Booklet No.1, page 3; *Child Labor in Domestic Service*, op cit, page 1 and *Child Labour: Facts and Figures* (What is Child Labor), at <http://www.ilo.org/public/english/comp/business/info/child.htm>.



**Table 1. Distinction of Acceptable and Unacceptable Work for Children**

<i>Work is acceptable, if it is:</i>		<i>Work is unacceptable, if it is:</i>
..fit with physical and mental capacity of children.	☞	☞ ..too heavy or intricate with physical and mental capacity of children.
..legal and helpful for themselves, family and society.	☞	☞ .. illegal, infringing security, social order or morals.
..done with adult's assistance and accompanying.	☞	☞ ...done under adult's strict supervision, coercion or control.
..reasonable in terms of hours of work which does not affect on the time for education, rest, recreation and entertainment of children.	☞	☞ ..working hours is too long which deprives or reduces the time for education, rest, recreation and entertainment of children.
..non-hazardous and decent in terms of working conditions and environment, without affecting moral, mental and social development of children.	☞	☞ ..hazardous and contaminative in terms of working conditions and environment which badly affect on moral, mental and social development of children.
..adequately paid.	☞	☞ ..inadequately paid.
..done to learn living skills and somewhat to contribute to families' economy.	☞	☞ ..done by coercion of other persons or difficult conditions, to earn a living for themselves and the families.
...done by workers whose age is appropriate for and stipulated by law.	☞	☞ ..done by workers ageing too early, lower than the minimum age for admission to employment or work that stipulated by law.

In order to examine more thoroughly the concept of child labour, it is necessary to compare it with the concept of *child work*.

Although the term of child work is not often used by the ILO, it has been used by UNICEF in some cases in order to distinguish categories of acceptable work and unacceptable work for children<sup>4</sup>. It is assumed that the term of child labour only refers to unacceptable work. This term, therefore, does not encompass all work performed by children under the age of 18. Specifically, it does not include activities such as helping out, after school is over and schoolwork has been done, with light household or garden chores, childcare or other light work, etc<sup>5</sup>... In other words, child labour does not refer to the work those positively impact on children since it is well-grounded that, by legitimately undertaking work, paid or unpaid, those are appropriate for their age and level of maturity, children can learn to take responsibility, to gain skills and to add to their families' and their own well-being and income as well as to contribute to their countries' economies<sup>6</sup>. In fact, it is significant for children to engage in acceptable work, especially in developing countries.

<sup>4</sup>See.....

<sup>5</sup>See: *A Future Without Child Labor*, Report I(B) to the 90th International Labor Conference, 2002, page 9.

<sup>6</sup>Ibid, page 9.

The acceptable work is mainly devoted to the term of child work. However, while the term of child labour implies only the work those have negative effect, the term of child work refers to both negative and positive work for children. That means, child work covers the meaning of child labour. Thus, in terms of statistics, it is likely to assume that the meaning of child work is basically similar to that of *economically active children* or *children engaged in economic activities*<sup>7</sup> which also used by the ILO in some cases.

### 1.3. Forms of Child Labour.

From the angle of harmful nature of work and age of working children, ILO has divided child labour into three categories, including:<sup>8</sup>

- (1) Labour that is performed by a child who is *under the minimum age* specified for that kind of work (as defined by national legislation, in accordance with accepted international standards), and that is thus likely to impede the child's education and full development;
- (2) Labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, known as *hazardous work*;
- (3) The *unconditional worst forms of child labour*, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment of children for use in armed conflict, prostitution and pornography, and illicit activities.

In addition to the above classification, on the basis of work characteristics, child labour can be identified in the following main seven types<sup>9</sup>: (1) Child family helpers; (2) Child working in forced labour situations; debt bondage or mortgage; (3) Child in prostitution for commercial purposes; (4) Child working in the industry and agricultural plantations; (5) Child street workers; (6) Child domestic workers; and (7) Child soldiers.

Though each of the above child labour types has its separate characteristics, they are of common points in a way that jeopardizes the survival and full development of children. Each of these types is likely to contain a number of specified work. Basically, the aforementioned types of child labour are existing in all regions of the world, which only differ from the extent of problem. Followed are main characteristics of each type:

#### +Child family helper:

This is a phenomenon in which children have to live and work in host's family as a servant. Normally, most of child family helpers are girl children. The most common work done by child family helpers at early age is to take care of the house, do chores and cooking, look after the host's baby, etc... Child family helpers at higher age, besides the housework, are likely to get involved in farming or business, etc... for the host family.

This type of child labour appears not too heavy or hazardous, but according to numerous studies<sup>10</sup>, this turns to be one of the types of child labour that needs for priority consideration, since the hardship of child family helpers is not exposed to the public, therefore it is often ignored, while in fact, their working conditions are of potential risks. Specifically, child family helpers have to work and live in a closed environment of the host family so their legitimate rights and interests are usually deducted or even uncared by the host. Working

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<sup>7</sup>For the concepts of *economically active children* or *children engaged in economic activities*, see Footnote 24 hereunder.

<sup>8</sup>See: *A Future Without Child Labor*, op cit, page 9.

<sup>9</sup>See also: *Trade Unions and Child Labor*, Booklet No.2, op cit, pages 3-7.

<sup>10</sup>For comprehensive analysis of the problem of child domestic workers, see: *Child Labor in Domestic Service...*, op cit. See also: *Child Labor: Targeting the Intolerable*, op cit, pages 12-13; *A Future Without Child Labor*, op cit, pages 29-30; *Trade Unions and Child Labor*, Booklet No.2, op cit, page 5.

time and conditions for child family helpers are sometimes not provided by law, but rather subjected to the host so they are normally requested to work from dawn to dark; not allowed to access to school, recreation, entertainment and social activities. They have few opportunities to contact their families and especially are constantly at risk of being beaten, offended, maltreated and sexually abused.

+*Child working in forced labour situations; debt bondage or mortgage*<sup>11</sup>:

This is a phenomenon in which children are transferred to debtors by their parents as an object for debt payment or as a mortgage for their family's debt to the debtors. The 'coercive' nature demonstrates in that children are placed in and forced to accept such horrible circumstances without any way to counter.

It is common to see that children working in the forced situations, debt bondage or mortgage descend from a proportion of population marginalized or at the bottom line of the society. The children fall in those circumstances will have a life of slavery for a long time, even for whole life. In the majority of cases, they are forced to work hard from dawn to dark, even as long as 20 hours per day, under strict supervision of the host's lackeys who have cold blood in using cruel measures like detention, torture, starvation, etc...to depress their resistance. Furthermore, they normally have to work in hazardous and toxic working conditions and environment. Girl child workers also face risks of being sexually abused or used in prostitution activities. Children working in forced situations, debt bondage or mortgage are unpaid or paid with a meager amount of wage.

Falling into the above circumstances, children are deprived of their fundamental human rights. However, lack of knowledge or ignorance is the root cause in a variety of societies in maintaining the psychological feeling that this problem is subject to the 'civil domain', that means the relationship between families and individuals. Consequently, social workers normally find themselves in difficulty to approach and intervene in, aiming at helping the child victims of one of the worst forms of child labour.

+*Child in prostitution for commercial purposes*<sup>12</sup>.

This is a phenomenon in which children are coerced, procured or deceived into prostitution activities or the production of pornography for the material benefits of inhumane persons. Both boy and girl children can be victimized, but girl children make up the majority. This form of child labour can be seen in many where in the world, most popularly in tourist sites. It leaves seriously physical, mental, moral and social traumas on victims. For instance, in regard to child prostitutes, they have to suffer daily from serious health risks such as bearing pregnancy unexpectedly; are forced to 'receive guests' as long as being exhausted; are detained, beaten and maltreated by the brothel runners and prostitution buyers; are infected with respiratory diseases, transmittable diseases through sexual intercourse, especially with HIV/AIDS. Moreover, these children also face discrimination, negligence and dignity degrading treatment from the society. Living in such a hardship and impasse state, many of these children find themselves in drug addiction.

Due to its seriousness and severe consequences in relation to the survival and development of children, child prostitution for commercial purposes is not only recognized one of the worst forms of child labour enshrined in C.182, but also a fundamental content of one of the two

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<sup>11</sup>See also: *Child Labor: Targeting the Intolerable*, op cit, page 13; *A Future Without Child Labor*, op cit, pages 31-33; *Trade Unions and Child Labor*, Booklet No.2, op cit, pages 8.

<sup>12</sup>See also: *Child Labor: Targeting the Intolerable*, op cit, pages 13-14; *A Future Without Child Labor*, op cit, pages 35-36; *Trade Unions and Child Labor*, Booklet No.2, op cit, page 9.

optional Protocols to CRC (*Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*).

+*Child working in the industry and agriculture*<sup>13</sup>:

This is a phenomenon in which children (both boys and girls) have to carry out adults' work in industrial factories, plants and plantations such as cloth weaving; textiles making; glass blowing; leather processing; bricks and cosmetic products manufacturing; pad-locks manufacturing; mining; growing, nurturing and harvesting sugar canes, cigarette leaves, teas, coffees, rubber, cottons, export-oriented flowers, etc...Falling into this type, children are normally compulsory to do heavy, hazardous and toxic work for expanded time and within the conditions lack of or without necessary facilities for labour protection and safety. And, they often get meager allowances, much lower than those paid for adults with equal work.

The majority of children working in the industry and plantation are in developing countries; however, there is also a reason to blame for brought in by industrialized countries. Recent studies have shown that a handful of corporations and multinational corporations from developed countries, in their investment activities in developing countries, are using local give-away child labour.

+*Child street workers*<sup>14</sup>:

This is a phenomenon in which children (both boys and girls) are compulsory to do all work to earn a living in streets of mega cities. This type of child labour can be seen everywhere in the world, but higher proportion of this form is claimed by cities in developing countries.

Types of child street workers are diversified, such as street vendors, souvenirs sellers; leaflet and ads distributors; goods carriers; trash pickers; motorbike or automobile keepers and cleaners; shoes polishers; goods sellers in markets, supermarkets, car parks, railways stations or crowded places; baggars; thieves; drug smugglers; procurers; prostitutes, etc... Street and urban environment poses potential risks for the life and physical and mental development of these children. For instance, for children working as street vendors, souvenirs sellers, leaflet distributors, etc...they have to walk front and back in intense traffic lines every day, which make them face danger of traffic accidents and frequently inhale contaminated air; trash child pickers constantly face with dirty and unhygienic objects that cause infected with bacteria and poisoning; child thieves, drug smugglers, procurers, prostitutes, etc... frequently face with police and imprisonment. Having no family environment, children fall in this form of child labour usually live on extremely living conditions in slums, street sidewalks, flower gardens, parks, etc...Consequently, they are easily lured and forced to undertake illegal acts by criminal gangs or groups. After all, these children are probably objectives of extremist manslaughters.

+*Child domestic workers*:

This is a phenomenon in which children have to engage in routine work in their family such as do farming, keeping poultry, looking after younger sisters or brothers, doing housework, merchandizing, etc...but with high intensity and occupying much time or at a too early age.

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<sup>13</sup>For comprehensive analysis of the problem of child labor in agriculture, see: *Bitter Harvest - Child Labor in Agriculture and Child Labor in Agriculture – A Survey of National Legislation*, Bureau for Workers Activities, ILO, 1998 and 2002 correlatively. See also: *Child Labor: Targeting the Intolerable*, op cit, pages 11-12; *A Future Without Child Labor*, op cit, pages 24-26 and 28; *Trade Unions and Child Labor*, Booklet No.2, op cit, page 5.

<sup>14</sup>For further analysis of the problem of child street workers, see: *In the Twilight Zone: Child workers in the hotel, tourism and catering industry*, by M. Black, ILO, 1995.  
See also: *A Future Without Child Labor*, op cit, pages 27-29.

In fact, if children are given housework on the condition of appropriate working intensity and time, and when children have reached proper ages, it would be acceptable since it would help children develop physically, mentally and foster their good characters. However, if they are forced to do such work at too early ages or compulsory to work with high intensity or given too much work that requires too much time to complete, it would in turn affect their physical development and make them find inadequate time for education, recreation and entertainment. This would be considered as child labour.

Economic problem is the main excuse for this type of child labour. Encountering the pressure of life, many families are compulsory to compel their children to start working at early age and give them a lot of work, some of which exceeds their physical and mental capacity.

Since the scope of work is carried out within the family, it is very difficult to interfere with child labourers' parents. Furthermore, the boundary of 'being affected' and 'being not affected' by the family work over the full development of children is frequently abstract; therefore, it is not easy to collect statistics and promulgate peculiar provisions to regulate this situation.

+*Child soldiers*<sup>15</sup>.

This form is provided as one of the worst forms of child labour in C.182. It is also a content of one of the two optional Protocols to CRC (*Optional Protocol on the Involvement of Children in Armed Conflict*).

In times of armed conflict, children may be coerced or induced, either by the State or by non-state military groups<sup>16</sup>, especially those belong to some groups such as: children separated from their families or with disrupted family backgrounds (e.g. orphans, unaccompanied children, single-parent families, child-headed households); economically and socially disadvantaged children (e.g. the rural and urban poor, those without access to education, vocational training and a reasonable standard of living); and other marginalized groups (e.g. street children, certain minorities, refugees and the internally displaced)<sup>17</sup>.

In fact, the child soldiers' duty during the times of armed conflict is much diversified. They may have to carry out different tasks such as directly fighting against enemy, digging trenches, moving supplies, evacuating dead and wounded combatants, delivering messages, cooking and even serving as sex slaves, human shields or suicide bombers. The military tasks may cause child soldiers to die or wounded while the severe and cruel nature of armed conflicts makes them violent, even bloody. In long-term armed conflicts, child soldiers' educational opportunities and infrastructure are progressively destroyed which make them seriously difficult in the peacetime later on.

In addition to the above classifications, looking from another angle, it is likely to single out manifestations of child labour on the basis of economic sectors. According to characteristics of management, it is likely to divide these economic sectors into the formal economic sector and the informal economic sector, in which special attention should be paid to the informal economic sector with regard to the problem of child labour<sup>18</sup>. Based on characteristics of occupation, it is probably divided into such peculiar economic sectors as

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<sup>15</sup>For comprehensive analysis of the problem of child soldiers, see: *Young Soldiers. Why they choose to fight*, by Rachel Brett and Irma Specht, ILO, 1992.

<sup>16</sup>See: Report of the Secretary-General to the Security Council on the Implementation of Resolution 1261 (1999) on Children and Armed Conflict, United Nations General Assembly, 55th Session, New York, 2000.

<sup>17</sup>See: *A Future Without Child Labor*, op cit, pages 33-35.

<sup>18</sup>Since informal economic sector is that converges small-sized economic activities carried out by groups or a collective of working people (in both rural and urban areas), who are not or less affected by the regulation of legislation, the ILO assumes that most of child laborers exists in this sector. For more related information, see: *Ibid*, pages 22-24.

agricultural, forestry, fishery, hunting, manufacturing, whole or retail sales, hotel and restaurant services, commodity transportation, warehouses and communications, construction, mining, stone producing. In each of those economic sectors, child labour appears in different proportions but as estimated by the ILO, agriculture is the area for which the biggest rate of child labourers is accounted<sup>19</sup>.

## I.2. Practical Aspects.

### 2.1. Magnitude of Problem - A Brief Description<sup>20</sup>.

#### 2.1.1. How Many Children Working in the World?

It is a challenging task to make a specified and accurate evaluation of the situation of child labour in the world because of its broad and complicated nature.

In all countries around the world, the investigation and collection of statistics of child labour had not been undertaken in the past. However, it began in 1978 that within the framework of preparing activities for *the International Year of Children* will be launched by the UN in 1979, a number of countries conducted investigations and collected statistics of this problem, but only counted children ageing from 15 to under 18. At the international level, over the recent years, in order to plan strategies of action with regard to the protection of children, the ILO and UNICEF have undertaken investigations and studies, aiming at defining the quantity, nature and scope of children engaged in economic activities. In the first launch of its estimates of economically active children (1995), the ILO tried to distinguish the indicators of child labour by giving estimates of the quantity of children involved in full economic employment, but not the number of child labourers. The estimates were continuously updated by the ILO in 2000, of which the more concrete quantity, characteristics and geographical distribution of child labourers in comparison with those of economically active children (see *Table 2,3,4* hereunder)<sup>21</sup>. This is very helpful for international community become more aware of the severity and urgent necessity in the abolition of child labour.

**Table 2. Estimates Children Engaged in Economic Activities in the World in the Years of 1995 and 2000**

1995 <sup>22</sup>	2000 <sup>23</sup>
<p>-250 millions children aged 5-14 engaged in economic activity<sup>24</sup>.</p> <p>-of which, at least 120 millions working full time.</p>	<p>- 351.7 millions children aged 5-17 engaged in economic activity (210.8 millions aged 5-14; 140.9 millions aged 15-17).</p> <p>-of which, 245.5 millions are child labourers (186.3 millions aged 5-14; 59.2 millions aged 15-17), including those engaged in worst forms of child labour.</p>

<sup>19</sup>Ibid, page 23.

<sup>20</sup>For comprehensive information, see: *Annotated Bibliography on Child Labour*, ILO, 2003.

<sup>21</sup>For further analysis of child laborers distribution in terms of economic branch (sector) and gender bases, see: *A Future Without Child Labor*, op cit, Table 2 and Figure 4, pages 17 and 23.

<sup>22</sup>Source: ILO, *Child Labor: Targeting the Intolerable*, op cit, pages 7-8.

<sup>23</sup>Source: ILO, *A Future Without Child Labor*, op cit, page 16.

<sup>24</sup>As specified by the ILO, "economic activity" is a broad concept that encompasses most productive activities undertaken by children, whether for the market or not, paid or unpaid, for a few hours or full time, on a casual or regular basis, legal or illegal; it excludes chores undertaken in the child's own household and schooling. To be counted as economically active, a child must have worked for at least one hour on any day during a seven-day reference period. Therefore, "economically active children" (or "children engaged in economic activities") is a statistical, rather than a legal, definition. It is **not** the same as the "child labor" referred to with regard to abolition. See: Ibid, page 19.

**Table 3. Estimates of Numbers and Percentages of Economically Active Children, Child Labour and Worst Forms of Child Labour in 2000 (by age)**<sup>25</sup>

	5-14 years		15-17 years		Total	
	Number (millions)	Percentage of age group	Number (millions)	Percentage of age group	Number (millions)	Percentage of age group
Economically Active Children	210.8	18	140.9	42	351.7	23
Child Labourers	186.3	16	59.2	18	245.5	16
Children in Worst Forms of Child Labour	-	-	-	-	178.9	11.5
Children in Hazardous Work	111.3	9	59.2	18	170.5	11

**Table 4. Estimates of Economically Active Children (aged 5-14) in 2000 (by region)**<sup>26</sup>

Region	Number of economically active children (millions)	Percentage of global total by group	Percentage of economically active children in total child population
Developed Economies	2,5	1%	2%
Transition Economies	2,4	1%	4%
Asia and the Pacific	127,3	60%	19%
Latin America and the Caribbean	17,4	8%	16%
Sub-Saharan Africa	48	23%	29%
Middle East and North Africa	13,4	6%	15%
<b>Total</b>	<b>211</b>	<b>-</b>	<b>16%</b>

### 2.1.2. Some Observations.

Based upon the estimates released by the ILO, it is likely to make some observations on the status of child labour in the world today as follows<sup>27</sup>:

*-The number of child labourers in the world keeps increasing:* The Table 2 shows that, although the number of children in the 5 – 14 range of age involved in economic activities tends to go down (from 250 millions in 1995 to 211 millions in 2000), the number of child labourers in the world are seemingly increasing in the same period. Specifically, there were about 120 millions of children in the 5 – 14 range of age involved in forms of child labour in 1995 while the year 2000 claimed for a number of 180 millions.

*-Child labourers account for a high proportion of children and most of them are at early age:* The Table 3 demonstrates that, in the world, child labourers made up 16 percent of children in the 5 – 14 range of age; accounted for 18 percent of children in the 15 – 17 range of age. Generally counting, one in every six children is a child labourer. The number of those under

<sup>25</sup>Source: *ILO Estimates for 2000 and World Population Prospects* (New York, United Nations, 2001). For a more detailed breakdown of the aggregate figures by economic category of activity and by the age group of the children involved, see: *A Future Without Child Labor*, op cit, page 17, Figure 3.

<sup>26</sup>Source: *Data for 2000 Based on 29 National Household Surveys*, ILO Bureau of Statistics, 2001.

<sup>27</sup>See also: *A Future Without Child Labor*, op cit, pages 19-23.

the age of 15 (the minimum age for admission to employment or work stipulated in C.138) was about 111.3 millions, standing for about two-third of the total 170.5 millions of child labourers involved in hazardous work in the world.

*-The status of worst forms of child labour is increasingly serious:* Also the *Table 3* demonstrates that, the number of children being exploited in the worst forms of child labour was stamped at approximately 180 millions of children, accounting for more than two-third of total of child labourers. It was estimated that one in every 8 children in the world was being exploited in one of the worst forms of child labour. The real situation was even worse than that was estimated by experts.

*-Child labour is allocated in all parts of the world, but imbalanced in scale:* At present, the Asia-Pacific region claims for the highest number, with about 127.3 millions of working children in the 5 – 14 range of age, accounting for 60 percent of working children within this range of age in the world. It is followed by the near African Sahara Desert Region, with 48 millions, making up 23 percent, etc...However, if we set a look at the intensity of the problem, the status of working children in the near Sahara desert region in Africa is the most serious, since working children in this region make up as high as 29 percent of children under the age 15, while the proportion in the Asia-Pacific Region is only 19 percent.

## **2.2. Consequences<sup>28</sup>.**

Many information about negative impacts of the child labour problem has been provided in the preceding parts of this chapter. Therefore, summarizing the aforementioned and supplementing new relevant information is the only work done in this part.

Practically, in mentioning consequences of the child labour problem, it would not be adequate if we only think of negative impacts exerted in by the problem on the life and development of children (even though this is the principal factor), but should also identify negative impacts of the problem on other actors, including family, community, country (or state/nation) and international (or humanity). Unless the problem is observed in such a comprehensive way, the pressing demand for preventing and eliminating child labour will not be clearly and fully realized.

From related information have shown, it is likely to summary consequences of child labour problem in form of *Table 5* hereunder.

## **2.3. Causes for Problem.**

### *2.3.1. Factors Affected<sup>29</sup>.*

As numerous studies on this problem have shown, it is likely to conclude that child labour is a social phenomenon that emerges from different political, economic, social – cultural factors. It peculiarly follows as below:

+*Political factor:* The concrete manifestation of the politics at the national level demonstrates in policies and legislation promulgated by the state in social management. Policies and legislation – which signify as collections of codes of conduct issued by the state, are compulsory for all social actors – play the role of a legal framework ensuring for the correct

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<sup>28</sup>For more analysis of this problem, see: *Children at Work. Health and Safety Risks*, by Valentina Forastieri, Second Edition, ILO, 2002; and *Investing in Every Child: An Economic Study of the Costs and Benefits of Eliminating Child Labour*, ILO, 2004; and *First Things First in Child Labour: Eliminating Work Detrimental to Children*, by A. Bequele and W.E. Myers, ILO, 1995; and *In the Twilight Zone: Child Workers in the Hotel, Tourism and Catering Industry*, op cit; and *Child Labour: Facts and Figures*, op cit, etc..

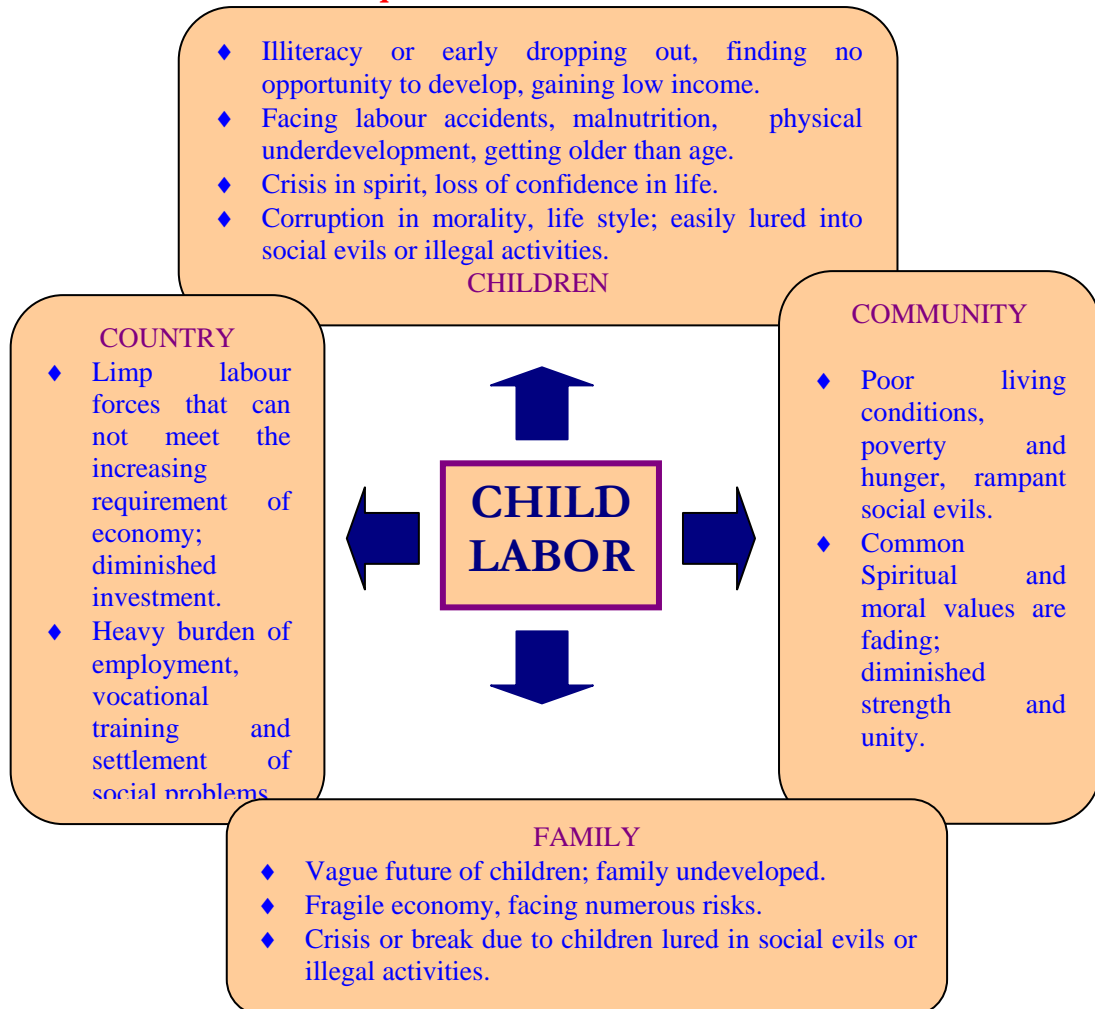
<sup>29</sup>See also: *A Future Without Child Labor*, op cit, pages 37-57; *Trade Unions and Child Labor*, Booklet No.2, op cit, page 10; *Child Labour: Facts and Figures*, op cit, (The Causes of Child Labour), etc..



operation of all social relations, including the recruitment and permission given to children to get involved in employment. Consequently, the absence or lack of proper policies and legal provisions will directly affect the status of child labour. For instance, in some countries, since policies and laws do not regulate labour relations in the informal sector that makes the status of child labour become a pressing social problem due to lack of intervention by the state.

However, it should be noted that even when there appears an adequate system of policies and laws but if it is not put into practice or less effectively implemented, child labour remains likely to take place.

**Table 5: Consequences of Child Labour Problem**



+*Economic factor:* This factor are likely to be divided into three sub-factors: of the child's family, of businesses and of the society.

With regard to the family, it is a certain possibility to see a child working if his family falls in poverty and hunger situations. The fact has shown that poverty and hunger circumstances make people consider earning a living as a priority, and normally every member of the family, regardless of age, is mobilized to do the job.

As far as businesses are concerned, many employers have been for long fully aware of and taken for granted the economic benefits, direct or indirect, by using child labourers. The direct economic benefits demonstrate in the form that they probably pay for child labourers with meager amount of money, though the work done by them are compatible with that of the adults. Moreover, since child labourers are more easily 'controllable' than adult workers, therefore they are constantly coerced by the employers to work over time to increase bosses'

surplus income. On the other hand, as the indirect economic benefits show, child labourers are not normally aware of or clearly understand of their rights, hardly complain, demand or establish associations, making the employers be at ease with their combat against demands or strikes held by labour unions for salary increase and improvement of working conditions.

In addition to the economic benefits, various employers sometime are attracted by their deliberate observations that children are more skillful than adults in many work. They even hold the view that children are of *irreplaceable skills* in a number of work, who have *nimble fingers*<sup>30</sup>; and thus, whether or not some industries can develop and gain profits, it is subject to the use of child labourers. This has increasingly stimulated employers (especially in such industrial handicrafts as carpet weaving, sewing, embroidering, etc...) to seek for child labourers. However, according to a number of studies conducted recently, the doctrine of superiority of child labourers over adult-workers takes no foundation.

For society, less economic development of a country normally is linked with poverty, hunger and child labour problem. As a study released by the WB shows, in countries where the gross-domestic products (GDP) per capital is less than USD 500, child labourers account for from 30 to 60 percent of total child population; while in countries registering for from USD 501 up to USD 1,000, the ratio ranges from 10 to 30 percent<sup>31</sup>.

Furthermore, the shifting of economic structure in a host of countries – which is demonstrated by industrialization, commercialization, privatization and more recently economic globalization – is closely associated with the huge demand for give-away labour, leading to the phenomenon of child labour exploitation. The aforementioned process also frequently causes less subsidization provided by the state for social services, thus children are forced to participate in economic activities in order to meet their own as well as families needs. Additionally, families in this process are placed in a more independent status in connection with production and business activities, and this, exclusive to positive aspects, leads to the increase of child labour problem.

The phenomenon of child labour exploitation in developing countries is also caused by the urbanization process. Economic development, especially too ‘heat’ development, is followed by the inflow of people from rural areas into major cities, industrial zones in an attempt to seek for a better life. In the context of living without farm land as their production material, numerous migrant adults and children are forced to do all kinds of employment to satisfy their own and families needs.

+*Social-cultural factor*: There are numerous social-cultural elements affecting the child labour problem, typically such as:

-*Outdated traditional conception of child labour*: Many societies have remained holding a concept that there are not any problem with child labourers since children have to work in order for their full development, or for the continuation of their grandparents or parents traditional occupations, ect...Thus, children in many families are stimulated or forced to work at very early age or do heavy and hazardous work. That conception has been so deeply rooted in the societies of which the majority of members, including parents and children themselves are unconscious that child labour is harmful for the survival and development of children, and is illegal.

- *Gender discrimination*: This issue is concerned with inequality of division of gender role. Many societies for long have had a stereotype that women play a key role in the reproduction (demonstrated by such work as giving birth, doing housework), while men have their

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<sup>30</sup>See: *Child Labor: Targeting the Intolerable*, op cit, page 15.

<sup>31</sup>See: *Child Labor and Direction for the World Bank*, prepared by P. Fallon and Z. Tzannatos, WB, Washington, 1998.

principal role to play in the production (such as doing business, or providing services that aim to create wealth and materials to feed themselves and the families). Another perspective is set on the community role (which demonstrates in the engagement in the community work such as security keeping, sanitation preservation, maintaining roads, participating in local festivals and ceremonies, etc...). This role is reckoned to be shouldered by the both genders.

Theoretically, the above division of gender role appears equally, but in reality it is not true as such. While men more often place emphasis on fulfilling their production role and do not or hardly take the other gender roles, women have to play the three roles, including the production role. The burden of such gender multi-roles shouldered by women make them find no time to study, improve their qualifications, and even to have time to rest for reproductive power. Even though, women remain being evaluated more inferior to men as the reproduction and community roles they play are not normally counted.

Being members of the female gender, in most of societies, child girls are also compulsory to bear the three gender roles, with bigger workload and longer working time than those of child boys. Commencing from the stereotype of gender, societies hold psychological opinions that child girls should be taught to take care of housework, while child boys shall be trained to be economic pillars. Therefore, it is unnecessary for child girls to reach higher educational levels or even to go schooling. Consequently, in many societies, gender gap in education is very wide. The higher is the education level, the larger is the proportion of male students to female students. Furthermore, child boys are frequently given better nutritional and health care, they have better physical health. Lack of education, malnutrition, being affected by stereotypes as well as the burden of gender multi-roles that have made many child girls find themselves in poverty, hunger, working as maids or even in prostitution. Thus, gender discrimination has turned into exploitation, which now is considered to be a form of exploitation of women and children labour.

*-Employment:* This issue is unseparatable with the economic factor (as mentioned above), but it influences the child labour problem by two quarters. In most cases, the impact of unemployment and inadequacy of work in society on parents or other adult members of the family, making the common income source reduced or deprived, that force the children to get involved in economic activities to earn a living. In some countries, many children even have to take the responsibility vested on their unemployed parents as the family economic pillar. In contrast, when an economy is in too 'heat' development, there appears lack of teen-workers and an ever increase in wage paid for this type of labour force. This may cause difficulties for employers, of whom many seek for solutions to these difficulties by the two following principal methods: hiring/illegally importing foreign workers and hiring child workers.

*- Education:* Poor education may have direct or indirect impacts on the child labour problem. When educational expenses are considered as a burden for family, children are possibly forced to drop out in order to engage in economic activities, or are compulsory to combine learning and working tasks. Moreover, negative impressions by parents and children themselves on the role and helpfulness of education are sometime consolidated by inappropriate educational contents and methods. They see education as something unpractical in the context of needs of life and social situation; therefore, it is unnecessary for children to go schooling. The consequences brought about by early dropping out or educational absence due to whatever reasons stated above are the scene of children working at early age. However, lack of basic education makes those children be able to find themselves employed in unskilled labour market only, and have no chances to learn labour skills those are necessary for a good occupation and job when they become adult workers.

*-Family size, nature and relations:* As far as the size is concerned, the ratio of child labourers descending from large-sized families is higher than that of small-sized families. This is again connected with the economic problem. Large-sized families are normally poor. Consequently, when parents are impossible to guarantee material needs of the family, children are compulsory to get involved in economic activities to assist their parents. With regard to the nature and relations, children, whose parents are too young, or from single parent families, or from families having the parents separated or divorced, or children have no family environment, are more at risk of having to work earlier than other children. The main reason for this is inadequacy of economic conditions, attention and caring.

*-Social-economic crisis:* Social-economic crisis – in a broad sense – includes all twists and turns those cause disadvantages to the economy and social order of a country, such as economic depression, political disorder, epidemics, armed conflicts, etc...

Social-economic crisis has direct and profound impacts on the life of people, especially the vulnerable social groups like children. In the context of economic depression, armed conflicts or the spread of AIDS epidemic, etc... sources of the country and family will be seriously diminished, resulting in rampant poverty and starvation, and as a consequence, children are forced to work to earn a living. This is pretty apparent when we do research on the impacts of the financial crisis in the late 1990s in a number of Asian countries or the effects of the AIDS epidemic as well as armed conflicts in some African countries at the time beings in connection with the status of child labour in these regions.

*-Social security:* Social security is a broad concept, covering both social insurance and relief, which have impacts on the child labour problem.

As far as social insurance is concerned, the establishment of a wide-range and effective insurance system will be a foundation for life settlement of many families, thus ensuring for their children to study, or not being involved in economic activities at too early age. In contrast, should many families find themselves in economic difficulty; their children will have to work to earn a living since they do not have adequate sources of material.

With regard to social relief, the creation of a sound and proper social relief system will be able to facilitate a lot of families to overcome disasters and risks that they may encounter, thus limiting the possibility that children of these families will have to drop out schooling to participate in economic activities. This is specifically significant in the breakout of armed conflicts, natural disasters, epidemics, etc... since those catastrophes do not only cause difficulties in material for many families, but also make a great deal of children become homeless. These children – if they are not provided with prompt sponsoring system – will be forced for sure to do all kinds of work to maintain their lives and their schooling would be something luxury.

### *2.3.2. Interaction of Factors Affected.*

It is extremely challenging to determine, among the aforementioned factors affecting the child labour problem, which one is more common or important than the other since it is up to circumstances of each child, his or her family as well as the concrete situation of individual countries.

Normally, the above factors affect the child labour problem in an intertwining manner, but in some particular cases, they may take the key role. It is important to clarify the status, role of each and every factor as well as the connection between them. This will help us find out the most appropriate solutions to the child labour problem.

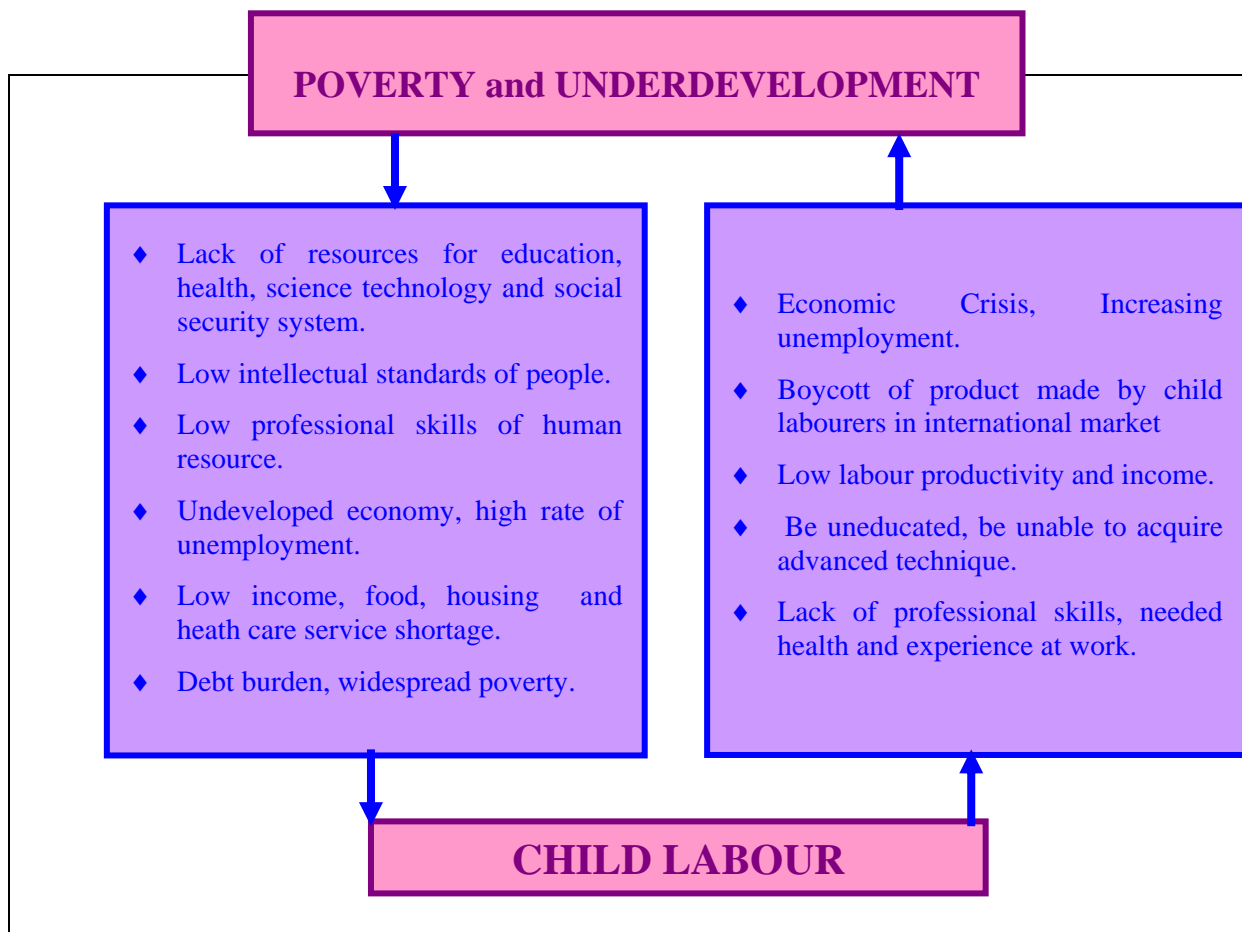
So as to be able to realize the status of factors affecting the child labour problem, it is necessary and likely to divide them into three following types: (1) immediate affected factors; (2) direct affected factors and; (3) foundation affected factors (see *Table 6*).

In order to see the intertwining relation between the factors affecting the child labour problem, it is likely to divide those factors into two groups: Supply factors and demand factors as the *Table 7*<sup>32</sup>.

As mentioned, the most important factors those are deemed a cause, *inter alia*, to the problem of child labour are hunger, poverty and underdevelopment in countries. However, if it is stopped at this point, it will be a one-sided, partial understanding. It should be noted that poverty, underdevelopment and the problem of child labour are bound by an interaction, creating a vicious circle<sup>33</sup>. In other words, child labour is also a cause to hunger, poverty and underdevelopment. Therefore, it is likely to draw that vicious circle as *Table 8*.

In order to define in a more concrete manner the nature, role of each and every factor affecting the child labour problem as well as the intertwining relations between them in different circumstances, it is likely to establish a matrix as *Table 9*.

**Table 8. Vicious Circle of Poverty, Underdevelopment and Child Labour**<sup>34</sup>

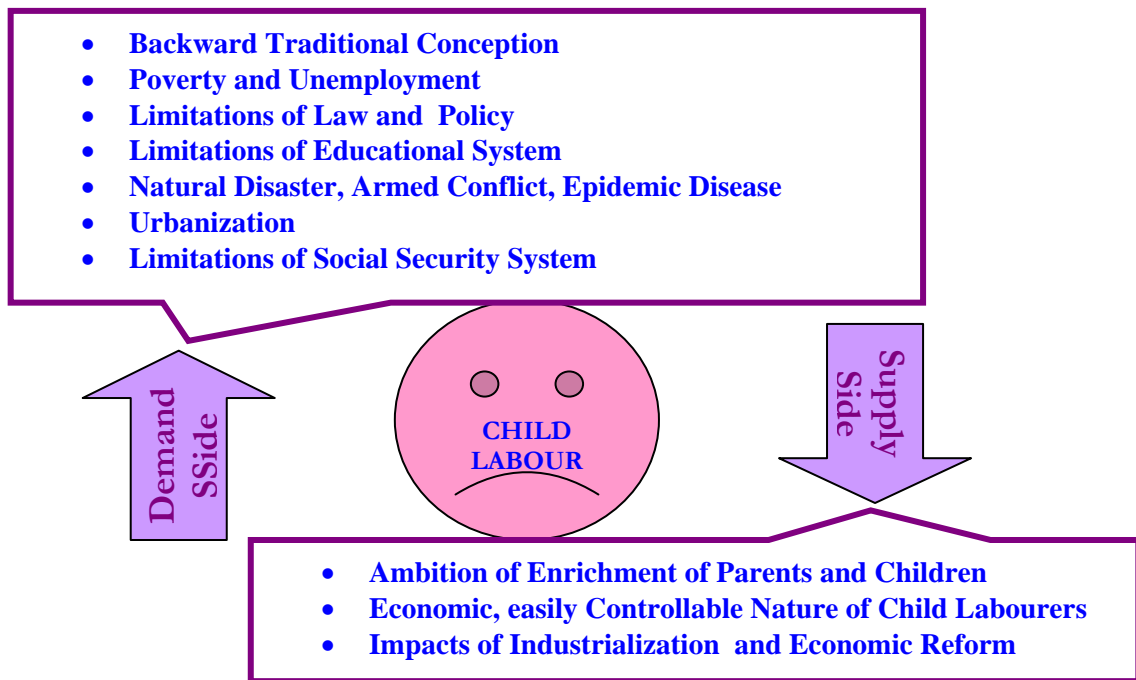


<sup>32</sup>See also: *Child Labor: Targeting the Intolerable*, op cit, pages 14-15.

<sup>33</sup>For further analysis of the relations between poverty, underdevelopment and child labor, see: *Strategies for Eliminating Child Labor: Prevention, Removal and Rehabilitation*, the joint UNICEF/ILO Paper at the International Conference on Child Labour, Oslo, Norway, October 1997, Part III (at <http://www.ilo.org/public/english/comp/child/conf/oslo/syn.htm>).

<sup>34</sup>See also: Vu Ngoc Binh: *The Problem of Child Labor* (in Vietnamese), Hanoi, 2002, page 36.

**Table 7. Supply-Demand Factors of Child Labour<sup>35</sup>**



**Table 6. Causes for Child Labour- Major Types<sup>36</sup>**

Immediate Causes	Direct Causes	Basic Causes
Family can not afford for buying food and foodstuff...; increased prices of necessities.	Break of traditional family models and informal social security systems.	Diminished or declined gross domestic products.
↓	↓	↓
Poverty-stricken, debt-ridden family; unemployed parents.	High ratio of divorce, lack of attention and assistance among relatives.	Inequality between countries and regions; disadvantageous trade barriers.
Unexpected disasters to family	Social stereotypes concerning children, education and employment.	Social disasters (such as war, economic crisis, political upheavals, epidemics...)
↓	↓	↓
Economic pillar persons of the family dead, sick; lost crops; depressed business...	Discrimination against child girls; misunderstanding the role of education to children.	External intervention; insufficient attention to education and social security.
Demand for cheap labour force by small businesses in the informal sector.	Desire for surmounting of poverty and for improvement of living conditions.	Insufficient legislation; some groups marginalized of social development.
↓	↓	↓
Farmer families and small businesses can not afford for hiring wage-earners.	Conception of child obligations to family; will and self-esteem of humans...	Poor governance; discrimination; lack of attention to social affairs.

<sup>35</sup>See also: Ibid, page 40.

<sup>36</sup>See also: Ibid, page 42.

**Table 9. Child Labour: Matrix of Pushing-Pulling Drives<sup>37</sup>**

<b>Children</b>	<b>Family</b>	<b>Community</b>	<b>Country</b>	<b>International</b>
Being pressed by requirement to help family or desire to escape of the family tragedy.	Being in poverty and hunger due to low income, unemployment, underemployment. Family crisis.	Undermining harm and illegality of child labour.	Inadequacy of or poor implementation of national programs of employment and poverty and hunger alleviation.	Inadequacy of or poor implementation of international programs of poverty and hunger alleviation.
Being compelled by the need for survival due to being orphanized, abandoned or deserted without care.	Parents dead or sick, disabled, incapable to bring up; parents drop, desert children.	Breakout of armed conflicts, natural disasters, epidemics, social crisis, burden of external debts.	Without or lack of resources to guarantee the social security system.	Inequitable order of world economy, rude interference in internal affairs of other countries.
Being compelled by the need for survival and advancement as being members of vulnerable social groups.	Parents and family are discriminated, suffering restrictions of political and economic opportunities and interests.	Availability of discriminatory thinking, segregation against certain social groups.	Policies and legislation demonstrating discrimination or ignoring the prevention of discrimination against some social groups.	Without or ineffective international efforts in assisting vulnerable social groups in the world.
There is no other choice due to early dropping out or inaccessible to school.	Lack of knowledge of benefits of education or without resources to guarantee their children's schooling.	Lack of resources and facilities to carry out, maintain and develop education system.	Inappropriate and ineffective educational policies and legislation; lack of human and material resources for education.	Without or ineffective international efforts in assisting countries to ensure the right to education of children.
Wishing to make money for individual desire; being affected by backward thinking of family, friends and society; being lured by the demand for labour sources.	Inadequate knowledge of negative impacts of child labour, as well as legislation in this field; encouraging and forcing children to work at young age.	Ignorance or acceptance of child labour; backward thinking of child labour.	Inadequate or inappropriate policies and legislation on the use of child labour; without or poor system of labour inspection.	Lack of systematic standards of child labour; poor international monitoring mechanism of child labour.
<b>Children</b>	<b>Family</b>	<b>Community</b>	<b>Country</b>	<b>International</b>

<sup>37</sup>See also: Ibid, page 47.

## Chapter II: ILO's Standards on Prevention, Prohibition and Elimination of Child Labour.

### II.1. Introduction.

#### 1.1. Codification of Child Labour Problem in International Law<sup>38</sup>.

As a number of studies show, in 1284, in Italy, there was a legal document adopted to protect child workers in glass-making factories<sup>39</sup>. A few centuries later, many European countries also issued acts in order to protect children working in some industries. However, these legal documents were valid only within the jurisdiction of individual countries.

Until the beginning of the 20<sup>th</sup> century, the first international legal documents regulating the child labour problem were promulgated, mainly by the ILO – which is one of the international organizations pioneering in this field<sup>40</sup>. Twenty-one of over two hundred conventions and recommendations adopted by the ILO since 1919 (the founding year of this organization), directly deal with the child labour problem. In addition to those directly concerned instruments, child labour problem is also mentioned in a number of such other ILO instruments as C.29 on forced labour (1930), C.105 on the abolition of forced labour (1957), etc.. These instruments result in indirect impacts on prevention, prohibition and elimination of child labour by establishing an international legal framework concerning the use of labour in general and child labour in particular.

In parallel with the ILO, some other international organizations, especially the UN, have various activities related to eradication of child labour. Many international human rights instruments adopted by the UN since 1945 deal with, directly or indirectly, this problem; for instance, the UDHR; ICCPR, 1966; ICESCR (1966); CEDAW (1979); CRC (1989) and its two Optional Protocols (2001); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949); Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956); UN Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), etc...

However, it was until the last decades of the 20<sup>th</sup> century that child labour had become a problem drawing broad attention by the world community. This is demonstrated by a series of important international conferences consecutively held, at which a great deal of instruments, directly or indirectly, providing preventive means, measures, removal of child labour. Among those events, the most remarkable ones should be mentioned as follows:

- The World Conference on Children, held in New York in 1990, adopted the Declaration and Plan of Action on the Survival, Protection and Development of Children.
- The UN Commission on Human Rights adopted the UN Program of Action Concerning the Prevention of Child Sale, Child Prostitution and Child Pornography (by the Resolution No. 1992/74, on 5<sup>th</sup> March 1992);

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<sup>38</sup>For comprehensive analysis of international responses to child labour, see: *Action Against Child Labour*, edited by Nelien Haspels and Michele Jankanish, ILO, 2000.

<sup>39</sup>See: *Problem of Child Labor*, op cit, page 18.

<sup>40</sup>For more related information, see also *A Future Without Child Labor*, op cit, pages 7-9 and 115-123.



- The Second World Conference on Human Rights, held in Vienna in 1993, adopted the Declaration and Plan of Action, in which the guarantee of the rights of the child and abolition of forms of child labour are touched upon.
- The Fifth World Women's Conference, held in Beijing in 1995, adopted the Declaration and Program of Action, which deal with the protection of girl children from sexual abuses.
- The World Summit for Social Development, held in Copenhagen in 1995, adopted the Declaration and Plan of Action, which emphasizes the need to strengthen social security regimes in order to assist vulnerable social groups, especially to protect children from being involved in employment at too young age and in dangerous or hazardous work.
- The UN Commission on Human Rights adopted the UN Program of Action concerning the prevention of traffic in persons and sexual exploitation of others (1996), which emphasizes the implementation of preventive measures of the sale and sexual exploitation of children.
- The World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996, adopted the Declaration and Agenda for Action of the World Congress against Commercial Sexual Exploitation.
- The 87<sup>th</sup> International Labour Conference, held in 1996, adopted the Resolution Concerning the Elimination of Child Labour.
- The International Conference on Child Labour, held in Oslo in 1997, adopted the Agenda for Action of the Oslo International Conference on Child Labour.
- The Conference on Child Labour, which was co-sponsored by the Government of the Netherlands and the ILO, held in Amsterdam in 1997, focused on discussing the most hazardous and exploitative forms of child labour and appealed states around the world to combat for the elimination of such hazardous and exploitative forms of employment.
- The Global March Against Child Labour started in 1998, with an aim to draw attention of the international community to the implementation of the rights of the child and protection of children from economic exploitation, and passed through 107 countries to reach Geneva for the annual meeting of the ILO in June of that year. It was supported by the ILO and 1100 NGOs, trade unions and others, aimed at raising awareness about child labour and identifying ways of abolishing it. Both working and school-going children took part, standing up for the human rights of all children.
- The 87<sup>th</sup> International Labour Conference, held in Geneva in 1998, adopted the ILO's Declaration on Fundamental Principles and Rights at Work; appealed state parties to realize the four principles, one of which is to eliminate effectively child labour.
- The 90<sup>th</sup> International Labour Conference, held in Geneva in 2002, adopted the global report titled 'A Future Without Child Labour', which fully reviewed the status of child labour, the struggle for the elimination of child labour in the world and worked out solutions to promote this struggle.
- The Special Session of the UN on Children, held in New York in 2002, adopted the Declaration and Plan of Action, which continued to mention the urgent need for the protection of vulnerable children, including child workers.

The system of above-mentioned international instruments and events shows that, child labour problem draws special attention paid by many international organizations. This also preliminarily demonstrates the continuity, increasing depth and width of measures and means used by international organizations in terms of removal of child labour.

## **1.2. ILO's Labour Standards in Brief<sup>41</sup>.**

The ILO is an international organization founded in 1919. It became a specialized agency of the UN in 1945. Main objective of the ILO is to protect workers and improve working conditions in over the world<sup>42</sup>. What makes the ILO unique among international intergovernmental organizations is its tripartite nature — that is, governments, workers and employers are all represented at the annual International Labour Conferences, on the ILO Governing Body and on specialized committees<sup>43</sup>.

Originated from tripartite principle, the member states of the ILO are represented by delegates from governments and from workers' and employers' organizations, and these, through tripartite negotiation, have developed a system of international labour standards<sup>44</sup>. The system of these standards, known as the International Labour Code, made up of.....ILO's Conventions and .....ILO's Recommendations (as of May 2005)<sup>45</sup>.

The term 'ILO's labour standards' (or 'ILO's standards', 'ILO's international labour standards') which normally used in practice refers to provisions enunciated in ILO's Conventions and Recommendations<sup>46</sup>. These standards provide guidelines for national legislation and a stimulus for action on such matters as the protection and promotion of basic human rights, working conditions, social security, occupational health and safety, and so on<sup>47</sup>. Hence, these include the terms of 'ILO's standards on child labour'; 'ILO's standards on the minimum age for admission to employment' and 'ILO's standards on the elimination of the worst forms of child labour' which are also used in this study. As far as the scope is concerned, the concept of 'ILO's standards on child labour' is broader than two later since the former contains all provisions concerning the minimum age for admission to employment and the worst forms of child labour.

Although ILO's Conventions and Recommendations both provide international labour standards, there are some differences between them. Firstly, while ILO's Conventions are international treaties, ILO's Recommendations are not so the former set out binding provisions which state parties are obliged to apply in their national law and practice whereas the later set out non-binding guidelines which can only orient national policy and action<sup>48</sup>. Secondly, most of ILO's Recommendations supplement an ILO's Convention, spelling out its provisions in greater detail, except some of them cover a particular subject such as the Recommendation No.125 on Underground Work, 1965.

It should be noted that, besides the Conventions and Recommendations, there are also Resolutions and informal forms of guidance such as Codes of Practice that have been adopted by either the annual International Labour Conferences or ILO technical meetings over the years. However, those texts do not have the same character as Conventions or

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<sup>41</sup>For comprehensive information about the international labour standards, see *The International Labor Organization and Its Standards*, Booklet 1, Bureau for Workers' Activities, International Labour Office, Geneva.

<sup>42</sup>For comprehensive information about ILO's objectives, see: .....at

<sup>43</sup>See: Footnote 41, page 5. For further information about the ILO's tripartite system, see: *Trade Unions and Child Labor*, op cit, Booklet No.7, page 1-14.

<sup>44</sup>For comprehensive information about the ILO's standards setting-process, see Footnote 41, pages 4-10.

<sup>45</sup>Ibid, page 5.

<sup>46</sup>See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, pages 2-3.

<sup>47</sup>See Footnote 41, page 5.

<sup>48</sup>Ibid, pages 3-4.

Recommendations since they can never give rise to any formal reporting procedure though they do make up a vast body of social policy guidelines and are an important supplement to the international labour standards in its narrow sense. Thus, strictly speaking, the international labour standards are made up of ILO's Conventions and Recommendations only<sup>49</sup>.

### **1.3. Main ILO's Instruments Relating to Child Labour Problem.**

As mentioned above, since its inception in 1919, the ILO has spared no interrupted efforts in finding ways to deal with the problem of child labour by adopting conventions and recommendations in this regard. Among over .....conventions and recommendations adopted by the ILO since 1919, twenty-one of them directly deal with the child labour problem, including<sup>50</sup>:

- Convention No.5 on Minimum Age (Industry), 1919.
- Convention No.6 on Night Work of Young Persons (Industry), 1919
- Convention No.9 on Minimum Age (Sea), 1920
- Convention No.10 on Minimum Age (Agriculture), 1921
- Convention No.15 on Minimum Age (Trimmers and Stokers), 1921.
- Convention No.33 on Minimum Age (Non-Industrial Employment), 1932.
- Convention No.58 (Revised) on Minimum Age (Sea), 1936.
- Convention No.59 (Revised) on Minimum Age (Industry), 1937.
- Convention No.60 (Revised) on Minimum Age (Non-Industrial Employment), 1937.
- Convention No.77 on Medical Examination of Young Persons (Industry), 1946.
- Convention No.78 on Medical Examination of Young Persons (Non-Industrial Occupations), 1946.
- Convention No.79 on Night Work of Young Persons (Non-Industrial Occupations), 1946.
- Convention No.90 (Revised) on Night Work of Young Persons (Industry), 1948.
- Convention No.112 on Minimum Age (Fishermen), 1959.
- Convention No.123 on Minimum Age (Underground Work), 1965.
- Convention No.124 on Medical Examination of Young Persons (Underground Work), 1965.
- Recommendation No.125 on Underground Work,1965.
- Convention No.138 on Minimum age for admission to employment and its attached R.146 (both of them adopted in 1973).
- Convention No.182 on the Elimination of the Worst Forms of Child Labour and its attached Recommendation No.190 (both of them adopted in 1999).

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<sup>49</sup>Ibid, page 4.

<sup>50</sup>See also: *A Future Without Child Labor*, op cit, pages 7-9 and *Trade Unions and Child Labor*, op cit, Booklet No.6, pages 10-12.

The above-listed ILO's instruments approach the solutions to the problem of child labour on five major following directions: (1) Providing minimum age for admission to employment; (2) Prohibiting employment of children in night work; (3) Providing health condition and examination for young workers in some types of work; (4) Providing conditions for the employment children in underground work; and (5) Immediate prohibiting and eliminating the worst forms of child labour. Among these approaches, the first and the last ones play the leading role. Consequently, the most important ILO's instruments relating to elimination of child labour are C.138, C.182 and their implement R.146, R.190. These instruments are thoroughly examined hereinunder.

#### **1.4. ILO's International Programme on the Elimination of Child Labour (IPEC)<sup>51</sup>.**

This global programme of action launched by the ILO since 1992 is designed to assist state parties to enhance capacity in regulating the child labour problem, approaching to the gradual removal of child labour. The programme is now being joined by more than 60 countries.

Strictly observing the rational and aims of action of the ILO, the IPEC focuses on all three target groups which are governments, employers' and workers' organizations. Still, the IPEC also places importance on mobilizing, assisting communities, schools, parents and mass media to participate in preventing and eradicating child labour.

Matters concerning the child labour problem dealt with by the IPEC include: exploitative, hazardous work; forced labour or work in vulnerable conditions; girl child workers and under-twelve child workers.

The following steps and peculiar activities are frequently undertaken by the IPEC in cooperation with states concerning the child labour problem:

- Measuring, analyzing the status of child labour and identifying target groups necessarily given priority and assistance.
- Based on analysis of and measuring the situation, assisting in formulating the national plan of action with regard to the eradication of child labour, in which it is necessary to establish appropriate and effective strategies, objectives and measures of action, as well as to allocate responsibility, project finance and adequate time for activities in compliance with international standards and practices.
- Establishing and consolidating synchronic viewpoints and action between actors involved in the implementation of the national plan of action.
- Initiating the implementation of the designed national plans of action.
- Monitoring, measuring the impacts of national action plans.

Action strategies constantly implemented by the IPEC include:

- Intervening directly in order to protect or withdraw children out of dangerous and hazardous work, and help them gain physical and mental recovery.

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<sup>51</sup>For further related information, see: <http://www.ilo.org/public/english/standards/ipec/index.htm>. See also: *A Future Without Child Labor*, op cit, pages 115-123.

Besides the IPEC, there is a programme launched by the UN Commission on Human Rights in 1993 with a view to coordinate action between agencies and functional organs of the UN in the struggle for the elimination of child labour. This Programme focuses on the eradication of the worst and most degrading forms of child labour exploitation, especially child sale, child prostitution, use of children for pornography or in hazardous work, begging, debt bondage as well as for illegal activities such as drug smuggling or child recruitment in armed forces. For further information, see also: *Action Against Child Labour*, op cit.

- Promoting mechanisms concerning the child labour elimination. This is demonstrated through a series of such matters as: providing assistance in formulating or amending, perfecting a system of national policies and legal documents concerned in accordance with international standards and practices with regard to the child labour problem; assisting in improving capacity (human, material resources) of participating agencies and organizations; assisting in incorporating the elimination of child labour into national economic and social programmes; educating and propagandizing to raise awareness of the public concerning child labour problem.

## **II.2. ILO's Standards on Minimum Age for Admission to Employment or Work.**

### **2.1. Background and Key Points of C.138<sup>52</sup>.**

#### *2.1.1. Background.*

Historically, right after its inception, the ILO paid attention to the protection of child workers by age provisions. One of the very first conventions, which is C.5 concerning the minimum age (in industry) was adopted by the ILO in 1919. Subsequently, the ILO has adopted numerous conventions dealing with the issue of minimum age for admission to employment in different labour branches and services. As mentioned in the list above, in the eve of the promulgation of C.138, there have been more than ten ILO's Conventions and Recommendations provided minimum ages for admission to employment, including Conventions No.5, 7, 10, 15, 33, 58, 59, 60, 112 and 123<sup>53</sup>. These conventions have for a long time served as a legal framework for the protection of children working at early age from exploitation. However, there are too many conventions dealing with the same topic of age for participation in labour relations while each of them touches upon a certain branch or service. This situation in fact has exerted in difficulties in disseminating and implementing those provisions in state parties.

In order to deal with that problem, in 1973, the ILO approved a recommendation to formulate a single convention concerning the minimum age for admission to employment or work, which is designed to gradually replace above-mentioned preceding conventions, making it favorable for the prevention and complete removal of child labour in the world<sup>54</sup>. As a result, C.138 (that is known in short as the Minimum Age Convention) was adopted at the 58<sup>th</sup> International Labour Conference on 26<sup>th</sup> June 1973.

#### *2.1.2. Key Points*

Based on the contents of C.138, it is likely to work out the key points of this Convention as follows<sup>55</sup>:

- The Convention applies to all sectors of economic activity, to all children when they are employed for wages and also if they are "self-employed". However, it does not apply to general, vocational or technical work done in schools or training institutions. It also may not apply to young people over the age of 14 employed in approved and regulated apprenticeships and training programmes.
- State Parties are obliged to pursue a national policy to ensure the effective abolition of child labour as well as to declare a national minimum age for admission to employment or work.

<sup>52</sup>See also: *Child Labor: Targeting the Intolerable*, op cit, page 19 and *Child Labor in Domestic Service*, op cit, pages 58-60.

<sup>53</sup>For more information about these instruments, see: *Trade Unions and Child Labor*, op cit, Booklet No.6, pages 10-11.

<sup>54</sup>See: C.138, the Preamble.

<sup>55</sup>See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, page 12 and *Child Labor: Targeting the Intolerable*, op cit, page 19.

- A principle established that in normal circumstances, the minimum age for entry into work shall be 15 years and not less than the age of compulsory schooling. Developing countries whose economy and educational facilities are not sufficiently developed may set an initial minimum age of 14 years but should be progressively raise it.
- A minimum of 18 years is set for any work considered hazardous. This may be reduced to 16 years if young people are properly protected from such dangers and are being offered specific instruction or training.
- Young people aged 13 years and over may be employed in certain light work those are not harmful to their health and do not affect their attendance and performance at school or training courses. In developing countries, this provision may apply to young people aged 12 years and over.
  - For some special work such as performance arts, it is allowable to employ children ageing lower than any above-mentioned minimum ages provided that the relevant strict requirements have met before.
  - All necessary measures, including appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the Convention.

The aforementioned key points are examined hereunder.

## **2.2. Minimum Ages for Admission to Employment or Work <sup>56</sup>.**

Attributed to the variety of work as well as socio-economic conditions in state parties, C.138 initiates different levels of minimum ages.

In order to go into details, from the point of view of applicable circumstances, it is likely to divide the minimum ages into such three main categories as:

- (1) *Minimum ages applicable to normal circumstances*<sup>57</sup>;
- (2) *Minimum ages applicable to where economic development and educational facilities are insufficiently developed*<sup>58</sup> and;
- (3) *'Exceptional' ages.*

From the point of view of applicable employment or work, it is likely to divide the minimum ages into such three main categories as:

- (a) *Minimum ages applicable to hazardous work;*
- (b) *Minimum ages applicable to light work;* and
- (c) *General' minimum ages applicable to the work not belong to either hazardous work and light work.*

### *2.2.1. Minimum Ages Applicable to Normal Circumstances.*

These minimum ages are considered as a legal framework for admission to employment or work in state parties whose economic development and educational facilities are sufficiently developed for carrying out the state's responsibilities stipulated in C.138. The state parties which under this condition are classified as 'in the normal circumstances'. It can assume that, *inter alia*, the developed state parties surely belong to this category.

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<sup>56</sup>To understand more clearly about the provisions related to minimum ages in C.138, see *Table 10* hereunder.

<sup>57</sup>See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, page 13.

<sup>58</sup>Ibid, page 13.

According to C.138, there are three minimum ages applicable to three types of employment or work in the normal circumstances, including:

**+At least from the age of 15 or more and no less than the age provided for the completion of compulsory schooling** (Article 2(3) of C.138):

In order to distinguish it from other minimum ages, it is likely to call this as 'general' minimum age<sup>59</sup>. In relations with minimum ages applicable to hazardous and light work those are examined hereunder, the *general minimum age* is devoted for work those are not belong to either hazardous or light work.

R.146 urges the state parties in which the general minimum age is still below 15 years should take urgent steps to raise it to the level of 15 years (paragraph 7(2)). What's more, it recommends state parties in which the general minimum age is already at 15 years to raise to 16 (paragraph 7(1)). The Recommendation also calls for the general minimum age to be fixed at the same level for all sectors of economic activity (paragraph 6). In paragraph 8, it shows the excessive interest in the issue of child labour in agriculture and rural areas by recommending that, where it is not immediately feasible to fix a general minimum age for all employment or work in agriculture and in related activities in rural areas, it should be fixed at least for employment or work on plantations and in the other agricultural undertakings referred in Article 5(3) of C.138<sup>60</sup>.

**+At least from the age of 13, or 15 but compulsory schooling not yet completed for light work:**

According to Article 7 of C.138, this is the minimum age at which children are employable or admissible for *light work*<sup>61</sup>. There has not been a common established definition of the *light work*, but it is somewhat understandable the meaning of this term by examining the Article 7 (1,2) of C.138, in which stipulates that *the work should be of nature or done in the conditions not likely to be harmful to the health, development, schooling, vocational training and other educational opportunities of children*. More specifically, in pursuance to R. 41 (adopted by the ILO in 1932), the concept of *light work* may be illustrated through such examples as: *trivial work* (post-man, cigarettes buyer, etc...); *newspapers distributor*; *sports or recreation related activities servers* (ball picker, clothes or equipment keeper, etc...); *fruits or flowers sellers*, etc...

In order to avoid the improper implementation of minimum age for light work, Article 7 (3) also provides that state parties are obliged to prescribe the such work in their respective national laws and clearly determine the number of working hours and conditions in which such employment or work may be undertaken.

**+At least from the age of 18 for hazardous work:**

Article 3(1) of C.138 provides that for *hazardous work* (work which by its nature or circumstances in which it is carried out is likely to jeopardize the health, safety or morals of children) the minimum age for admission shall not be less than 18<sup>62</sup>.

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<sup>59</sup>See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, page 13.

<sup>60</sup>This provision, that hereunder mentioned, provides the minimum list of employment and work to which C.138 must be applied by state parties. Among which is plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

<sup>61</sup>See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, page 13.

<sup>62</sup>For further analysis of hazardous work, see: *Child Labor: Targeting the Intolerable*, op cit, pages 9-12. See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, page 13.

Since this provision refers to work 'likely' to jeopardize the safety, health or morals of young persons and not only work which is recognized as having that effect, it is necessary to examine both the nature of the work and the circumstances in which it is carried out<sup>63</sup>. That is to say, certain types of activities which are not in themselves hazardous may become so in certain circumstances, and the competent authorities are to take this into account<sup>64</sup>.

According to the Article 3(2), the types of hazardous work shall be determined by national laws or regulations or by the competent authority. That means the Convention leaves it to the individual countries to determine the content of these activities. However, as provided in this paragraph, whatever the method chosen, it is required that a determination be made, and for this purpose prior consultations must be held with the organizations of employers and workers concerned, if they exist in the country<sup>65</sup>.

R.146 (paragraph 9) urges state parties upon their admission to C.138 remaining the minimum age for admission to hazardous work less than 18 to promptly lift such age up to 18. Paragraph 10 recommends that, in determining the types of hazardous work, full account should be taken of relevant international labour standards, such as those concerning dangerous substances, agents or processes (including ionising radiations), the lifting of heavy weights and underground work. The list of the types of hazardous work should be re-examined periodically and revised as necessary, particularly in the light of advancing scientific and technological knowledge. In addition to that, according to the paragraph 11, state parties by which minimum age are not yet provided for certain economic sectors or enterprises, are required to put in practice provisions concerning the minimum age appropriate for work likely to be harmful to young persons.

Although the provision of hazardous work seems to be strict, it is somewhat flexible. According to Article 3(3) of C.138, notwithstanding the provisions of paragraph 1 of this article which provides that the minimum age for admission to *hazardous work* shall not be less than 18, state parties, after consultation with the organisations of employers and workers concerned, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

### *2.2.2. Minimum Ages Applicable to Where Economic Development and Educational Facilities Insufficiently Developed.*

Corresponding to the general minimum age and minimum age for light work applicable to normal circumstances are those applicable to state parties which economic development and educational facilities are insufficiently developed. It can assume that, only developing countries belong to this category.

#### **+General minimum age can be reduced to at least from the age of 14:**

According to Article 2 (4,5) of C.138, should economic and educational conditions of state parties are inadequately developed to admit the age of 15 (general minimum age applicable to normal circumstances), they may deduct this minimum age to 14 after consultation with the organizations of employers and employees concerned, as well as making sure that the reason for applying such provisions and the desired time for termination of admitting this minimum age shall be included in annual reports submitted to the ILO.

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<sup>63</sup>See: *Child Labor: Targeting the Intolerable*, op cit, page 20.

<sup>64</sup>Ibid, page 20.

<sup>65</sup>Ibid, page 20.



***+Minimum age for light work can be reduced to at least from the age of 12, or 14 but compulsory educational level not yet completed:***

As the Article 7(4) of C.138 goes, as long as the conditions mentioned in Article 2 (4,5) of the Convention continue, state parties may recruit or permit children, who are of ages from 12, or 14 but not yet complete the compulsory educational level, to be admitted to light work. As a rule of the thumb, in admitting these flexible ages, state parties are required to prescribe such work in their national laws, number of hours during which such work is undertaken, as well as conditions for recruitment or employment.

As far as the application period is concerned, in the spirit of C.138 and R.146, it is possible to assume that the minimum ages applicable to where economic development and educational facilities insufficiently developed are not permanent, but only admitted for a certain period. In addition to that, these minimum ages shall be applied with attached strict conditions among which states concerned are required to keep constant alert of lifting this age up to the minimum ages applicable in normal circumstances as long as it is permissible.

Also, it should be noted that, regarding to minimum age for hazardous work, according to Article 3 of C.138, there is not any exception based on the applicable circumstances. In other words, every country, whether under normal or insufficiently developed circumstances, is obliged to provide the minimum age of 18 for work which by its nature or circumstances in which it is carried out is likely to jeopardize the health, safety or morals of children as well as is allowable to deduct this age to 16 years if young people are properly protected from such dangers and are being offered specific instruction or training.

**2.2.3. 'Exceptional' Age.**

Besides the aforementioned minimum ages, according to Article 8 of C.138, state parties may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

This means that it is likely to recruit or permit children to be admitted to some special work at the age lower than any above-mentioned minimum ages.

However, as provided in Article 8, the prescription of the 'exceptional' ages must also be followed by strict conditions. Firstly, consultation with the organizations of employers and workers must be previously held. Secondly, permission papers granted to such 'exceptional' cases should clearly point out the number of hours within which and circumstances in which such work is undertaken.

**2.3. Scope of Application.**

*+With regard to the territorial aspect:* Article 2(1) of C.138 provides that, in a declaration appended to their ratification, state parties shall specify minimum age for admission to employment within their territories and on means of transport registered in their territories. It means that, provisions concerning minimum age for admission to employment shall be synchronically applied over the territories of state parties upon C.138's entry into force.

*+In respect of the sectoral, occupational area:* It is also provided in the Article 2(1) that each state parties shall have to guarantee 'no one under the minimum age shall be admitted to employment in any occupation'. As supplemented in R.146 (paragraph 6), minimum age must be established uniformly in all economic sectors. That means, in principle, C.138 shall be applied to all economic sectors and occupations, regardless it is contracted or non-

contracted work, self-employment or employment for wage-earning, paid or unpaid work, domestic or extra-domestic work<sup>66</sup>.

However, there are some exclusions of application of C.138 which based on characteristics of some working circumstances and factual potential of state parties in the pursuance of implementation of the Convention.

For the first cause, according to Article 6 of C.138, this Convention shall not apply to the following circumstances: (a) Work under educational, vocational training or technical programs for children and young persons in schools for general, vocational or technical education; (b) Work done by children from at least 14 years of age, which is carried out in accordance with vocational training programs in the context of enterprises.

For the second cause, according to Article 4(1), as long as it is necessary, state parties may decide to exclude some specific work from the application of the Convention limited categories if employments or work in respect of which special and substantial problems of application arise. The types of work those may be excluded include: servicing, domestic work, household business or others that are not considered as paid work. However, as also provided in Article 4(1), before coming up with such decision, state parties are required to hold consultation with the organizations of employers and workers concerned; and, according to Article 4(2), state parties shall list in their first report on the application of the Convention submitted to the ILO any categories which may have been excluded in pursuance of paragraph 1, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories. Article 4(3) set another condition is, the hazardous work provided in Article 3 shall not include in the list of exclusions from application.

In addition to that, according to Article 5(1,2), state parties those are of insufficient development in economic conditions and management may initially limit the scope of application of this Convention to some specific branches of economic activity or types of undertakings after consultation with the organizations of the employers and workers concerned. A statement naming these branches of economic activity or types of undertakings shall be attached to the country communication of ratification of the Convention. Article 5(4) provides that it is an obligation for the concerned state parties to state clearly in their annual country reports to the ILO the master situation of young persons working in, as well as any development trend towards the broadening the scope of application of the Convention to the sanctioned branches of economic activity or types of undertakings.

Notwithstanding, according to Article 5(3) of C.138, in the above-mentioned situation, the scope of application of the Convention shall at least cover: *mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; plantations and other agricultural undertakings mainly producing for commercial purposes* (but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers).






It should be noted that, there is a difference between the exclusion towards special working circumstances and those towards implemental potential of state parties. Specifically, while the former is applicable to every state parties, the latter is only applicable to developing countries those are of insufficient development in economic conditions and management<sup>67</sup>.

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<sup>66</sup>See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, page 12 and *Child Labor: Targeting the Intolerable*, op cit, page 19.

<sup>67</sup>See: *Child Labor: Targeting the Intolerable*, op cit, page 21.

**Table 10. Minimum Ages for Admission to Employment in Accordance with C.138**

<b>Minimum Ages Applicable to Normal Circumstances</b>		
<b>18</b> or <b>16</b> (if protected and under training)	<b>15</b> (but not less than the compulsory school age)	<b>13</b> or <b>15</b> (but not yet completed the compulsory school age)
		
<b>Minimum Age for Hazardous Work</b> (Work which by its nature or circumstances in which it is carried out is likely to jeopardize the health, safety or morals of children)	<b>General Minimum Age</b> (For work which do not belong to either hazardous or light work)	<b>Minimum Age for Light Work</b> (Work which by its nature or circumstances in which it is carried out is unharmed to health, safety, dignity, morals, schooling or vocational training opportunities of children)
<b>Minimum Ages Applicable to Where Economic Development And Educational Facilities Are Insufficiently Developed</b>		
<b>18</b> or <b>16</b> (if protected and under training)	<b>14</b>	<b>12</b> or <b>14</b> (but not yet completed the compulsory schooling)
		
<p><i>The age of 16 only applied after:</i></p> <ul style="list-style-type: none"> <li>◆ consulting with the organizations of employers and employees concerned.</li> <li>◆ ensuring necessary measures to protect the safety and morals as well as giving peculiar and adequate instructions or initiating vocational training programs appropriate for children.</li> </ul>	<p><i>Only applied if after:</i></p> <ul style="list-style-type: none"> <li>◆ economic and educational conditions are inadequately developed to admit minimum 'general' ages.</li> <li>◆ consulting with the organizations of employers and employees concerned</li> <li>◆ clarifying the reasons for applying and the desired time for termination of admitting these minimum ages (then include them in annual reports submitting to the ILO).</li> </ul>	
<b>'Exclusive' Ages</b>		
<ul style="list-style-type: none"> <li>▪ lower than any above-mentioned minimum ages.</li> <li>▪ only for some special work by which children must and can be admitted to employment at early age such as performance arts.</li> <li>▪ consultation with the organizations of employers and employees concerned before permission is required.</li> <li>▪ number of hours within which and circumstances in which the work is undertaken must be clearly pointed out.</li> </ul>		

## **2.4.Enforcement of the Convention.**

Since C.138 is an international treaty, its state parties are obliged to put the Convention in force.

With regard to obligations of state parties of C.138, the focus is paid on national policy for abolition of child labor and enforcement measures.

### *2.4.1.National Policy for Abolition of Child Labor.*

As provided in Article 1 of C.138, each state party shall undertake to pursue a national policy designed to ensure the effective abolition of child labour.

As supplemented in Paragraph 1 of R.146, to ensure the success of such national policy, high priority should be given to planning for and meeting the needs of children and youth in national development policies and programmes and to the progressive extension of the inter-related measures necessary to provide the best possible conditions of physical and mental growth for children and young persons.

Paragraph 2 concretizes areas which should be given special attention by state parties when building national policy, including: (a) promotion of full employment<sup>68</sup> and employment-oriented, especially in rural and urban areas; (b) alleviation of poverty and promotion of family living standards and income; (c) development and progressive extension of social security and family welfare measures, including children's allowances; (d) development and progressive extension of adequate facilities for education and vocational orientation and training appropriate to the needs of the children and young persons; (e) the development and progressive extension of appropriate facilities for the protection, welfare and development of children and young persons.

Paragraph 3 urges state parties to take account of the needs of children and young persons who do not have families or do not live with their own families and of migrant children and young persons who live and travel with their families in national policy. It also suggests that, measures taken to that end should include the provision of fellowships and vocational training.

Paragraphs 4 and 5 emphasises the importance of education and vocational training in national policy. As recommended in Paragraph 4, in national policy, full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively ensured up to an age at least equal to general minimum age that provided in Article 2 of C.138. Paragraph 5 supplements that, consideration should be given to preparatory trainings such as for hazardous work provided in Article 3 of C.138 to ensure that the trainees' age is higher than the age of completion of compulsory full-time schooling and they are properly protected from dangers.

### *2.5.2.Necessary Measures to Ensure the Enforcement of the Convention.*

As defined in Article 9 of C.138, state parties is obliged to take all necessary measures, including appropriate penalties, to ensure the effective enforcement of the Convention. Some specific measures are mentioned in Paragraphs 2 and 3 of this Article, including: (a) defining the persons responsible for compliance with the provisions giving effect to the Convention and (b) prescribing the registers or other documents on child workers which shall be kept and made available by the employer.

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<sup>68</sup>Regarding issue of promotion of employment, the reference suggested in R.146 is the ILO's Employment Policy Convention and Recommendation in 1964.

Paragraph 14 of R.146 supplements that, measures to ensure the enforcement provided in Article 9 of C.138 should include strengthening of labour inspection and services for the improvement and inspection of training activities in businesses and enterprises. This Paragraph emphasises the importance of labour inspection and the role of labour inspectors in combating against child labor by urging state parties to conduct special training courses for and supply labour inspectors with necessary information and advice. It also reminds state parties to take account of coordinating and cooperating between institutions being in charge of inspection and administration in terms of labour and training.

With regard to verification of minimum ages, Paragraph 16 suggests specific measures to facilitate that end. These measures include, *inter alia*, establishing an effective system of birth registration (which should include the issuance of birth certificates) and issuing licences or other documents to children and young persons working in streets, in outside stalls, in public places, in itinerant occupations or in other circumstances which make the checking of labour records impracticable, etc..

Paragraph 15 of R.146 raises matters to which state parties should pay special attention to enforce C.138, including enforcement of provisions concerning employment in hazardous work and prevention of the employment of children and young persons to work during the hours of schooling or vocational training in accordance with the compulsory programme.

More specifically, Paragraphs 12 and 13 concretize requirements relating to conditions of employment of juvenile workers (which have been somewhat examined in part 2.2). As suggested in Paragraph 12, state parties should take measures to ensure that children under the age of 18 are employed or given vocational and technical training in adequate conditions of employment which should be closely supervised. Paragraph 13 of R.146 enumerates important aspects to which state parties should pay special attention in order to reach that end, including: (a) Fair remuneration, in principle of equal pay for equal work<sup>69</sup>; (b) Strict limitation of the hours spent at work in a day and in a week and prohibition of overtime work (c) Provision of a minimum consecutive period of 12 hours for night rest and of customary weekly rest days, including in case of genuine emergency; (d) Ensuring an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults; (e) Ensuring social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be; (f) Maintenance of adequate standards of safety and health, under appropriate instruction and supervision.

## **2.5. Significance of C.138: Concluding Remarks.**

C.138 is considered as the most comprehensive ILO's instrument on child labour<sup>70</sup>. It is a consolidation of principles that had been gradually established in various earlier instruments and applied to all sectors of economic activity, whether or not the children are employed for wages. Supplementing to C.138, R. 46 provides the broad framework and essential policy measures for both the prevention of child labour and its elimination<sup>71</sup>.

In terms of approach, C.138 is flexible since it was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives<sup>72</sup>. However, the Convention contributes a significant part to establish fundamental principles and rights at work which are reaffirmed in the 1998 ILO's Declaration on

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<sup>69</sup>As provided in the Article 7(3), this provision is also applied for young sailors where at the time they do not benefit from the same provisions enunciated in conventions and recommendations concerning the maritime industry.

<sup>70</sup>See: *Child Labor: Targeting the Intolerable*, op cit, page 19.

<sup>71</sup>Ibid, page 19.

<sup>72</sup>See: *Child Labor: Targeting the Intolerable*, op cit, page 19.

Fundamental Principles and Rights at Work<sup>73</sup> and recent ministerial-level Declarations made by WTO. Thus, this Convention is a component part of regulations of international commercial relation<sup>74</sup>.

Presently, C.138 constitutes one of the eight fundamental Conventions of the ILO<sup>75</sup>. This Convention is one of the central targets in the activities launched by the ILO annually with a view to mobilize states to accede to it. Up to this day, C.138 has admitted 141 countries as its state parties<sup>76</sup>.

## **II.3. ILO's Standards on Elimination of the Worst Forms of Child Labour.**

### **3.1. Background and Key Points of C. 182.**

#### *3.1.1. Background.*

Despite the growing number of state parties of C.138, the fact remains that the worst forms of child labour are increasing in the world<sup>77</sup>. It is likely to explain this situation by focusing on the strategy for dealing with the problem of child labour established in C.138. Although this Convention launches a comprehensive approach to deal with the problem of child labour; it does not sets forth concrete steps towards the full eradication of all forms of child labour in which elimination of the worst forms should be considered as a matter of priority.

In the meantime, as mentioned before, child labour is an extensive and complicated problem that is connected to political, economic, cultural and social areas, especially is closely associated with poverty and underdevelopment. Therefore, it is impossible to eradicate this problem within a short period of time. Instead of that, it is well-grounded that there is a necessity to set forth appropriate steps to gradually deal with the problem by giving priority to the elimination of the worst forms of child labour – the circumstances in which the survival, full development of children are being seriously impacted, as well as the urgent necessity of human rights of children should be considered.

The increase in worst form of child labour naturally demanded an urgent treatment that was clearly explained at the 87<sup>th</sup> International Labour Conference in 1999: “The world community was calling for an end to the intolerable: the persistent exploitation of children in slave-like and bonded conditions, in hazardous and hazardous work, in prostitution, pornography and other unspeakable situations”<sup>78</sup>. In this context, there arose the movement for a new convention which led to the draft of C.182. The Convention was adopted unanimously in 1999 - a reflection of the widely held view that something must be done to put a stop to the intolerable forms of child labour and since then there has been a record breaking number of

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<sup>73</sup>Article 2 of this Declaration provides four principles concerning the fundamental rights at work, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) *the effective abolition of child labour*; and
- (d) the elimination of discrimination in respect of employment and occupation.

See the text of this Declaration in *A Future Without Child Labor*, op cit, pages 128-129 or *Trade Unions and Child Labor*, op cit, Booklet No.6, pages 6-7.

<sup>74</sup>For further information about the relations between child labor and international commerce, see: *Child Labor: Targeting the Intolerable*, op cit, pages 6-7.

<sup>75</sup>Excluding C.138, the others include: C.182, C. 29 and C. 105 (on Forced Labour), C. 87 and C. 98 (on Freedom of Association and Collective Bargaining), C. 100 and C.111 (on Against Discrimination in Employment). For further related information, see also: *Trade Unions and Child Labor*, op cit, Booklet No.6, pages 3-5.

<sup>76</sup>Source: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

<sup>77</sup>For further related information, see: Report VI (1), Child Labour, The 87<sup>th</sup> International Labour Conference, 1999. See also *Trade Unions and Child Labor*, op cit, Booklet No.6, pages 12-13.

<sup>78</sup>Source: Report VI (1), Child Labour, op sit.

ratifications. It came into force on November 19, 2000 and to date; there have been ....state parties<sup>79</sup>.

Although C.182 also deals with the problem of child labour, it is not supposed to make any revision, change or effect to the ratification and implementation of C.138 that keeps playing a cornerstone in this field. The adoption of C.182 is aimed at supplementing C.138, making available another international legal instrument to promote new efforts in the eradication of child labour by giving priority to the removal of its worst forms<sup>80</sup>. It seems that, the international debate on child labour which C.182 aroused has made a resurgence of C.138 while the ratification of this Convention is increasing steadily. Thus, in some cases, a country's accession to C.182 can be considered as the first step towards the accession to C.138 as well<sup>81</sup>.

### 3.1.2.Key Points.

Based on its contents, it is likely to work out the key points of C.182 as follows<sup>82</sup>:

- The term *child* is defined as the same as that in CRC (person being under 18 years old).
- The worst forms of child labour are defined such specific activities as: all forms of slavery, prostitution, using children in pornography and drug production and trafficking.
- Work which is likely to harm the health, safety or morals of children (hazardous work) also constitute the worst forms of child labour. The detailed list of hazardous work is drawn up by governments, in consultation with workers' and employers' organizations.
- States parties must: (i) take immediate and effective action to eliminate the worst forms of child labour; (ii) establish appropriate mechanisms to monitor the implementation of the Convention; (iii) design national programmes of action to eliminate as a priority the worst forms of child labour; (iv) take all necessary measures to ensure the effective implementation and enforcement of the Convention (v) take part in enhanced international cooperation and/or assistance.

The aforementioned key points are examined hereunder.

### 3.2. The worst forms of child labour.

Article 3 of C.182 refers to the worst forms of child labour as follows:

- (a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performance;
- (c) 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

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<sup>79</sup>Source:

<sup>80</sup>See: *C182 Worst Forms of Child Labour Convention, 1999*, Preamble, paragraph 3. See also: *Trade Union Briefing on Convention 182*, op cit, page 4 and *Trade Unions and Child Labor*, op cit, Booklet No.6, page 14.

<sup>81</sup>See: *Trade Union Briefing on Convention 182*, op cit, page 4. See also: *Frequently Asked Questions about Convention No. 182 and Recommendation No. 190 on the Worst Forms of Child Labour*, ILO, at.....

<sup>82</sup>See also: *Trade Unions and Child Labor*, op cit, Booklet No.6, pages 15-16.

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

In fact, almost specific worst forms of child labour named in items (a,b,c) have been prescribed in some other international human rights treaties, including those adopted by the ILO. As a result, it is necessary for state parties to examine the related provisions of those treaties in order to identify them among different forms of child labour.

Specifically, with regards to *all forms of slavery or practices similar to slavery* stipulated in the item (a), it should refer to the *UN Supplementary Convention on the Abolition of Slavery* (adopted by the UN General Assembly in 1956), which pays attention to situations in which children are delivered into total dependency on their employer. Also, *C.29 on forced labour* (adopted by the ILO in 1930), which applies to all persons concerns forced labour regardless of their age, should be considered as the primary references. Both of those conventions are recalled in the Preamble of C.182<sup>83</sup>.

For the worst form of compulsory recruitment of children for use in armed conflict, the *Optional Protocol to CRC on the Involvement of Children in Armed Conflicts* (adopted by the UN General Assembly in 2001) should be examined. Meanwhile, its twin brother (*the Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography*) should be a reference of that provided in the item (b) (the worst forms of child prostitution and child pornography). For those provided in both items (a, b), the *UN Convention against Trans-National Organized Crime* (adopted by the UN General Assembly in 2000) and two its supplement Protocols should also be referred.

With regard to those of item (c), it should be noted that, tobacco is not considered as a kind of drugs banned in any relevant international treaties. For the reference of this item, the Convention.....is/are recommended.

Apart from the worst forms mentioned in the items (a,b,c), those mentioned in the item (d) (normally called *hazardous work*) are not yet named in Article 3 of C.138. They will separately be examined in the following part.

### **3.3. Hazardous Work.**

According to Article 4(1) of C.182, hazardous work shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned and taking into consideration relevant international standards, in particular paragraphs 3 and 4 of R.190. Article 4 (2,3) adds that, the competent authority of the country shall identify where the types of work exist and periodically examine and revise the list of the types of work if necessary. These actions shall be undertaken in consultation with the organisations of employers and workers concerned.

The term of "*relevant international standards*" mentioned in Article 4(1) has a very broad meaning so it is too numerous to list. However, it would include, for example, ILO's standards concerning toxic substances, dangerous processes, heavy weight, night work, etc<sup>84</sup> ...

In fact, almost all aforementioned factors have been named in Paragraph 3 of R.190, which is emphasized in Article 4(1) of C.182 as one of two primary references to be taken in consideration when determining hazardous work. This Paragraph provides minimum criteria

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<sup>83</sup>See the Preamble of C.182, paragraph 10.

<sup>84</sup>See: *Frequently Asked Questions about Convention No. 182 and Recommendation No. 190 on the Worst Forms of Child Labour*, op cit, questions relating to articles 3 and 4.



to which in determining the types of hazardous work and in identifying where such work exist, consideration should be given. Those criteria, *inter alia*, include the followings:

- ◆ Work which exposes children to physical, psychological or sexual abuse;
- ◆ Work underground, underwater, at dangerous heights or in confined spaces.
- ◆ Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport or heavy loads;
- ◆ Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to the health of children.
- ◆ Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Obviously, Paragraph 3 of R.190 is of paramount importance to state parties since it lists hazards which should be considered *as a minimum* when determining any type of work referred to under Article 3(d) of C.182<sup>85</sup>. However, since this Paragraph merely draw up the minimum list of hazards but not provide the details so in order to determine and identify where hazardous work exist as well as periodically examine and revise the list of the types of work, state parties should engage their officers with health and safety knowledge and expertise in preparing a list of occupations in which such hazards exist. One possible way to collect related information would be to draft and circulate a questionnaire based on above-mentioned criteria and to follow up with national workshops to engage mass organizations, especially those of employers and workers closely in the process<sup>86</sup>. During this process, since there is not any ‘restricted area’ for hazardous work in practice so attention should be paid to both formal and informal economic sectors<sup>87</sup>.

In comparison with C.138 and R.146, it should be noted that, Article 3 of C.138 also refers to work which is likely to jeopardize the health and safety of children which then mentioned in Article 3 (d) of C.182. There is an inappreciable defference between two conventions relating to definition of hazardous work. While Article 3(1) of C.138 mentions the employment or work which ... "*is likely to jeopardize the health, safety or morals of young persons*", Article 3(d) of C.182 defines "*work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children*". Consequently, we can say that C. 182 codifies, by defining them, the worst forms of child labour<sup>88</sup>.

However, the C.182 and R.190’s “added value” is here that while C.138 and R.146 only describes the general types of work that may or may not be performed by people under the age of 18 among which hazardous work is prohibited, C.182 and R.190 provide clear descriptions of types of work or working conditions which, as a minimum, must be considered as hazardous<sup>89</sup>.

### **3.4. Children’s Age in Context of the Worst Forms of Child Labour.**

Article 2 of C.182 establishes the concept of ‘a child’ on the basis of age, by which, ‘a child’ is persons who are less than 18 years of age (similar to prescription provided in Article 1 of CRC). However, it should be noted that, the age indicated in Article 2 of C.182 does not

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<sup>85</sup>See: *Trade Union Briefing on Convention 182*, op cit, page 35.

<sup>86</sup>Ibid, page 10.

<sup>87</sup>Ibid, page 36.

<sup>88</sup>Ibid, pages 8-9.

<sup>89</sup>Ibid, pages 8-9.

apply to all work performed by children, but solely to the worst forms of child labour<sup>90</sup>.

Consequently, the types of work determined in Article 3 of C.182 as such, if carried by persons ageing 18 or more, shall not be considered as the worst forms of child labour. In other words, in that case, they are naturally not subjected to the scope of regulation of C.182.

On the contrary, it is not accurate to conclude that while the types of work determined in Article 3 of C.182 carried by persons ageing fewer than 18, they are always considered as the worst forms of child labour, since there is an exception set forth in paragraph 4 of the R.190. According to this Paragraph, persons who are from the age of 16 could be employed in the types of work referred to in Article 3 (d) of C.182, provided that consultation with the organisations of employers and workers previously taken, and health, safety and morals of children are fully protected or they have been given adequate and specific instructions or vocational training in the relevant branch of activity.

It is possible to assume that the Paragraph 4 of R.190 has been imported from the little-used Article 3(3) of C.138.

Nevertheless, it should be aware this Paragraph is not a derogation from the minimum age of 18 set in C.182<sup>91</sup>. Work which is hazardous remains banned despite this paragraph. Workers from 16 can only be authorized if potential hazards are removed or, if it is impossible to remove them completely, the full protection and training have been assured. For example, it could be acceptable for a child of this age to be a carpenter's apprentice, although the tools used are potentially dangerous, as long as the safeguards were applied<sup>92</sup>.

Combining Articles 3 and 2 of C.182 with Paragraph 4 of R.190, it is likely to draw the *Table 11 hereunder* in which related conditions necessary to identify the worst forms of child labour is clarified.

### **3.5. Enforcement of the Convention.**

#### *3.5.1. Immediate Action Against the Worst Forms of Child Labour.*

According to Article 1 of C.182, state parties shall take *immediate and effective measures* to secure the prohibition and elimination of the worst forms of child labour *as a matter of urgency*.

This provision reflects the desire of the ILO for a focused instrument which would require immediate action against the worst forms as the priority in the campaign for the elimination of all forms of child labour<sup>93</sup>. That is, while C.138 envisages progressive elimination to the total abolition of child labour, C.182 requires prohibiting and taking action immediately to eliminate the worst forms of child labour, which it defines clearly, during process of dealing with child labour problem<sup>94</sup>.

In the Article 1, the term “*immediate measures*” implies an obligation with regards to the means, not to the results. In other words, this term refers not to the anticipated final result but rather to the means which must be deployed to ensure the prohibition and elimination of the worst forms of child labour<sup>95</sup>. The meaning of *measures* in this provision is broad. In principle, State Parties must, without delay, take any appropriate measures, including legal

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<sup>90</sup>Ibid, page 8.

<sup>91</sup>Ibid, page 37.

<sup>92</sup>Ibid, pages 37-38.

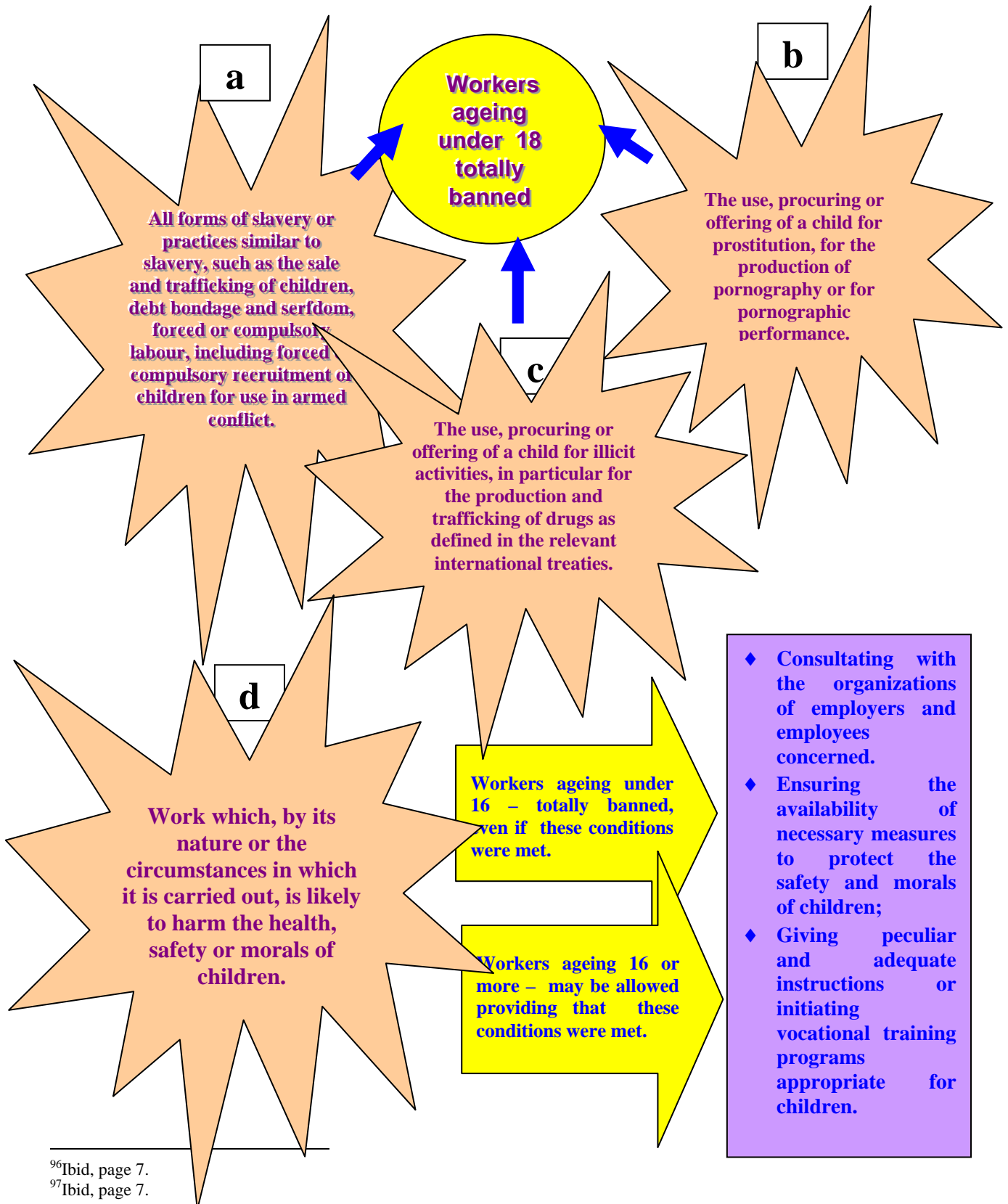
<sup>93</sup>See: Preamble of C.182 (paragraphs 3,4).

<sup>94</sup>See: *Trade Union Briefing on Convention 182*, op cit, page 7.

<sup>95</sup>Ibid, page 6.

provisions, to secure the prohibition and elimination of the worst forms of child labour<sup>96</sup>. The term “*as a matter of urgency*” underlines the necessity of rapid action in order to prohibit and eliminate the worst forms of child labour<sup>97</sup>.

**Table 11. Worst Forms of Child Labour in Accordance With C.182 and R.190**



<sup>96</sup>Ibid, page 7.

<sup>97</sup>Ibid, page 7.

### 3.5.2. *Mechanisms to Monitor the Implementation of the Convention.*

According to Article 5 of C.182, state parties shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention. This requirement is repeated in Paragraph 8 of R.190.

As was demonstrated in practice that, an effective monitoring mechanism is essential for implementation of international conventions. For C.182 as an example, it can assume that, without a monitoring mechanism, the worst forms of child labour may not be determined and eliminated.

However, for the term of '*appropriate mechanism*', there is not a common model for every state party. Practically, while many state parties already allocated responsibility for the elimination of child labour to their labour ministries or to their labour inspectorates, the others may lay such responsibility with ministries and authorities responsible for education or social services<sup>98</sup>. Nevertheless, it seems that a combined approach in which a ministry may remain the lead department of mechanism and others with an interest and competence might be included in, is the best for most cases<sup>99</sup>. Moreover, while the prime responsibility for monitoring implementation of the Convention should remain with the public authorities, the mass organizations, especially trade unions and employers' organizations should also be engaged in<sup>100</sup>.

### 3.5.3. *National Programme of Action to Eliminate the Worst Forms of Child Labour.*

As provided in Article 6 of C.182, state parties are required to design and implement programmes of action to eliminate as a priority the worst forms of child labour in consultation with relevant government institutions, trade unions and employers' organizations, taking into consideration the views of other concerned groups as appropriate.

Obviously, Article 6 highlights the need for consultation with concerned subjects in designing and implementing programmes of action. Although tripartism always lies at the heart of consultation<sup>101</sup>, this Article extends the consultation to other social partners in order to strengthen a broad social alliance in the struggle against child labour. The formulation '*in*' in this Article implies that consulted subjects should be involved in every stage of the process<sup>102</sup>.

Paragraph 2 of R.190 implements Article 6 of C.182. This Paragraph places more emphasis on formulation of national programme of action by replacing the words *a matter of urgency* on *a matter of priority*. It supplements *children and children's families directly affected by the worst forms of child labour* into subjects which should be consulted by governments in designing and implementing national programmes of action. The requirement of taking into consideration the views of *other concerned groups* in Article 6 is repeated but added *committed to the aims of the Convention and this Recommendation* into this phrase. In fact, the added phrase was a part of the amendment proposed by the worker members at the 87<sup>th</sup> International Labour Conference with the aim to make clear that the reference was to groups committed to abolishing the worst forms of child labour but not to those who campaign for children's' so-called "right to work", or propose improving children's' working conditions

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<sup>98</sup>Ibid, page 13.

<sup>99</sup>Ibid, page 13.

<sup>100</sup>Ibid, page 13.

<sup>101</sup>For comprehensive analysis of the relation between ILO's tripartite system and child labor problem, see: *Trade Unions and Child Labor*, op cit, Booklet No.7, page 1-14.

<sup>102</sup>See: *Trade Union Briefing on Convention 182*, op cit, page 14.

rather than their removal from the worst forms of child labour to education as required by C.182<sup>103</sup>.

The Paragraph also supplements the aims for national programmes of action, *inter alia*, including<sup>104</sup>: (a) identifying and denouncing the worst forms of child labour; (b) preventing the engagement of children in the worst forms of child labour or removing children from the worst forms of child labour, protecting them from reprisals (by employers) and assisting them for rehabilitation, social integration through measures which address their educational, physical and psychological needs;(c) giving special attention to such targets as: younger children, girl children, other groups of children with special vulnerabilities and needs; and to the following matters: hidden work, in which child children are at special risk; (d) identifying, reaching out to and working with communities where children are at high risk;(e) informing, sensitizing and mobilizing public opinion and other social groups concerned, including children and their families.

#### *3.5.4. Necessary Measures to Ensure the Enforcement of the Convention.*

According to Article 7(1) of C.182, state parties shall take all necessary measures to ensure the effective implementation of this Convention including penal and other sanctions. With regard to necessary measures, Paragraph 2 of this Article specially mentions to *time-bound programmes* while Paragraph 3 focuses on designating competent authorities responsible for that end.

##### *3.5.4.1. Time-bound Programme.*

As provided in Article 7(2), state parties is obliged to take effective and time-bound programmes to: (a) prevent the engagement of children in the worst forms of child labour; (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; (d) identify and reach out to children at special risk; and (e) take account of the special situation of girls.

The term of "*time-bound*" in Article 7(2) implies that, state parties is obliged to carry out immediate action with clear target-setting in the definite duration for the implementation of the Convention<sup>105</sup>. The test of reasonableness of the targets would apply; however, implementation must be secured within the shortest period possible<sup>106</sup>. Specifically, for the duration of action, while a five-year programme might be considered reasonable in some countries, a thirty-year programme would not<sup>107</sup>.

##### *3.5.4.2. Preventive, Interventional and Remedial Approaches.*

Article 7(2, a) emphasizes on *preventive* measures when firstly mentions to the target of *prevent the engagement of children in the worst forms of child labour*. It is well-grounded that, preventive action is the most effective and economical measure against child labour since it can deals with the problem at very early stage.

The Convention does not provide any specific preventive measures but given the practice, there is a long list of actions which can be used to keep children out of child labour such as providing them with education, developing campaigns to sensitize parents to the problem and

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<sup>103</sup>Ibid, page 31.

<sup>104</sup>Ibid, pages 34-36.

<sup>105</sup>Ibid, page 17.

<sup>106</sup>Ibid., page 17.

<sup>107</sup>Ibid, pages 17,18.

dangers of child labour, organizing in the workplaces as the best protection, breaking cycles of poverty and deprivation; inspecting and gathering information about enterprises which have used the worst forms of child labour or which continue to do so, etc<sup>108</sup>..

However, the preventive measure should not be considered as the unique, but as a part of a balanced time-bound programme<sup>109</sup>. As also provided in Article 7(2, a), the removal of children from the worst forms of child labour must be considered as the initial priority<sup>110</sup>. It is called as the *interventional* measure since by which children suffering the worst forms of child labour are directly delivered from such situation. It is recommended in R.190 (Section II, examined hereinunder) that, penalties should be included in the interventional measures.

Simultaneous with preventive and interventional measures, Article 7(2) mentions to *remedia* measure which is also considered as an essential approach against child labour since by which the child victims can be given rehabilitation and intergrated with commities instead of being turned back to the worst forms of child labour<sup>111</sup>.

#### 3.5.4.3. Education as a Central Element.

Like C.138, C.182 does not provide any specific types of rehabilitation, however, Article 7(2,c) of C.182 emphasizes the importance of free basic education and vocational training for all children removed from the worst forms of child labour. According to this provision, state parties is obligated to take immediate action to relief children from the worst forms of child labour and move them into education but not into other non-hazardous occupations until they are past the age at which basic education would normally be concluded<sup>112</sup>.

Education thus belongs to both the preventive and remedial measures and is considered as the central element to implement C.182<sup>113</sup>. Nevertheless, it should be noted that C.182 neither requires provision of universal basic education nor provides an explicit definition of basic education, though during drafting process, the suggestion of using the term “basic education” as commonly used by the UN which could include not only primary education, but also up to three years of secondary education, was launched by worker members<sup>114</sup>. In fact, the common understanding is to reach basic education levels generally required primary education plus two years, making a total of 8 or 9 years<sup>115</sup>, but for an older child removed from a worst form of child labour, the requirement might not be 9 actual years of education, but rather intensive remedial education so that the child can reach the educational standards that would normally be achieved after such time<sup>116</sup>.

Consequently, there is not any common age of conclusion of basic education provided in C.182, but, for the countries which had also ratified C.138, that age would normally be the age set in C.138 for entry into full-time, non-hazardous work<sup>117</sup>. Children above that age who are removed from the worst forms of child labour could be provided with a combination of remedial basic education, appropriate vocational training, and, insofar as it did not interfere with their education and training, could be permitted to perform non-hazardous work<sup>118</sup>.

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<sup>108</sup>Ibid, page 20.

<sup>109</sup>Ibid, page 18.

<sup>110</sup>Ibid, page 18.

<sup>111</sup>Ibid, page 18.

<sup>112</sup>Ibid, page 19.

<sup>113</sup>Ibid, page 18.

<sup>114</sup>Ibid, page 18.

<sup>115</sup>Ibid, page 18.

<sup>116</sup>Ibid, page 18.

<sup>117</sup>Ibid, page 19. See also section 5.3.3 above.

<sup>118</sup>Ibid, page 19.

In point of fact, removing children from the worst forms of child labour and providing them for education as well as other types of rehabilitation may require state parties to allocate considerable human and financial resources. This relates to the issue of international cooperation and assistance that is examined hereunder.

#### *3.5.4.4. Special Attention to Vulnerable Groups.*

As provided in Article 7(2, d, c), for the time-bound measures, special attention should be paid to children at special risk and situation of girl children. Specifically, the inspection of children at special risk of the worst forms of child labour should be carried in every workplace, whether in the informal or formal economy, in which the focus should be paid to identifying where children are performing hidden work<sup>119</sup>. In that regard, the guidance given by the ILO Meeting of Experts on Labour Inspection and Child Labour in September 1999 may be helpful<sup>120</sup>.

Regarding situation of girl children, the labour inspection should be focused on economic sectors where the workforce is predominantly female and mainly based on international standards on child labour but should not totally equate it with the gender issue<sup>121</sup>.

#### *3.5.4.5. Designation and Co-operation of Competent Authorities.*

According to Article 7(3) of C.182, state parties shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

The term of '*competent authority*' can be understood as the body with ultimate responsibility for implementation and enforcement. Consequently, this responsibility must lie with the Government – the executive power – of state parties<sup>122</sup>. As was shown in practice, the competent authority should designate a branch of the executive, possibly the most relevant ministry, or several ministries which should work together to ensure a multi-disciplinary approach to implementation<sup>123</sup>.

It can be assumed that, in order to make the body enforced, its designation must be provided in national legislation which is adopted by parliament, and where appropriate, are also provided in regulations made by Government and relevant ministries.

As supplemented in Paragraph 9 of R.190, state parties should ensure that the competent authorities cooperate with each other and coordinate their activities for implementation of C.182. The competent authorities referred in this Paragraph, in terms of logic, must be a combination of the bodies which have a direct responsibility for implementation of the Convention<sup>124</sup>.

It is well-grounded that, such cooperation and coordination are very important since child labour is a complicated problem relating to different ministries of state parties. Moreover, the cooperation and coordination between their competent authorities if it is well-conducted will help state parties to avoid wasteful duplication or rivalry in the struggle against child labour.

#### *3.5.4.6. Specific Measures Suggested.*

*+Collecting and processing related information and data.*

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<sup>119</sup>Ibid, page 20.

<sup>120</sup>Ibid, page 19.

<sup>121</sup>Ibid, page 20.

<sup>122</sup>Ibid, page 21.

<sup>123</sup>Ibid, page 21.

<sup>124</sup>Ibid, page 41.

With regard to necessary measures of the implementation of C.182, Paragraphs 5,6,7 of R.190 recommend state parties to pay attention to collecting and processing related information and data. It is understandable why this matter is especially interested in R.190 since the information and data are a vital resource for providing policies and strategies to deal with any social problems.

Specifically, Paragraph 5(1,3) suggests that detailed information and disaggregated statistical data on the nature and extent of child labour as well as on violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date. According to Paragraph 5(2), as far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. For this purpose, the importance of an effective system of birth registration should be taken into account. Paragraph 7 adds that, the information compiled should be communicated to the ILO on a regular basis while Paragraph 6 reminds state parties to respect the right to privacy when taking aforementioned activities.

Although neither Article 7 of C.182 nor Paragraphs 5,6,7 of R.190 mention to consultation with employers' and workers' organizations concerned in collecting and processing related information and data, it can assume that the consultation is necessary and required, based on the dominance of tripartism in C.182. Furthermore, it is worth referring to Article 3 of C.160 on labour statistics (1985) which provides that, in collection and publication of the statistics required under that Convention, the representative organizations of employers and workers should be consulted with a view to taking into account their needs and to ensuring their cooperation<sup>125</sup>...

*+Sanctions for violations.*

As provided in Article 7(1) of C.182, sanctions (penal or others) belong to necessary measures which state parties shall apply to ensure the enforcement of the Convention.

Since C.182 does not provide any specific provisions relating to sanctions of violation, this issue is supplemented in R.190 with different aspects.

Regarding the aspect of subject of violations, Paragraph 10 of R.190 calls for clear legal responsibility to be attributed to persons, whether legal or natural (i.e. individuals or companies) who break laws or regulations aimed at eliminating the worst forms of child labour<sup>126</sup>. For the aspect of penalties, as suggested in Paragraph 14, state parties should provide as a matter of urgency for criminal, civil or administrative remedies for violations of national legal provision on child labour. That means, the penalties which deter or punish violations all can be applied in accordance with different violations and judicial and penal cultures of each country. However, for the worst forms of child labour listed in Article 3(a,b,c) of C.182, Paragraph 12 suggests that, they should be provided as criminal offences by state parties<sup>127</sup>. In addition to that, as recommended in Paragraph 13, for violations relating to any type of work referred to in Article 3(d) (hazardous work), where appropriate, should be also applied criminal penalties.

*+Other measures.*

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<sup>125</sup>Ibid, page 39.

<sup>126</sup>Ibid, page 42.

<sup>127</sup>In addition to specific forms listed in Article 3 (a,b,c) of C.182, with regard to item (c) on *the use, procuring or offering of a child for illicit activities*, besides the action of *production and trafficking of drugs*, Paragraph 12 adds some more specific ones namely *activities which involve the unlawful carrying or use of firearms or other weapons*.



Besides the abovementioned measures, Paragraph 15 of R.190 recommends state parties to consider other specific measures aimed at the prohibition and elimination of the worst forms of child labour. These measures provide solutions to child labour problem from different approaches such as education, propaganda, communication and sanction of violations, etc...Specifically, they include: (a) informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary; (b) involving and training employers' and workers' organizations and civic organizations; (c) providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals; (d) providing for the prosecution in their own country of the member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country; (e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt; (f) encouraging the development of policies by undertakings to promote the aims of the Convention; (g) monitoring and giving publicity to best practices on the elimination of child labour; (h) giving publicity to legal or other provisions on child labour in the different languages or dialects; (i) establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons; (j) adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls; (k) as far as possible, taking into account in national programmes of action the need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and the need for sensitizing parents to the problem of children working in such conditions.

### 3.5.5. *International Cooperation.*

According to Article 8 of C.182, state parties shall take appropriate steps to assist one another in giving effect to this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Firstly, it should be noted that, the term of ‘enhanced’ in this Article, as discussed by the Conference Committee during drafting process, does not simply mean that more funds should be allocated for aid from donor countries, but also that it could mean the better targeting and use of resources, including for capacity building<sup>128</sup>. It is to say, implementation of the Convention should be understood as a priority for action at both national and international levels.

More specifically, Paragraph 16 of R.190 reminds developing state parties that, international assistance is only *complement national efforts*. Thus, in principle, failure to gain international assistance does not relieve developing state parties of their obligations under C.182<sup>129</sup>.

Naturally, Article 8 relates to the 20/20 principle, which firstly set up at the World Summit for Social Development, held in Copenhagen in 1995 and recalled in the Agenda for Action of the Oslo Conference on Child Labour in 1997. According to this principle, donors and developing countries are urged to allocate on average twenty per cent of overseas development assistance and national budgets respectively to basic social services including basic education and primary health care. Thus, it is likely to assume that, if this principle is

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<sup>128</sup> See: *Trade Union Briefing on Convention 182*, op cit, page 2.

<sup>129</sup> *Ibid*, pages 51-52.

fully complied with, almost all necessary resources for national programmes of action to elimination of child labour will be met.

Paragraph 16 of R.190 also gives some suggestions relating to specific forms of international cooperation and/or assistance, include: (1) mobilizing resources for national or international programmes; (2) mutual legal assistance; (3) technical assistance including the exchange of information; (4) support for social and economic development, poverty eradication programmes and universal education.

With regard to the issue of mobilizing resources, it is necessary to ensure the best result and to avoid wasteful duplication and competition<sup>130</sup>. For the issue of mutual legal assistance, as was shown in practice, it could take the form of sharing good practice in legislation and enforcement which are specified in Paragraph 11 of R.190, include: (a) gathering and exchanging information concerning criminal offences, including those involving international networks; (b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances; (c) registering perpetrators of such offences.

For the last suggestion of Paragraph 16, in fact, developing state parties can pursued support not only in the ILO, but also in other international organization to which they have memberships or especially in international financial institutions such as the IMF, the WB and the WTO<sup>131</sup>.

Finally, although the issue of international cooperation, in principle, mainly refers to relationship between Governments, Paragraph 16 gives an opportunity to employers' and workers' organizations to be involved in this relation when suggests that, enhanced international cooperation and/or assistance among state parties may, as appropriate, be developed and implemented in consultation with these organizations.

### **3.6. Significance of C.182: Concluding Remarks.**

C.182 enhances further efforts against child labour problem by aiming at eradicating immediately the worst forms of child labour as a priority. Thus, it plays an important role in the process of total elimination of child labour in the world.

Since the worst forms of child labour cause seriously negative impacts on the survival and full development of child workers; C.182 directly take part in protection of fundamental human rights of children.

By forcing state parties to take all necessary measures to eliminate immediately the worst forms of child labour, C.182 contributes a significant part to maintain fundamental principles and rights at work those affirmed as among the foundations of international commercial relations. Hence, similar to C.138, this Convention is also a crucial element for economic development of state parties.

Like C. 138, C.182 constitutes one of the eight major conventions of the ILO, therefore, it also a central target in a campaign annually launched by the ILO in mobilizing countries to accede thereto. Up to this day, C.182 has admitted 156 countries as its state parties<sup>132</sup> which proving its significance in term of elimination of child labour in the word.

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<sup>130</sup>Ibid, page 52

<sup>131</sup>Ibid, page 52

<sup>132</sup> Source: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

# Chapter III. Elimination of Child Labour in Vietnamese Context

## III.1. Awareness and Situation of Child Labour in Vietnam - An Overview.

### 1.1. General.

Although child labour is a new issue in Vietnam, it is increasingly concerned and studied in recent years. Since early 1990s, several of surveys and workshops on child labour have been conducted by different Vietnamese institutions, but mostly by the Ministry of Labour, Invalids and Social Affairs (MOLISA) and the National Committee for Population, Family and Children (CPFC), in cooperation with some international organizations and NGOs such as the ILO, UNICEF and the Swedish Save the Children (Radda Barnen), etc...

However, most of research work on the child labour problem so far conducted in Vietnam has just been limited in sociological aspect. Besides that, they only just focus on some certain forms of child labour such as: hired child work, children working at private mines, children working at traditional craft villages, child trafficking, sexually abused children, children in domestic services, street children, etc...Until today, there is not any research work in which comprehensive situation of child labour in Vietnam is presented.

This part will evaluate available documents resulted from above-mentioned research in order to assess the awareness and situation of child labour in Vietnam.

### 1.2. Awareness of Child Labour.

As yet, child's work is widely accepted in Vietnam. Most of Vietnamese people believe that, the appropriate work helps to develop both personality and physical well-being of children, to give hands to their families as well as to contribute to communities where they live in. Especially, in rural and mountainous areas of Vietnam, due to many motivation factors such as seasonable features of agricultural production, working characteristics of household economy and low living-standards, many children have become an important labourer in their families. The work which those children participated in is very different such as: buffalo tending, grass collecting, chicken feeding, looking after younger siblings, food cooking, etc... In addition to that, some children are also a labour resource of households in traditional handicraft villages.

During period of centrally planned economy in Vietnam (1954-1986), social services were equally delivered to all citizens. Although the productions were less-developed and living standards were still low, the achieved progress in social development, particularly in the field of protection, care and education of children had contributed in limiting situations in which children in the poor families had to work for earning. In fact, children had opportunities to engage in some light work following the motto of *'the little does the little job depending upon their abilities'* to give hands to their families but there were very few children working for earning.

As a result, it is likely to say that, child labour was not a problem in Vietnam during period of centrally planned economy though it was existing in some cases.

In 1986, at the VI<sup>th</sup> Congress of the Vietnamese Communist Party, the Renovation Process (*Doi Moi*) was launched firstly with economic reforms to convert the former centrally planned economy to a market economy with a socialistic orientation. Since then, the Doi Moi has made deep changes in many aspects of Vietnamese society, including in protection, care and education of children.

The Doi Moi recognized and encouraged the development of all economic sectors, notwithstanding state or non-state characteristics. Correspondingly, non-state economic sector in Vietnam has strongly developed, made considerable and increasing contributions to state budget by producing goods for domestic consumption and export. This economic sector has also contributed in creating new jobs for unemployed and underemployed people in urban and rural areas respectively.

Nevertheless, since the capacity in management of state agencies in Vietnam do not meet requirements, the development of economic sectors, especially non-state economic sector, also created some complicated matters, including hiring children for business. The negative effect of child labour on children has increasingly drawn the public's attention. Accordingly, while before 1986, child labour was not considered as a question, since the Doi Moi, it has been gradually considered as an urgent social problem.

However, there has been an argument over the effect of working on children. While many people keep the idea that every work is negative to children, some others believe that there were no problem with the issue of working of children. This argument reflects a confusion in distinguishing concepts of *child labour* and *child work*<sup>133</sup> in society. Fortunately, until today, at least concerned state agencies and an increasing number of citizens of Vietnam have comprehended that child labour is composed of children who have to work in heavy, hazardous conditions or at very early age which harm their physical, intellectual, morals and social development or interfere with their education. They also have grasped that child labour is one of serious social problems of the country so the forms of child labour must be prevented, prohibited and gradually eliminated in order to protect the well-being and development of children.

In short, although not every people in society understood fully and properly about child labour problem, there has gradually been a change in awareness of child labour in Vietnam towards understanding more clearly characteristics of both *child labour* and *child work*. This progress is conformable to related international standards and practices and makes advantageous to the process of elimination of child labour in Vietnam.

### **1.3. Situation of Child Labour.**

In order to define suitable methods and strategy for prevention, prohibition and elimination of child labour in Vietnam, it is essential to pay attention in assessing situation of this problem.

As mentioned in previous section, although there have been many surveys of child labour finished since the 1990s, most of them only focused on specific groups of child labourers<sup>134</sup>. Consequently, the most important sources on which can rely to define the serious scale of child labour problem in Vietnam are Vietnam Living Standards Surveys (VNLSS) which conducted by the Vietnamese General Statistics Office (VGSO) in 1992-1993 and 1997-1998<sup>135</sup>. Based on the related data extracted from VNLSS, it is likely to draw out the *Tables 12 and 13* herein under by which a panorama of child labour situation in Vietnam is somewhat presented.

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<sup>133</sup>Regarding the differences between terms of *child labor* and *child work*, see Chapter I, item (1.2).

<sup>134</sup>Some typical work can be mentioned are those on street children in Hanoi conducted by the Vietnamese Youth Research Institute in 1996; on child labour in Hanoi, Ha Tay and Ho Chi Minh City conducted by the Institute of Labour Science and Social Affairs in 1996, on child labour in some rural areas of Vietnam conducted by the UK Save the Children in 1997; on the status of child labour exploitation in Quang Ninh and Hai Phong City conducted by Center for Sociology of Ho Chi Minh National Political Academy in 1998, etc...

<sup>135</sup>The first round conducted in 1992/93 interviewed 4800 households while the second one took place in 1997/98 interviewed 5999 households and revisited 4305 households from the first. Although both of them followed the same questionnaire and field design, the latter was designed to be a nationally representative, stand-alone cross-sectional survey.

**Table 12. Estimates of Percentages of Children Engaged in Economic Activity in Vietnam During 1992/1993 and 1997/1998<sup>136</sup>**

Age	6-10		11-14		15-17		Total	
Year	92-93	97-98	92-93	97-98	92-93	97-98	92-93	97-98
<b>Based on Age and Sex</b>								
Male	8.4	8.0	39.8	36.0	77.2	61.0	40.0	29.0
Female	7.8	6.8	41.8	37.5	80.9	63.7	42.3	29.6
Average	8.1	7.4	40.8	36.7	79.1	62.3	41.1	29.3
<b>Based on Age and Area</b>								
Rural	9.0	8.4	45.6	41.7	87.5	71.0	45.2	33.1
Urban	3.4	1.3	16.8	9.8	45.2	20.5	21.3	8.8
Average	8.1	7.4	40.8	36.7	79.1	62.3	41.1	29.3
<b>Based on Age and the Relation to Education</b>								
Working only	0.1	0.1	11.9	7.7	64.4	34.3	21.7	9.8
Schooling only	90.8	92.2	55.6	60.5	13.9	34.1	53.9	68.5
Combined	9.1	7.4	28.6	28.3	15.1	27.8	20.8	19.5
Neither Schooling or Working	0.1	0.3	3.9	3.6	6.5	3.7	3.6	2.3
<b>Based on Age and Type of Work</b>								
Domestic Work	14.52	1.73	46.76	18.04	69.66	41.09	-	-
Hired Work	0.22	0.29	2.26	4.61	9.8	14.02	-	-
Combined	-	-	0.6	1.15	2.94	4.27	-	-
Self-employed	-	-	1.58	1.69	6.61	7.25	-	-

<sup>136</sup>Source: Data extracted from VNLSS in 1992-1993 and 1997-1998. See also: *A Study on Child Labour in Vietnam*, Hanoi, 2000, pages 58, 59, 63, 64, 68.

**Table 13. Estimates of Working Time of Children Engaged in Economic Activity in Vietnam During 1992/1993 and 1997/1998<sup>137</sup>**

Age	6-10		11-14		15-17		Total	
	92-93	97-98	92-93	97-98	92-93	97-98	92-93	97-98
Total of Working Day	107.6	120.0	92.4	154.3	102.2	171.7	98.6	160.8
Total of Working Hour	435.9	402.0	496.4	357.8	682.4	596.7	606.0	472.1
Average Working Hour/ Day	4.3	3.5	5.7	2.4	6.9	4.0	6.4	3.2
Total of Hired Day	-	-	77.6	-	75.3	56.0	76.0	56.0
Total of Hired Hour	-	-	606.4	-	584.9	546.0	591.6	546.0
Average Hired Hour/Day	-	-	7.8	-	7.8	9.8	7.8	9.8
Average Wage (VND1,000/h)	-	-	0.9	-	2.3	2.3	1.8	2.3
Total of Day for Domesticwork	105.0	-	77.0	84.0	76.3	15.0	77.2	41.5
Total of Hour for Domestic Work	414.9	-	376.1	216.0	480.5	120.0	439.0	156.9
Total of Hour for Domestic Work/Day	4.0	-	4.9	2.6	6.3	8.0	5.7	3.8
Total of Day for Agricultural Work	31.5	120.0	29.8	160.8	47.3	179.4	42.2	167.3
Total of Hour for Agricultural Work	252.0	402.0	235.5	370.9	369.8	572.8	330.7	466.8
Total of Hour for	8.0	3.35	7.90	2.31	7.82	3.19	7.84	2.79

<sup>137</sup>Ibid.

The Tables 12, 13 show that, *inter alia*:

- The rate of economically active children in Vietnam declined quite fast between the survey years of 1992 – 1998, but it is still high in the year of 1998.
- The reduction of working children basically correlates to the growth of schooling children.
- A majority of economically active children in Vietnam engaged in domestic work. The rate of those engaged in hired work is very low.
- Most of working children are present in the traditional field of agriculture. Thus, the attempt of elimination of child labour in Vietnam should be focused on agricultural area and paid special attention to child workers' families.

However, it should be noted that, the VNLSS did not contain some information necessary to comprehensively investigate patterns and trends in child labour in Vietnam. First, the information about the existence of the worst form of child labour is not provided. Second, the working conditions of child labourers were not mentioned. Third, some of the group of children who are labouring were likely to be hidden, for example, street children was not count among neither domestic working children nor hired working children<sup>138</sup>, etc...

Fortunately, some other conducted surveys can adapt the limitations of the VNLSS. Specifically, according to surveys conducted by the Vietnamese Youth Research Institute and the Institute of Labour Science and Social Affairs in 1996 and 1997, the number of street children in biggest cities of Vietnam (Hanoi and Ho Chi Minh City) was estimated around 30,000 and 50,000 correlatively. Those conducted by the UK Save the Children and Center for Sociology of Ho Chi Minh National Political Academy in 1997 and 1998 showed the bad working conditions in illegal private gold mining and some traditional craft villages in northern mountainous area of Vietnam.

Since all above-mentioned other surveys were in small size (under 500 questionnaires and in one district or province), they did not provide comprehensive, accurate and reliable data on number and situation of children engaged in the worst forms of child labour in Vietnam. However, the available documents indicated that, some of the worst forms of child labour are existing in Vietnam including children are trafficked for sexual purposes or fall to prostitution mostly under the force of economic circumstance. Nevertheless, there are not any reports providing evidence of child labour in state economic sector, foreign-invested economic sector and also in private industrial enterprises.

### **III.2. Vietnamese Legislation on Child Labour Problem.**

#### **2.1. Legal Documents Relating to Child Labour Existing Prior to the Labour Code.**

The first Labour Code of Vietnam was just adopted in 1994, but in the prior period, the national labour legislation contained many provisions related to prevention, prohibition and elimination of child labour such as working time, rest, other working conditions, vocation and training for working children, especially to the minimum age for admission to employment or work.

Just two years after the Year of National Independence (1945), President Ho Chi Minh signed the Order No.29/SL (dated 12 March 1947) that gave the prohibition in respect of employment of working children under 12 years of age at workshops, underground work,

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<sup>138</sup>See also: *Child Labor in Transition in Vietnam*, prepared by Eric Edmonds and Carrie Turk, WB Office in Vietnam, 2002, page 5.

trade stalls (Article 99). In case of employment of workers ageing 12 to under 18, the local labour office may request doctors to examine whether those working children are capable to shoulder the tasks assigned by employers or not. If not, after consultation to the doctors, the local labour office may request the employers to transfer related working children to other jobs or to terminate the working term (Article 100).

In addition to that, the Order forbade the employment of children working at night shifts (Article 106). Night rest period of working boys ageing fewer than 18 and working girls at teen ages must be at least 11 consecutive hours (Article 107). The Order also provided for minimum age for admission to work which are hard, hazardous or harmful to dignity of female workers at any age, or working boys ageing under 15 for the underground work and harmful workshops listed by Ministry of Labour, as well as strictly prohibition of employment of girls ageing under 15 for *geishas* or dancers (Article 131).

In 1950, another related Order was signed by President Ho Chi Minh (the Order No.77/SL dated 22 May 1950) which focused on public sector only. According to Article 8 of this Order, minimum age for admission to employment in public sector as well as vocational training was lifted up at 15 and 14 year of ages respectively. In 1963, the Government (at that time called Minister's Council) issued the Decree No. 24/CP (13 March 1963) defined that only workers ageing 18 and more should qualify to admission to employment at State's manufacturing enterprises and agencies. The cases those employ workers less than 18 years of age in state sector should be defined by Ministry of Labour and Ministry of Home Affairs (Article 3).

The change in labour relationships originated from Doi Moi required a reform of related legal documents. Thus, in 1990, the State Council<sup>139</sup> adopted the Ordinance of Employment Contract in which provided that only workers ageing 15 or more shall be qualified to conclude an employment contract (Article 4). The junior workers also may conclude an employment contract but only for some permitted jobs and on the condition of their parents or legitimate guardian's permits have been gained (Article 5). However, in any circumstances, the minimum age for admission to employment shall be at least 12 years of age (Article 8).

Besides the labour legislation, in that period, the rights of children were recorded in the first Constitution of Vietnam in 1946, by means of provisions of care, protection and education of children (Articles 14, 15). In the existing Constitution (adopted in 1992 and amended in 2002), those provisions are repeated and extended in many articles, especially in articles of 35, 40, 59 and 65. Moreover, the Ordinance of Protection, Care and Education of Children which was adopted by the National Assembly in 1979 concretized related provisions in the Constitution. This Ordinance was superseded by the Law on Protection, Care and Education of Children, that was adopted in 1991 (in the same year, Vietnam became the second country in the world that ratified CRC). Although these documents do not provide any direct provisions in terms of labour relationship, they indirectly deal with the issue of child labour by providing the social and legal basis of preventing children from falling to child labour situation.

All in all, it is likely concluded that the issue of prevention and prohibition of child labour was stipulated in the Vietnamese legislation at very first before adoption of the Labour Code. The defined measures to deal with the child labour problem were quite comprehensive. However, it should be noted that in that period, the national legislation of Vietnam did not prevent children from working completely. In the one hand, it is strictly prohibited for any

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<sup>139</sup>At that time, this institution functioned as a Standing Commission of the National Assembly of Vietnam.



economic exploitation of child labour. In the other hand, the children are encouraged to do the work those suit their age with no harm to their schoolings, spiritual and physical development. This approach to the issue of working of children is maintained till now and basically, it is not contrary to relevant international standards and practices.

## **2.2. Existing Legal Provisions Relating to the Prevention, Prohibition and Elimination of Child Labour.**

### *2.2.1. The Labour Code and Its Concretized Legal Documents.*

The adoption of the Labour Code of Vietnam<sup>140</sup> is considered as a very important step forwards to protect workers in labour relations, including those under the age of 18.

Similar to the replaced Ordinance of Employment Contract in 1991, Article 6 of the Labour Code defines the minimum age for admission to employment is 15. However, according to the legal documents concretizing the Code, this minimum age is leveled up to 18 for certain jobs such as working for the foreign employers in Vietnam<sup>141</sup>, working in restaurants, hotels and pubs<sup>142</sup> and other hard or hazardous jobs<sup>143</sup>. Especially, the working conditions of juvenile workers<sup>144</sup> are detained. Specifically, Article 119 of the Labour Code stipulates that, all exploitation of the labour capacity of juveniles shall be strictly prohibited. This article also provides that, at places where juvenile workers are employed, separate records shall be kept mentioning in full the name, date of birth, work assigned, and results of periodic health checks, and shall be produced upon demand by labour inspectors. Additionally, Article 121 provides that, the employers may only employ juvenile workers in work suitable to their health so as to ensure their physical, mental and personal development, and must concern themselves with the care of juvenile workers as regards their work, wages, health and training in the course of their employment. The employment of juvenile workers shall be prohibited for hard, dangerous work and work exposed to harmful substances as determined in a list issued by MOLISA and MOH.

The harmful factors and hard or dangerous jobs are then specified in the Circular No.09/TTLB that jointly adopted by MOLISA and MOH on April 13, 1995. This document enumerates 81 categories of trades and 13 working environments those are considered as harmful to juvenile workers.

All provisions relating to the issue of employment of juvenile workers in the Labour Code of 1994 were maintained in the revised Labour Code of 2002, except a supplement of '*workplace, jobs which effect adversely to dignity of juvenile workers*' was put in Article 21. Although it is a small revision, it is likely considered as a foundation to review amendments and supplements to the list of forbidden jobs and working environments provided in the Circular No.09/TTLB in order to protect more effectively working children in forthcoming years.

Like the previous document, Article 120 of the revised Labour Code provides that the admission to work of children under 15 years of age shall be prohibited except in certain categories of occupations and work determined by MOLISA (mostly belong to the field of vocation training and or performing arts which require talents and skills of children at very early age) and in those cases, the agreement and supervision of their parents or guardian shall

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<sup>140</sup>This Law was adopted by the National Assembly of Vietnam on 23 July 1994 and came into force by 1 January 1995.

<sup>141</sup>Article 1 of Degree 85/1998/ND-CP, dated 20 November 1998 on Recruitment, Employment and Management of Vietnamese Laborers Working for Foreign Individuals and Institutions in Vietnam.

<sup>142</sup>Circular No.4/LDTBXH-TT, dated 14 August 2003 on Recruitment, Employment of Workers in Service Sector.

<sup>143</sup>Circular No.9/LB-TT, dated 13 April 1995 on Hazardous Working Conditions and Work in Which Employment of Juvenile Workers is Forbidden.

<sup>144</sup>As defined in the Article 119(1) of the Labor Code, '*juvenile workers*' are workers under 18 years of age.

be required. However, the conditions of admission to work of junior workers are defined more narrowly than the former. Specifically, Article 22 of the Code provides that, trainees in training establishments must be at least 13 years of age<sup>145</sup> (except in the case of trades in respect of which MOLISA determines otherwise) and they must be in good health so as to meet the requirements of the trade concerned. This provision is then concretized in the Circular No.21/1999/TT-LDTBXH adopted by MOLISA on September 11, 1999. This Circular lists 4 categories of trades those children under 15 years of age can be admitted to work and 8 requirements those employers have to comply with when employing working children ageing under 15.

Regarding the issue of working time and rest, Article 122 of the revised Labour Code stipulates that, the hours of work of juvenile workers shall not exceed 7 hours per day or 42 hours per week (one hour more per day and 6 hours more per week in comparing with those working time applying to adult workers) and the employers may only employ juvenile workers to work overtime or work at night in certain categories of occupations and work determined by the MOLISA<sup>146</sup>. Separately relating to working children ageing under 15, the Circular No.21/1999/TT-LDTBXH provides that, their working time shall not exceed 4 hours per day or 24 hours per week and employing children under 15 years of age to work over time or work at night is prohibited.

The revised Labour Code reserves a chapter for the issue of labour inspection and penalties for contraventions of labour laws (chapter XVI), including inspection of implementation and penalties for violations of provisions relating to working children.

According to Article 187 of this chapter, while carrying out their inspection functions, labour inspectors shall be empowered: (i) to inspect and investigate any place liable to inspection within their competence, at any time without advance notice; (ii) to require the employer and other persons concerned to supply situation reports and data and documents relevant to inspection or investigatory work; (iii) to receive and deal with grievances and complaints concerning contraventions of labour laws, in accordance with the provisions of the law; (iv) to take decisions on the temporary stoppage of the use of machinery, equipment, and working places which indicate an immediate danger of occupational accidents or serious pollution of the working environment.

In order to make available the information resource, Article 188 provides that labour inspectors, even after their functions have ceased, shall be obliged to not reveal any secret that has come to their knowledge in the course of their duties and to keep absolutely confidential all sources of complaint. Since the labour relations are very large and complicated, Article 189 stipulates that, while carrying out their inspection duties, labour inspectors shall cooperate closely with the executive committee of the trade union. In the event that the matters under inspection are related to scientific, technical or other professional and specialized fields, appropriate specialists and highly qualified experts may be invited to participate as consultants. The inspection of machinery, equipment and stores must be carried out in the presence of the employer and of persons directly in charge of the items in question.

Besides the system of labour inspection established by MOLISA, there is also the system of children's rights inspection in Vietnam, which is established by CPFC. Although the latter does not focus only on the issue of working children, it also has a function of detection of violations relating to child labour. Unfortunately, two systems are still separated. They do not

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<sup>145</sup>This level of age is relevant to the age of ending the compulsory education program in Vietnam that is provided in the Law of Universalization of Primary Education, adopted by National Assembly of Vietnam in 1991.

<sup>146</sup>.....

have any relationship as well as contact or contribution each other though having the same duty.

In fact, penalties for contraventions of labour laws, including contraventions of labour legal provisions on the issue of working children, does not specify in the revised Labour Code. Instead of that, they are defined in Degrees No.38/CP, No.113/2004/ND and No.49/CP. However, these Degrees only mention violations which are not severe enough to bring into court. In other words, these Degrees only define administrative but not civil and criminal penalties.

In brief, the revised Labour Code of Vietnam and its concretized legal documents, *inter alia*, have established a legal framework for employment of juvenile workers in order to prevent the deliberate or unintentional acts of employers to abuse or exploit working children. In comparing with the former legal provisions provided in previous period, existing provisions are more comprehensively and narrowly.

The existing provisions are in general in conformity with relevant international standards, however, they are still not covered all categories of working children in Vietnam. In fact, these provisions just focus on the formal economic sector, specifically on the areas of industry and services (both public and civil services), but not on the informal economic sector as well as on the situations of self-employed children or children working for their own family business, especially in rural and mountainous regions.

#### *2.2.2. Other Related Legal Documents.*

Besides the Labour Code and its concretized legal documents, there are many other legal documents of Vietnam which also contribute to deal with the child labour problem. These documents focus on two main aspects supplementing to the relevant labour legal provisions. The first aspect is prevention of children from falling to difficult situations in which they have to work at early age or may become victims of sexual abuse or labour exploitation. The second is sanction of violations of legal provisions relating to the issue of working children.

##### *2.2.2.1. Regarding the First Aspect.*

In fact, difficult situations in which children may be fallen to the status of child labour are much diversified. In the context of Vietnam, it is possible to understand them through the term of 'children with special circumstances' which is defined in the Chapter IV of the Law on Protection, Care and Education of Children (revised in 2004). This term implies almost all kinds of children with difficult situations existing in Vietnam at present such as orphans without supporters, dropped children, street children, disabled children, children infected with dioxin chemical, child drug addicts, child offenders, children living with HIV/AIDS; sexual harassed children; trafficked children; children of poor families, etc<sup>147</sup> ..

The above-mentioned Chapter provides measures to protect and care for as well as services and institutions supporting children with special circumstances. The specific measures are defined in the Chapter including: 1) Voluntary contributing in cash or in kind; 2) Child adoption or sponsor or replaced family to care for and rearing children with special circumstances; 3) Involving in caring for, nursing children with special circumstances at child support institutions; 4) Organizing activities to support children to reduce the difficulties caused by special circumstances, health and spiritual recovery, moral education<sup>148</sup>. There are three kinds of institution through which the support for children with

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<sup>147</sup>See: *Law on Protection, Care and Education of Children of Vietnam*, Article 40.

<sup>148</sup>*Ibid*, Article 41.

special circumstances can be received and distributed including state institutions, charity organizations and social organizations<sup>149</sup>.

In addition to that, the Law of Protection, Care and Education of Children provides a system of children's rights among which many can help the children in difficult situations out of falling to child labour problem, including: the right to a nationality (article 11.1), the right to family reunification (article 11.2), the right to being in care and feeding (article 12), the right to live with parents (article 13), the right to health (article 15), the right to education (article 16), etc...Especially, Article 7 of this Law strictly prohibits exploitation or abuse of children as well as activities in which children may be abused or exploited such as forsaking children (committed by parents or legal guardians); enticing or drawing children to leave their home; enticing, drawing or forcing children to involve in drug trafficking or gaming; enticing, drawing or forcing children to involve in prostitution or pornography; obstructing the children's education, etc.. This Law also stipulates the specific responsibilities of state agencies and social organizations to protecting, caring for and educating children among which CPFC plays the role of a co-ordination agency.

The issue of education and vocational training of children are then concretized by some other laws and legal documents. Specifically, the Law of Universalization of Primary Education (adopted in 1991) and the Law of Education (adopted in 1998) provide that, children ageing 6 to 14 have the right to education free of charge. Recently, the plan of universalization of secondary education has been established and implemented by the National Assembly and Government<sup>150</sup> by which children ageing up to 18 are beneficiaries. According to the National Strategy of Education Development 2001-2010<sup>151</sup> and the National Programme of Action for Children 2001-2010<sup>152</sup>, one of the national educational objects up to the year of 2010 is there will be no any child up to the age of 15 illiterate in Vietnam.

The issue of vocational training actually has been stipulated in the Labour Code (Chapter III). This issue is then repeated in the Law of Education and is concretized in the Degree No.02/2001/ND-CP adopted by the Government on January 01, 2001. According to these legal documents, establishing and running vocational schools, vocational centers or vocational courses, irrespective of economic sectors, is encouraged and contributed by State. In the National Strategy of Education Development 2001-2010, the issues of education and vocational training for children are associated as from secondary schools. This document also provides specific targets for vocational training among which raising the rate of the graduated secondary students entering vocational schools from 6% in 2000 to 10% in 2005 and to 15% in 2010. At present, children with special circumstances in Vietnam are generally entitled to access free vocational training in state vocational institutions and charity vocational institution.

#### *2.2.2.2. Regarding the Second Aspect:*

In point of fact, sanctions for contraventions of labour laws, including contraventions of labour legal provisions on child labour problem, does not specify in the Labour Code and the Law of Protection, Care and Education of Children. Instead of that, these sanctions are defined in many other legal documents which can be divided into two types: administrative and criminal penalties. The difference between two types of penalties is while the second

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<sup>149</sup>Ibid, Articles 51-54.

<sup>150</sup>This Plan is provided in the Resolution No.41/2000/QH10 adopted by the National Assembly on December 09, 2000 and then is concretized in the Degree No.88/2001/ND-CP adopted by the Government on April 25, 2001.

<sup>151</sup>This Strategy is issued by the Decision No.201/2001/QD-TTg signed by Prime Minister on December 12, 2001.

<sup>152</sup>This Programme is issued by the Decision No.23/2001/QD-TTg signed by Prime Minister on December 25, 2001.

applied to punish serious violations those are stipulated in the Criminal Code as crimes, the first applied to violations those are not severe enough to bring the cases into the courts.

As to the administrative penalties, the person who employs illegally children or violates legal provisions on working hours and rest period of juvenile workers or employs juvenile workers in hazardous work shall be correlatively fined up to VND 01 millions or VND 05 million<sup>153</sup>. Even the parents who exploit their children's labour shall be warned or fined up to VND 0,5 million<sup>154</sup>.

Other administrative penalties should be mentioned: Making corrupt use of vocational training capacity to exploit juvenile apprentices' labour or to entice or to draw them to carry out illegal business shall be fined up to VND 20 millions<sup>155</sup>. Violation of not concluding the employment contract when employing juvenile workers shall be warned or fined up to VND 10 millions<sup>156</sup>. Ill-treatment of juvenile workers shall be fined up to VND 20 millions<sup>157</sup>. Violations of establishment of the records, arrangement of periodic health checks, exploitation of labour capacity, when employing juvenile workers shall be fined up to VND 5 millions<sup>158</sup>.

It should be noted that, the above-mentioned violations must be not severe enough to bring the cases into the courts otherwise the relevant criminal penalties shall be applied.

As to the criminal penalties, crime of violation of legal provisions on employing juvenile workers is firstly added into current Criminal Code (revised in 1999), numbered Article 228. According to this Article, persons who employ juvenile workers in heavy or hazardous work stipulated by law by which caused severe consequences for juvenile workers shall be sentenced from 3 months to 7 years of imprisonment depending on severe scale of violations. Additionally, the offenders may be fined from VND 2 to 20 millions.

Especially, the Criminal Code provides penalties for violations relating to worst forms of child labour, including:

(1) Trafficking, exchanging fraudulently or appropriating children irrespective of the ways by which the crime was committed shall be sentenced from 3-20 years or life imprisonment depending on severe scale of violations. Additionally, the offender may be fined from VND 5-50 millions and may be prohibited from undertaking positions (in state agencies), carrying trades or doing jobs those are relevant to crimes which the offender has committed from 1-5 years or even may be kept under surveillance from 1-5 years<sup>159</sup>;

(2) Harboring prostitutes ageing from 16 to under 18 shall be sentenced from 5-15 years of imprisonment. In case prostitutes harboured ageing from 13 to under 16, offender shall be sentenced from 12 years to life imprisonment. Additionally, the offender may be fined from VND 5-100 millions, may be seized partly or totally his/her property that was used to commit crime, or may be kept under surveillance from 1-5 years<sup>160</sup>;

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<sup>153</sup>See: Degree No.49/CP issued by the Government on August 15, 1996 on Administrative Punishment of Violations Relating to Public Order, Article 26.

<sup>154</sup>See: Degree No.87/2001/ND-CP issued by the Government on August 15, 1996 on Administrative Punishment of Violations in the Field of Family and Marriage, Article 33.

<sup>155</sup>See: Degree No.113/2004/ND-CP issued by the Government on April 16, 2004 on Administrative Punishment of Violations in the Field of Labor Relations, Article 9(3,4).

<sup>156</sup>Ibid, Article 10(1,2,3).

<sup>157</sup>Ibid, Article 10(4).

<sup>158</sup>Ibid, Article 15(1).

<sup>159</sup>See: Criminal Code of Vietnam, Article 112.

<sup>160</sup>Ibid, Article 254.

(3) Enticing or drawing children ageing from 16 to under 18 to involve in prostitution shall be sentenced from 3-10 years of imprisonment. In case victims ageing from 13 to under 16, offender shall be sentenced from 7-15 years of imprisonment. Additionally, the offender may be fined from VND 1-10 millions<sup>161</sup>;

(4) Buying sex of children ageing from 16 to under 18 shall be sentenced from 1-5 years of imprisonment. In case seller ageing from 13 to under 16, offender shall be sentenced from 3-8 years of imprisonment. Additionally, the offender may be fined from VND 5-10 millions<sup>162</sup>; and

(5) Propagating pornography to children shall be sentenced from 3-10 years of imprisonment<sup>163</sup>.

### **2.3. Programs and Projects Relating to Child Labour Problem.**

As provided in both C.138 and C.182, besides codification, national mechanism in which related institutions, programmes and projects are well-conducted is also required to deal with the child labour problem.

Apart from projects carried out by mass organizations and NGOs in Vietnam, there are many programmes on child labour so far conducted by different state agencies among which the *Programme on the Prevention and Settlement of Street Children, Sexual Harrassed Children, Child Labourers in Hard and Dangerous Working Conditions in Period 2004-2010* that launched in 2004 by Vietnamese Government<sup>164</sup> is considered as the most important one. This programme includes five projects of which four directly relate to elimination of child labour.

The first project aims to prohibit and eliminate street children and abuse of children's labour. This project is implemented by MOLISA in co-operation with CPFC, MPS and some other bodies concerned. The second is planned to prevent children from dignity, honor and sexual abuses, especially from commercial exploitation of children. This project is implemented by MOLISA in co-operation with CPFC, MPS, VWU, VYU and some other bodies concerned. The third focuses on prevention and control of drug abuse among children. This project is conducted by the National Committee on Drug Control (CDC) in co-operation with MPS, MOLISA, CPFC, VWU, VYU, Ministry of Education and Training (MOET), Ministry of Health (MOH), Committee on Ethnic and Mountainous Affairs (CEMA) and some other bodies concerned. The fourth is devoted to organize the activities of information dissemination, education, consultation in various forms for families and communities on protection and care of children with specially difficult circumstances. This project is carried by CPFC in co-operation with provincial people committees.

The aforementioned Programme sets targets, *inter alia* : (1) 80% and 100% orphans without supporters will be taken care up to 2005 and 2010 correlatively; (2) 70% and 90% street children and child labourers in heavy and hazadous conditions will be reduced up to 2005 and 2010 correlatively; (3) almost get success in dealing with the issues of sexual harassed children and trafficked children up to 2010.

Besides the above-mentioned Programme, the children with specially difficult circumstances to which child labourers belong can be also benefited from some social policies of State, including, *inter alia*:

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<sup>161</sup>Ibid, Article 255.

<sup>162</sup>Ibid, Article 256.

<sup>163</sup>Ibid, Article 253.

<sup>164</sup>This Programme was proclaimed in the Decision No.19/2004/QD-TTg signed on February 12, 2004 by the Government Prime Minister of Vietnam.

- *Rearing support policy:* The objective of this policy is to maintain normal life for children with specially difficult circumstances, especially child groups without the supporter and disabled children in very poor families so that they can be kept out of child labour problem. The contents of this policy includes: (1) Usual support for parentless children and serious disable children in very poor families in communes<sup>165</sup>; (2) Living cost support for children with mental disease, parentless children, disabled children, homeless children at social centres<sup>166</sup>; (3) Financial support for families and individuals adopt to rear orphans<sup>167</sup>; (4) Emergency support to children of poor families to solve their short term financial difficulties and to street children in order to sent them to home.
- *Legal support and consultation services:* There are legal consultation and communication offices in all 64 provinces which include psychologists, educationalists, lawyers and doctors in order to support children with specially difficult circumstances. Since 2003, the free consultation service hot line for protection of children with specially difficult circumstances has been established by CPFC in Hanoi and Ho Chi Minh City and is planning to expand to all provinces and cities of Vietnam.

Evidently, child labour problem is particularly drawn attention of Vietnamese Government and has been dealt with in different ways in which many concerned state agencies, mass organizations and NGOs are engaged. Hence, such projects had so far gained some progress. For example, in 2003 thanks to the strategy to send the street children back to their families and integrate their communities 80% of street children in two biggish cities of Hanoi and Ho Chi Minh has been settled. These street children have returned home and reintegrated into their communities and were supported to stablize their lives, entitling to cultural education, vocational training. In the same year, almost child labourers working in illegal gold mines were released, etc...<sup>168</sup>

However, implementation of existing projects and policies relating to child labour remains many limitations caused by different reasons. First, when the term of programmes finished, normally there is not any follow-up activities so the achievements are not stable and expanded. Mealwhile, backward preconception of child labour dominating in society, especially at local level, causes drastic disputes over the long-term benefit of schooling and short-term benefit of working of chilren making much difficult for combating against violations of legal provisions on child labour. Second, policies and services supporting children generally and children with special circumstances have not been applied uniformly and completely. Specifically, a part of children with special circumstances in remote and mountainous areas have not been benefited from necessary policies and services in terms of finance and resources. Third, staffs working with children is limited in terms of both quantity and professional capacity.

In addition to that, the existing programmes and projects are in fact focused on some worst forms of child labour only. Up to date, there is not any programme or projects aiming at comprehensive prevention and elimination of all forms of child labour in Vietnam. While a national programme on elimination of child labour is drafting by MOLISA<sup>169</sup>, the lack of as

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<sup>165</sup>This support level is VND 45,000/person/month stipulated in Decree No. 07/2000/ND-CP issued by Vietnamese Government on March 09, 2000 on Policy of Social Relief.

<sup>166</sup>Ibid. This support level is VND 100,000/person/month, children under 18 months of age alone are entitled to the support of VND 150,000/month.

<sup>167</sup>This support is decided based on each individual case. It is stipulated in Decision No. 38/2004/QD-TTg issued by the Government Prime Minister on March 17, 2004.

<sup>168</sup>Source: Report of Chidren Department, CPFC, 2005.

<sup>169</sup>This national programme have been drafting since June 2004 by MOLISA in co-operation with many concerned state agencies and mass organization, with the support of the ILO.

such should be considered as the biggest shortcomings in terms of programming for total elimination of child labour in Vietnam.

#### **2.4. Recommendations and Lessons Learned.**

Based on abovementioned information and assessments, it should be recommended that, in order to effectively prevent, prohibit and eliminate child labour problem in Vietnam, the followings should be focused:

*Regarding strategy and policies:*

- (1) Conducting a survey on the national scale in order to fully collect and comprehensively analyse information and data on child labour situation as well as to specifically identify sectors at which children are working under hard and hazardous conditions or are being exploited.
- (2) Developing a national programme of action on elimination of child labour and establish a body as the focal point of the Government to co-ordinate concerned institutions in action and to mobilize resources for activities on prevention and elimination of child labour. Special attention should be paid to agricultural area, non-state and informal sectors and some worst forms of child labour such as trafficking children and commercial sexual exploitation of children, etc..when building up the national programme.
- (3) Raising the economic and social living standard of communities, especially in rural and mountainous areas, through planning and carrying out programmes on hunger eradication and poverty alleviation as well as other related programmes on employment promotion, health care, education and vocation and training. That is to say, poverty and underdevelopment belong to the causes of child labour but would not be considered as the causes for the delay of immediate action to deal with this problem. In the factual context of Vietnam, economic policies which promote development of the poor seem to be the best in preventing and eliminating child labour.
- (4) Consolidating and expanding the social relief and support programmes relating to child workers and their families in order to keep children with specially difficult circumstance such as parentless children, dropped children, disabled children, children infected with toxic chemical, children living with HIV/AIDS or children of poor families, etc.. out of child labour problem as well as to recover physical, spiritual health of child victims who have been delivered from child labour situation, provide them basic education and rehabilitate them in the communities. In this regard, State should raise the existing welfares as well as encourages organizations and individuals to involve in support activities for children. In addition to that, State should form support institutions for children to ensure all children with specially difficult circumstances without supporters are cared for and brought up.
- (5) Promoting propaganda and education against child labour by different ways, especially through mass media and national education system. Focus should be first paid on concerned authorities, working children and their parents, employers, members of trade unions and other mass organizations.
- (6) Strengthening international co-operation, especially with the ILO, UNICEF and international NGOs working on the field of children's rights for the long-term target of total elimination of child labour as well as the immediate target of building up the national programme of action on elimination of child labour.



- (7) Improving the capacity of people who participate in combating child labour (staffs of MOLISA, CPFC and law enforcement bodies, members of trade unions as well as persons working for mass organizations or local NGOs who are in charge of or concerned with prevention and elimination of child labour) through organizing training courses or disseminating relevant documents and manuals, etc...
- (8) Reforming the inspectoral system on child labour in order to effectively supervise related legal provisions.

*Regarding amendment of related legal provisions:*

- (1) Supplementing the list of jobs and occupations in which employment of juvenile workers are forbidden in order to catch up with new emerging jobs and occupations and to be in line to C.138 and C.182 to which Vietnam has ratified or acceded<sup>170</sup> (the existing list promulgated in 1999 at that time Vietnam was not a state parties of both Convention).
- (2) Adding legal provisions on obligation of periodic reporting on situation of juvenile workers to competent authorities charging to employers (at present, according to Article 119 of the Labour Code, at places where juvenile workers are employed, employers are only obliged to produce records of juvenile workers upon demand by labour inspectors).
- (3) Broadening breaches of legal provisions on child labour problem as well as the respective penalties in accordance with standards set forth in C.138 and C.182, especially those relating to domestic work and employment of children in non-state and informal economic sectors.
- (4) Formulating regulations relating to organization and operation of labour inspectorate on child labour in order to deal with the absurdity of overlapping but less effectiveness causing by the fact that there are two institutions in Vietnam namely MOLISA and CPFC involving in child labour supervision but there is not any co-operation and co-ordination between them.
- (5) Revising and supplementing the by-law instruments to give guidelines to the provisions of Labour Code relating to child labour in agriculture, non-state and informal economic sectors where majority of juvenile workers are in employment.

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<sup>170</sup>Vietnam ratified C.182 on December 19, 2000 and acceded C.138 on June 24, 2003. Source: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

## General Conclusions.

Child labour refers to state of children who intentionally or unintentionally involved in employment or work which are harmful to their physical, mental, spiritual, moral and social development; or engaged in work at too early age, which deprives their childhood, opportunities and time necessary for education, recreation and entertainment.

Awareness and identification of child labour are basically based on negative effect of employment or work on child workers. Generally, the comparison between acceptable and unacceptable work for children is suitable to define whether child labour existing or not.

Despite of its existence for long in all societies, until the 1980s, child labour just was broadly drawn attention from the international community. To date, child labour is considered as not only social/internal but also human rights/international problem. Hence, it calls for prompt reaction from both national and international levels.

Although many international treaties relating to child labour have been adopted by the ILO and the UN since beginning of the 20th century, the most important international tools to deal with this problem are ILO's C.138 on minimum age for admission to employment or work and C.182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

Consolidated from principles and provisions that had been gradually provided in various earlier ILO's conventions on minimum ages, C.138 applies to all sectors of economic activity, to all children whether or not they are employed for wages, except to those who engage in some types of vocational or training programmes. Hence, this Convention is recognized as the most comprehensive ILO instruments on child labour.

State parties of C.138 have an essential obligation to fix a minimum age for admission to employment or work and raise progressively this minimum age to a level consistent with the fullest physical and mental development of young persons. In addition to that, the Convention obliges ratifying states to undertake to pursue a national policy designed to ensure the effective abolition of child labour.

The basic principle for fixing the minimum age for admission to employment or work is the minimum age should not be less than 15 as well as the age for completing compulsory schooling. However, in this regard, flexibility is built in to allow for progressive implementation. Depending on the type of employment or work, rather than provide one minimum age of less than 15, state parties can provide two more minimum ages of less than 18 for hazardous work and less than 13 for light work. In addition to that, for state parties whose economy and educational facilities are insufficiently developed, it is allowable to set the minimum age initially at 14 instead of 15, and at 12 instead of 13 for light work.

The increase in worst forms of child labour in despite of the growing number of state parties of C.138 called for a new convention which led to adoption of C.182 in 1999 - a reflection of the widely held view that something must be done to put a stop to the intolerable forms of child labour.

C.182 is not supposed to make any revision, change or effect to the ratification and implementation of C.138 but aims at supplementing that Convention by giving priority to

the removal of the worst forms in order to enhance new efforts in total eradication of child labour.

C.182 defines the worst forms of child labour as: all forms of slavery, prostitution, using children in pornography and drug production and trafficking as well as work which is likely to harm the health, safety or morals of children (hazardous work). State parties have to undertake to take immediate and effective action to eliminate the worst forms of child labour and are in this regard obliged to design national programmes of action as well as to take all necessary measures to ensure the effective implementation and enforcement of the Convention, including establishing appropriate monitor mechanisms and enhancing international cooperation and/or assistance.

Since child labour causes seriously negative impacts on the survival and full development of children, elimination of child labour means directly protection of fundamental human rights of children, especially the right of the child not to be subjected to economic exploitation which provided in Article 32 of CRC. In addition to that, since ILO's standards on child labour are considered as a component part of fundamental principles and rights at work which widely accepted by international community, implementation of ILO's standards on child labour is a precondition of international commercial relations of state parties.

Although not everybody has been fully and properly aware of the risk of child labour problem, there has gradually been a change in awareness of child labour in Vietnam. To date, at least concerned state agencies and an increasing number of citizens have comprehended that there are differences between *child labour* and *child work* and in this regard child labour must be prevented, prohibited and gradually eliminated in order to protect the well-being and development of children. This progress makes advantageous to the struggle against child labour in the country.

Actual evidence demonstrated that, during period of centrally planned economy in Vietnam (1954-1986), child labour was not a problem since social services were equally delivered to all citizens.

The *Doi Moi* which started in Vietnam in 1986 has been making not only considerable progress in terms of economy but also some social problem, including child labour.

Although up to date, there is not any research work in which comprehensive situation of child labour in Vietnam is presented, available surveys and research show that, the rate of economically active children in Vietnam is quite high in comparison with other countries in the world, among which the worst forms of child labour such as trafficking or sexual exploitation of children, etc...included. A majority of child labourers in Vietnam engaged in domestic work and presented in the field of agriculture and traditional handicrafts while there are not any reports providing evidence of child labour in state economic sector, foreign-invested economic sector and also in private industrial enterprises.

Protection and care for children is an important component in the human development strategy of Vietnam. Since 1945 when the country gained independence, Vietnam has issued many legal documents and policies on protection and care of children, including on prevention, prohibition and elimination of child labour. The prompt decisions to become a state party of CRC, C.182 and C.138 in the years of 1989, 2000, 2003 prove Vietnam's political commitment to ensuring children's rights in general and elimination of child labour in particular.

Related legal provisions and policies of Vietnam deal with child labour problem from all preventive, interventional and remedial approaches in which many concerned state agencies, mass organizations and NGOs are engaged. These provisions and policies are basically in conformity to ILO's standards on child labour such as on minimum ages for admission to employment or work, labour contract conclusion, working conditions and hours and vocation training, responsibilities of employers and sanctions for violations of child labour, etc...

However, there are still limitations mainly relating to enforcement of national laws and policies on child labour in Vietnam. Some of them are worth to be mentioned such as lack of national programme on elimination of child labour as well as follow-up activities for finished projects and programmes; limited quantity and professional capacity of staffs and working on elimination of child labour and lack of mechanism by which co-operation and co-ordination between labour and educational, vocational institutions would be well-conducted, especially in terms of child labour inspectorate.

The recommendations are drawn from above lessons learned, in which both existing national legislation and policy systems relating to child labour should be somewhat reformed and revised. Focus should be paid on developing a national programme of action and reforming the inspectoral system on elimination of child labour. The specific suggestions include, *inter alia*: conducting a survey on the national scale on child labour situation; consolidating and expanding the social programmes and policies in support of child workers and their families; promoting propaganda and education against child labour by different ways; improving the capacity of people who participate in combating child labour; supplementing the list of jobs and occupations in which employment of juvenile workers are forbidden by law as well as legal provisions on obligation of employers in periodic reporting on situation of juvenile workers to competent authorities; broadening breaches of legal provisions on child labour problem and respective penalties. In these regard, agriculture, non-state and informal economic sectors where majority of juvenile workers are in employment should be given undivided attention.

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