



**The Status of a Child under International Labor  
Law and Problems to its Implementation**  
by Tamar Otarashvili

LL.M. SHORT THESIS  
COURSE: Children's Rights and Juvenile Justice  
PROFESSOR: Karoly Bard  
Central European University  
1051 Budapest, Nador utca 9.  
Hungary

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## **Abstract**

The thesis focuses on child labor as one of the major problems facing the world today. The issue is studied and analyzed in the context of overview and assessment of the existent international law provisions regulating the status of a child. Three Conventions -the UN 1989 Convention on the Rights of the Child, ILO No. 138 Minimum Age Convention and its No. 182 Worst Forms of Child Labor Convention are referred in the paper. At the same time, the work undertaken by international bodies in charge of monitoring the implementation of those instruments is analyzed.

The major purpose of the thesis is to investigate the extent to which provisions of international Conventions on child labor find their reflection on domestic legislation of states parties to them. This particular aim is accomplished through examination of domestic laws of two states – Nepal and India to reveal that despite their adherence to international standards on child labor, these countries still have flaws in full harmonization of their internal laws with the requirements of those standards.

## Introduction

Child labor represents one of the major harms affecting entire world. It calls for international community to adequately address the issue in order to initially reduce and further advance to its eventual eradication. The causes child labor are multiple, not restricted to only poverty as frequently referred ground for its appearance and depend on actual situation of a country under discussion<sup>1</sup>. Though, according to International Labor Organization (hereinafter – ILO)<sup>2</sup> poverty and poorly developed social-economic conditions do represent one of the major reasons that force children to enroll into labor practices. The same organization contends that poverty should be regarded as not only the cause but also the outcome of child labor.<sup>3</sup>

This reference implies important message that child labor represents an evil that not only harms millions of children throughout the world but also hinders economic development of numerous countries and needs adequate measures to be applied for its eradication by both national and international actors.

In order to properly understand the subject of this paper it is important to define the meaning of “child” and “child labor”<sup>4</sup> first. The UN Convention on the Rights of the Child, 1989 (hereinafter – CRC) defines a child as a person below the age of 18 unless domestic laws of a

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<sup>1</sup> *Eliminating the Worst Forms of Child Labor: A Practical Guide to ILO Convention No. 182*, Handbook for Parliamentarians No. 3, International Labor Office, Inter Parliamentary Group, at 23 (2002) available at: [http://www.ilo.org/public/english/standards/ipecc/publ/ipu\\_2002\\_gb\\_web.pdf](http://www.ilo.org/public/english/standards/ipecc/publ/ipu_2002_gb_web.pdf), (last visited March 20, 2007).

<sup>2</sup> *Id.*, at 31.

<sup>3</sup> *Id.*

<sup>4</sup> Kaushik Basu, *Child Labor: Cause, Consequence and Cure, with Remarks on International Labor Standards*, Vol. 37, No. 3 Journal of Economic Literature, 1083, 1084 (1999) available at: <http://links.jstor.org/sici?sici=0022-0515%28199909%2937%3A3%3C1083%3ACLCCAC%3E2.0.CO%3B2-W>, (last visited March 21, 2007).

state concerned provide otherwise.<sup>5</sup> As for the meaning of “child labor”, this is more complex as there is no universal definition of the phenomenon. In compliance with ILO, child labor is present when it:

- *Is mentally, physically, socially or morally dangerous and harmful to children and*
- *Interferes with schooling;*
- *By depriving them of the opportunity to attend school;*
- *By obliging them to leave school prematurely; or*
- *By requiring them to attempt to combine school attendance with excessively long and heavy work”.*<sup>6</sup>

The seriousness of the problem is related to extremely high number of children forced to work. It is unfeasible to know the exact quantity of minors involved in labor practices, but in accordance with ILO latest statistical data of 2004, approximately 218 million children of age 5 to 17 are occupied in child labor and 126 million children work in hazardous conditions<sup>7</sup> (the term will be defined in a respective Chapter). These figures once again stress the importance for immediate and effective actions to be taken against the problem. Measures adopted for the elimination of child labor take many different forms, are difficult to estimate<sup>8</sup> and it is impossible to address them in detail here.

<sup>5</sup> UN Convention on the Rights of the Child, Nov. 20, 1981, art. 1 (No. 27531. Sept. 2, 1990, United Nations, *Treaty Series*, [vol. 1577, p. 3.](#)).

<sup>6</sup> *Child Labor, A Textbook for University Students*, International Labor Office, International Labor Organization, at 16 (2004) available at: [http://www.ilo.org/public/english/standards/ipecc/publ/download/pol\\_textbook\\_2004.pdf](http://www.ilo.org/public/english/standards/ipecc/publ/download/pol_textbook_2004.pdf), (last visited March 17, 2007).

<sup>7</sup> Frank Hagemann, Yacouba Diallo, Alex Etienne & Farhad Mehran, *Global Child Labor Trends 2000 to 2004*, at 1, International Program on the Elimination of Child Labor (IPEC) Statistical Information and Monitoring Program on Child Labor (SIMPOC), (2006) available at: [http://www.unescobkk.org/fileadmin/user\\_upload/efa/TWG/18th\\_TWG/Global\\_CL\\_trends- final1\\_1.pdf](http://www.unescobkk.org/fileadmin/user_upload/efa/TWG/18th_TWG/Global_CL_trends- final1_1.pdf), (last visited March 16, 2007).

<sup>8</sup> *The End of Child Labor Within Reach*, Report of the Director General, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labor Conference, 95th Sess., para. 75, at 17, Report I (B) (2006) available at: [http://www.ilo.org/public/english/standards/ipecc/about/globalreport/2006/download/2006\\_globalreport\\_en.pdf](http://www.ilo.org/public/english/standards/ipecc/about/globalreport/2006/download/2006_globalreport_en.pdf), (last visited March 15, 2007).

Respectively, the major purpose of the thesis is to research on the impact that adherence to international standards on the status of a child engaged in labor bears on domestic laws of ratifying states in order to show the extent to which states are faithful to their international obligations on the matter. As regards to the international legal framework regulating status of a child in labor practices, the paper will refer to three documents –CRC, ILO No. 138 Minimum Age Convention (hereinafter – Minimum Age Convention) and ILO No. 182 Worst Forms of Child Labor Convention (hereinafter – Worst Forms of Child Labor Convention) shaping the main ground<sup>9</sup> for action against the matter under discussion. ILO Recommendation 190 Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labor will also be indicated as complementary instrument to the Worst Forms of Child Labor Convention, providing for additional guidelines for state parties for due implementation of the Convention.

Due to the broadness of the issue and limitations of the paper, I will illustrate the picture about the affect of international standards of child labor on domestic legislation by analyzing the situation in two states – Nepal and India. Nepal is a ratifying state of all three Conventions relevant for this paper, while India has only ratified the CRC. I chose these two countries as they both represent Asia-Pacific region where, in accordance with ILO estimates of 2004, the highest number of world's working children – 122.3 million<sup>10</sup> - belong to. It is further interesting to compare the extent of affect of international standards in force in these countries on their internal

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<sup>9</sup> *A Decade of ILO – India Partnerships Towards a Future Without Child Labor 1992 – 2002*, at 8, International Labor Organization (2004) available at: <http://www.ilo.org/public/english/region/asro/newdelhi/download/publ/childlabour/indpubl04eng1.pdf>, (last visited March 20, 2007).

<sup>10</sup> See *supra* note 7, at 9.

legislation. In this context, the importance of ratification of international documents will be emphasized as one of the major preconditions providing legal ground for action at both international and domestic levels. ILO contends that through ratification states become bound to report at international level on progress made by them for the fulfillment of its Conventions.<sup>11</sup> The examination of Nepali case demonstrates that ratification of ILO Minimum Age and Worst Forms of Child Labor Conventions is obviously a very important step taken by the state but, at the same time, current reality on the country's legislation does not fully correspond to international standards on child labor adhered by it. As for India, it has only ratified the CRC and its commitments are only examined with regard to this treaty that also reveals substantial flows in terms of harmonization of India's domestic laws having implications for child labor.

I will further assess the work undertaken by international bodies that operate on the basis of international documents subject to discussion here – the Committee on the Rights of the Child and ILO with its major International Program on the Elimination of Child Labor (hereinafter – IPEC) that focuses on child labor as major target of its work.<sup>12</sup> I will contend that despite their endeavors for elimination of child labor, these organs need substantial improvement in order to considerably influence the decisions of member states in terms of polishing up their domestic laws concerning child labor. This argument mainly stems from studying domestic laws of the countries discussed in the paper that even though have made relative progress in incorporating international standards in light of considering recommendations of the above-mentioned bodies, still have significant work to do for full harmonization of their legislation with international provisions on the matter.

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<sup>11</sup> See *supra* note 1, at 35.

<sup>12</sup> See *supra* note 9, at 4.



As regards to the character of international documents subject to discussion here, CRC is regarded to bear a non-self-executing character as its Article 4 clearly provides, that it is the obligation of states to undertake actions for its implementation.<sup>13</sup> With this regard actions taken by Nepali and Indian national authorities in light of the provisions on child labor of their domestic laws will be analyzed.

As regards the methodology of the research, after making an overview of international labor standards on the status of a child, I will refer to domestic laws of the states mentioned above and make comparative analysis of both the international legislation on child labor and domestic laws of Nepal and India. Due to the specific nature of the paper, it will primarily be based but not restricted to above-mentioned international documents regulating child labor, basic domestic legislation of Nepal and India pertaining to the matter of focus of the paper, recent annual reports of ILO/IPEC, reports of Nepal and India submitted to the Committee on Children's Rights, concluding observations/comments made by the latter on the reports.

The paper is divided into three Chapters. The first Chapter will illustrate international legal framework with regard to child labor and stress their interdependent and complementary character. Chapter two will discuss the mandate of the Committee on the Rights of the Child and refer to the role of ILO and IPEC as major international organization and its program towards elimination of child labor respectively. The same Chapter will assess the efficiency of the work of the Committee on the Rights of the Child and conclude that the work undertaken by this body has its advantages in being able to provide expert assistance to states concerned and

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<sup>13</sup> Jonathan Todres, *Emerging Limitations on the Rights of the Child: The UN Convention on the Rights of the Child and its Early Case Law*, Columbia Human Rights L. Rev. 9, 184-185, (1998) in *Children's Rights* Vol. II (Michael D.A. Freeman ed., Ashgate Garmouth, 2004); see also *supra* note 5, art. 1

disadvantages as well that relate to its mandate mainly limited to consideration of states' reports.<sup>14</sup> The work undertaken by ILO and IPEC will be addressed in more detail in the third Chapter which primarily presents and analyzes impact of international standards on domestic child labor laws of Nepal and India. At the same time, the work of international bodies referred to in previous Chapter will be presented in light of particular actions taken by them for assistance of these countries. Based on evaluation of the progress made by Nepal and India in harmonizing their laws with international standards on child labor, I will stress the importance of ratification of ILO Conventions by India and further steps to be taken by both states to align their domestic legislation with CRC and ILO provisions.

The Conclusion will sum up major findings about the matter both at international plane and national levels in Nepali and Indian cases and maintain that in light of taking into consideration undoubtedly valuable work of respective international and domestic actors, both have to continue their efforts in direction to progressive elimination of child labor through further harmonization and due enforcement of international and domestic legislative provisions in order to achieve the goal of eliminating child labor.

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<sup>14</sup> Jutta Gras, *Monitoring the Convention on the Rights of the Child*, 55, (Faculty of Law, University of Helsinki 2001).

# **Chapter 1 – Child Labor under International Law: 1989 UN Convention on the Rights of the Child, ILO No. 182 Worst Forms of Child Labor Convention (1999), ILO Recommendation 190 and the ILO No. 138 Minimum Age Convention**

## ***1.1 Legal Framework with Regard to Child Labor in Accordance with 1989 UN Convention of the Rights of the Child***

In this part of the paper, I will review the major articles on child labor of the following international documents – the 1989 UN Convention on the Rights of the Child (hereinafter - CRC), ILO No. 138 Minimum Age and No. 182 Worst Forms of Child Labor Conventions. These documents form principal ground for respective international and domestic actions against child labor. Importance of CRC is determined due to the fact that it represents the first treaty granting rights to children at highest international level with unprecedented number of ratifications.<sup>15</sup>

Among various spheres of children's rights regulated by the Convention, we find prohibition of "economic exploitation" of children in Article 32 of CRC.<sup>16</sup> This Article has rather general character but it should be read and implemented in conjunction with other international documents regulating children's rights. This statement follows from the very provision of the second part of Article 32 which provides that: "...having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age

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<sup>15</sup> Jane Fortin, *Children's Rights and the Developing Law*, 5, (Butterworths 1998).

<sup>16</sup> See *supra* note 5, art. 32.

or minimum ages for admission to employment.”<sup>17</sup> The complementary character of CRC<sup>18</sup> is best demonstrated with the existence of ILO Conventions No. 138 and 182 subject to discussion here. Provisions of the latter documents framing boundaries for types of work not acceptable for children under international standards<sup>19</sup> and those of CRC will be covered below in a more comprehensive manner.

### 1.1.1 CRC about child labor

Adoption of an international instrument regulating children’s rights demonstrates that in the late 90’s the international community realized the need for the existence of special protection mechanism for children that ended up by producing CRC.

The high aspirations of drafters found their reflection in the Preamble to the Convention which refers to the documents that played a role of inspiration for them. According to the founders, motivation for writing a human rights document for children was drawn from provisions of the Universal Declaration of Human Rights and International Covenants on Human Rights which state that: “everyone is entitled to all the rights and freedoms set forth therein”<sup>20</sup>. The Preamble to CRC further speaks about the right and necessity for every child to be brought up “in the spirit

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<sup>17</sup> *Id.*, art. 32(2).

<sup>18</sup> Yoshie Noguchi, *ILO Convention No 182 on Worst Forms of Child Labor and the Convention on the Rights of the Child*, 10 Int’l J. of Children’s Rights 355, 357 (2002).

<sup>19</sup> See *supra* note 8, para. 103 at 23.

<sup>20</sup> See *supra* note 5, see generally the Preamble to the UN Convention on the Rights of the Child, Nov 20, 1989.

of peace, dignity, tolerance, freedom, equality, solidarity”<sup>21</sup> in loving and understanding atmosphere in order to be able to live a normal life in a respective community.

Among many rights enshrined in the Convention, Article 32(1) protects a child from economic exploitation.<sup>22</sup> At the same time, the Article protects children from performing any work that would be characterized as hazardous or obstructed child's education and had harmful affect on their development.

It is important to note that the Convention does not provide a definition of the term “economic exploitation”. According to Van Buren: “child labor is exploitative when it threatens the physical, mental, emotional or social development of the child”.<sup>23</sup> Furthermore, the work of a child amounts to exploitation when he is paid less than an adult for the same job. The work carried out by a child also represents exploitation when it is done by a person at too young an age and causes harm to him by providing an obstacle to education. The author also contends that not international law is not concerned with work as such but with its abuse<sup>24</sup>. This last statement coincides with the intentions of the drafters of CRC. The wording of the Article makes it obvious that the drafters did not have in mind to outlaw all kinds of work performed by children. According to Article 32(1), economic exploitation of children is not permitted at all. As for work done by children, only the following qualifies to be prohibited by the Convention: “hazardous work, work that interferes with the child’s education, work that is harmful to the

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<sup>21</sup> *Id.*

<sup>22</sup> See *supra* note 16, pt. 1: ”States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”.

<sup>23</sup> Geraldine Van Buren, *The International Law on the Rights of the Child*, 264 (Martinus Nijhoff Publishers 1995).

<sup>24</sup> *Id.*

child's health, work that is harmful to the child's physical, mental, spiritual, moral or social development".<sup>25</sup>

Point 2 of Article 32 provides for state obligations that need to be fulfilled in order to ensure that children will not become subject to unacceptable work. There are several measures that need to be adopted at national levels in order to meet the requirements of the Convention. Namely, the states are obliged to set minimum age or minimum ages for admission to employment, enact appropriate rules to regulate the hours and conditions of employment and provide for suitable penalties or other sanctions in order to fully comply the requirements of Article 32 of CRC<sup>26</sup>. The requirement of determining minimum ages for employment of children is of particular importance for the purpose of this paper. It clearly calls for the adoption of respective legislation by states parties to regulate the employment of children and prohibit the types of work that will be illegal in terms of the Convention.

This way, while outlawing economic exploitation of children and certain kinds of work performed by children, the Convention in its Article 32 sets general guidelines for nation-states that they are required to bear in mind when developing their domestic legislation with regard to child labor.

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<sup>25</sup> Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child*, 563, (Martinus Nijhoff Publishers 1999).

<sup>26</sup> See *supra* note 22, art. 32 (2).

### 1.1.2 ILO No. 138 Minimum Age Convention about Child Labor

The second Convention to be discussed here is the ILO No. 138 Minimum Age Convention. On its fifty-eighth Session, the International Labor Organization that at different times had adopted several Conventions regulating minimum ages for admission at work in various areas,<sup>27</sup> having set the total abolition of child labor as its goal, adopted an international instrument that would in general terms regulate the question of minimum age for admission to employment. The Convention has 148 ratifying states up to date.<sup>28</sup>

Article 1 of the Convention determines the “effective abolition of child labor”<sup>29</sup> as its aim and urges the member states to the Convention to raise the minimum age for employment. Elaboration of a an international instrument setting general standards for the employment of children and providing for their age as a primary determinant for them to start certain types of work indeed represents an important attempt for the regulation of child labor matters.

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<sup>27</sup> See generally the Preamble to the ILO No. 138 Minimum Age Convention (Jun. 26, 1973) available at: <http://www.ilo.org/public/english/standards/ipecc/publ/law/ilc/c1381973/index.htm>, (last visited March 20, 2007).

<sup>28</sup> See List of Ratifications of International Labor Conventions, Minimum Age Convention, 1973 (No. 138) available at: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> (last visited March 22, 2007).

<sup>29</sup> ILO No. 138 Minimum Age Convention (Jun 26, 1973), art. 1;

As CRC, the said Convention also states the development of children as a value to the achievement of which abolition of child labor serves as one of the important means<sup>30</sup>. One of the most important features of this Convention lies in its commitment to cover all types of employment.<sup>31</sup> Article 2(3) of the Convention declares that children should not be employed until they finish compulsory schooling and, in any case, until the age of fifteen.<sup>32</sup> Article 3 of the Convention regulates the subject of hazardous work<sup>33</sup>. It determines hazardous work as an activity that is likely to have negative impact on health, safety and morals of children and establishes 18 years as the age for admission to such type of work<sup>34</sup>.

As it will be shown below, it is exceptionally difficult for state parties to stick to this prescription and harmonize their domestic provisions with its requirement. This particular difficulty was duly taken into consideration by ILO which found relative solution to the potential problem of its implementation in that after setting general minimum age standards for admission to employment for minors, the Convention allows for exceptions if certain specific conditions are met. Article 2(4) permits member states with insufficient economic and educational system development to initially prescribe 14 years as an age for admission to employment.<sup>35</sup> This implies that member states that will exercise their right to follow the above-mentioned provision are encouraged to raise the minimum age for employment as soon as the conditions specified in the Article improve. Another exception concerns the admission of children to hazardous work.

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<sup>30</sup> *Id.*

<sup>31</sup> Karl Hanson & Arne Vandaele, *Working Children and International Labor Law: a Critical Analysis*, 11 Int'l J. of Children's Rights, 73, 99 (2003) available at: <http://web.ebscohost.com/ehost/pdf?vid=10&hid=116&sid=baa9efb5-217c-469e-9b6f-36f32cad8df1%40sessionmgr7>, (last visited March 14, 2007).

<sup>32</sup> See *supra* note 30, art. 2(3).

<sup>33</sup> See *supra* note 25, at 564.

<sup>34</sup> See *supra* note 33, art. 3(1).

<sup>35</sup> *Id.*, art. 2(4).



Article 3(3), permits the states to determine 16 years as an age for admission to such employment only after relevant consultations with competent authorities and in case such work is not detrimental for the health, safety and morals of children.<sup>36</sup> The Convention further encourages the state parties to the Convention to carry out all necessary measures to ensure due implementation of the Convention, namely, national authorities are under the obligation to revise their domestic laws, harmonize them with the provisions prescribed by the Convention and determine persons responsible for their enforcement.<sup>37</sup> Thus the Minimum Age Convention determines general international rules that must be taken into consideration by the states parties to it while drawing or revising their national laws with regard to admission to employment of children in order to comply with the aim of the drafters for eventual abolishment of child labor.

### **1.1.3 Provisions of ILO No. 182 Convention concerning Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labor (1999) and ILO Recommendation 190 Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labor**

ILO No. 182 Convention concerning Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labor which has been ratified by 163 states throughout the world<sup>38</sup> (hereinafter – Worst Forms of Child Labor Convention or the Convention) and the ILO Recommendation 190 Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labor (hereinafter – Recommendation 190) were adopted together on June

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<sup>36</sup> *Id.*, 3(3).

<sup>37</sup> *Id.*, 9(2)(3).

<sup>38</sup> See List of Ratifications of International Labor Conventions, Worst Forms of Child Labor Convention, 1999 (No. 182) available at: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>, (last visited March 20, 2007), the text of the Convention is available at: <http://www.ilo.org/public/english/standards/ipecc/ratification/convention/text.htm>, (last visited March 15, 2007).

17, 1999 by the member states of International Labor Organization at 87<sup>th</sup> session of International Labor Conference.<sup>39</sup> The adoption of the above-mentioned Convention and Recommendation is one more step forward taken by International Labor Organization in its effort to achieve eradication of the problem of child labor around the world.

Worst Forms of Child Labor Convention occupies a place among “fundamental”<sup>40</sup> Conventions of ILO which means that its ratification is considered to be a high priority by the Organization. Like No. 138 Minimum Age Convention, the Convention can be regarded to complement the UN Convention on the Rights of the Child in the sense that it provides for more detailed and concrete measures that need to be adopted by member states to effectively deal with child labor.

The adoption of the Worst Forms of Child Labor Convention by ILO was determined by realization of the need for more effective international instrument that would regulate with the matter. The Organization further considered the necessity for consolidated national and international action against elimination of child labor<sup>41</sup> and elaborated provisions that directly addressed the worst forms of child labor in the form of an international Convention.

In Article 2, the Convention determines 18 years as an age below which everyone is prohibited to perform any activity that can be regarded as worst form of child labor. This means that the Convention does not allow for any deviation from its provisions.<sup>42</sup> On the contrary, the

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<sup>39</sup> See *supra* note 18, at 355.

<sup>40</sup> See Frequently Asked Questions about Convention No. 182 and Recommendation No. 190 on the Worst Forms of Child, available at: <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/faq.htm#01> , (last visited on March 11, 2007).

<sup>41</sup> See the Preamble to the ILO No. 182 Worst Forms of Child Labor Convention, Jun. 17, 1999.

<sup>42</sup> See *supra* note 1, at 20.

Minimum Age Convention provides for more flexible application of certain provisions but the Worst Forms of Child Labor Convention strictly applies to all children of both sexes under the age of 18. The firm implications of the Convention call for immediate actions to be taken by states parties in order to provide for adequate domestic provisions for the protection of children from worst forms of labor.

In Article 3, the Convention clarifies all forms of child labor that are characterized as its worst forms. According to it all the following is prohibited when undertaken by a person below 18 years: (a) slavery and forced labor, including child trafficking and forced recruitment for armed conflict; (b) child prostitution and pornography; (c) production and trafficking of drugs; and (d) work likely to harm the health, safety or morals of children.<sup>43</sup>

It is clear that by listing the above-mentioned activities as worst forms of child labor, the International Labor Organization created further legislative guarantees for the improvement of already existing provisions with respect to prohibition of child labor. In other Articles, the Convention urges the states parties to the Convention to take adequate steps to outlaw the worst forms of child labor in their national law and assign respective authorities in charge of conducting monitoring on proper enforcement of the provisions that implement the articles of the Convention<sup>44</sup>. At the same time, the states parties are under the obligation to elaborate and implement programs of action that target the abolition of worst forms of child labor.<sup>45</sup> This provision imposes further obligations on states parties and not limits their duties to mere improvement and harmonization of their internal laws with the provisions of the Convention.

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<sup>43</sup> See *supra* note 23, at 356, see also *supra* note 42 art. 3.

<sup>44</sup> See *supra* note 42 art 5.

<sup>45</sup> See *supra* note 39, art 6.

It is obvious that the Worst Forms of Child Labor Convention represents an international legislative tool of significant importance for the struggle towards abolition of child labor. It clearly spells out the activities that by no means should be carried out by children less than 18 years of age. In addition it calls for the adoption of special measures at national levels in the form of action programs that will primarily be focused on eradication of the problem of worst forms of child labor.

The ILO No. 182 Worst Forms of Child Labor Convention was complemented by Recommendation 190 that was adopted at the same day as the Convention. The Preamble to the Recommendation specifies the reasons for its adoption in accordance with which, the Recommendation was adopted to provide for concrete proposals for actions to be taken for the abolition of child labor and was meant to be applied in conjunction with the Convention.<sup>46</sup> The Recommendation puts special emphasis on the importance of programs of action the adoption of which are already prescribed by the Convention. While announcing the aims of the programs of action, the Recommendation draws special attention of states to: a) younger children; b) girl children; c) the problem of hidden work; d) other groups of children with vulnerabilities or needs.<sup>47</sup> The referral to “hidden work” is of particular importance for the purposes of this paper as it pertains to work undertaken by children in informal which will be discussed below. The document provides further guidelines for states with regard to the steps to be taken in order to ensure the adequate implementation of nation actions, namely, it states that proper collection and

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<sup>46</sup> See the Preamble to ILO Recommendation 190, Jun. 17, 1999 available at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm>, (last visited March 18, 2007).

<sup>47</sup> *Id.*, para. 2.

maintenance of statistics on child labor is essential for successful enforcement of actions of states.

After the general overview of legal provisions discussed, it can be said that the problem of child labor in today's world is countered by sufficient international legal basis. The work of international bodies created on grounds of these documents will be discussed in the next Chapter in order to demonstrate what mandates these organs possess, how affectively they work and what drawbacks can be identified in fulfillment of competences by them.



## **Chapter 2 – the Committee on the Rights of the Child and the International Labor Organization in Struggle against Child Labor**

### **2.1 The Committee on the Rights on the Child – General Overview of the Committee’s Work and its Relation to Child Labor**

The Committee on the Rights of the Child was established in accordance with Article 43 of the CRC in order to “examine the progress” made by states in their attempts to realize the objectives of the Convention.<sup>48</sup> The Committee mainly fulfills this task by examining the periodic reports submitted by member states to it. The timeframes for submitting reports is clearly regulated by the Convention. There are two types of reports that states are obliged to submit to the Committee: initial and periodic ones. The first kind of report is only submitted once by a state two years after the Convention enters into force for it<sup>49</sup>. As for periodic reports, they should be submitted every five years to the Committee.<sup>50</sup> As this is the only procedure through which the Committee can control the level of observance of CRC provisions by state parties<sup>51</sup>, it evidently lacks strong mechanisms for checking on the progress made by states in direction of implanting the Convention at domestic levels.

To assist the state parties in preparation of reports, the Committee has developed precise and detailed guidelines that should be taken into consideration by the states parties. The Committee has elaborated a flexible manner of organizing reports in accordance with specific subject matters each of which includes one or more articles to be reported on.

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<sup>48</sup> See *supra* note 5, art. 43.

<sup>49</sup> *Id.*, art. 44 (1)(a).

<sup>50</sup> *Id.*, art. 44(1)(b).

<sup>51</sup> See *supra* note 10.

The guidelines for preparing initial reports apportion special place for “economic exploitation, including child labor” under the heading “special protection measures”<sup>52</sup> and the guidelines for periodic reports require reporting on “economic exploitation, including child labor” under the heading “children in situations of exploitation, including physical and psychological recovery and social reintegration”<sup>53</sup> These guidelines as basic standards for facilitation of the work of states for their preparation of reports set quite well-elaborated directions.

For the purposes of this paper only the work of the Committee conducted around the reports submitted to it will be discussed. After hearing the reports, the Committee usually evaluates the submissions of the states and makes its concluding observations that may also include suggestions and recommendations for state parties.<sup>54</sup>

It is important to note that due to tremendous variety of states parties to the Convention, it is difficult for the Committee to design country-specific measures that need to be adopted by particular states to address the problems, in this case, child labor at national levels. Accordingly, the Committee has stated, that it is not up to it to provide “for detailed arrangements appropriate for very different systems of government across states parties”<sup>55</sup> and had made a general recommendation in compliance with which the states have to review their government machinery

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<sup>52</sup> CRC/C/5, 1<sup>st</sup> Sess., 22<sup>nd</sup> mtg., para. 23 (c)(i) (1991) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/0780278cf3405f4941256226005cc7a2?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/0780278cf3405f4941256226005cc7a2?Opendocument), visited March 22, 2007)

<sup>53</sup> CRC/C/58, 13<sup>th</sup> Sess., 343<sup>rd</sup> mtg, para. 151 (1996) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e78f6fffd63fcca2c1256403005754a5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e78f6fffd63fcca2c1256403005754a5?Opendocument), (last visited March 22, 2007).

<sup>54</sup> CRC/C/33, 7<sup>th</sup> Sess., para. 18 (1994) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6b7857954a60d13380256809004bc0ae?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6b7857954a60d13380256809004bc0ae?Opendocument), (last visited March 27, 2007).

<sup>55</sup> CRC/GC/2003/5, 34<sup>th</sup> Sess., para. 38 (2003) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3bba808e47bf25a8c1256db400308b9e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3bba808e47bf25a8c1256db400308b9e?Opendocument), (last visited March 30, 2007).



in light of implementation of the Convention<sup>56</sup> in order to achieve the elimination of problems regarding children's rights including child labour.

The extent to which the states follow the recommendations of the Committee will be discussed in the next Chapter where the matter of dealing with child labour at national and international levels will be presented and evaluated based on concrete examples. Now it suffices to note, that even though states parties do make efforts to follow the recommendations made by the Committee, they are not always successful. Moreover, in some cases, there is no proper follow-up at all as the states do not attach sufficient importance to them.<sup>57</sup> Even though the Committee works rather hard and devotes much time to careful examination of the reports made by the states, it still can not force the states to comply with its recommendations.<sup>58</sup> This weak aspect of Committee's work will be clearly demonstrated below when discussing the concrete examples on insufficiently addressed recommendations made by the Committee.

Another important difficulty for the effectiveness of the Committee's work is that its mandate does not provide for individual complaints procedure as it is only restricted to reviewing reports of states parties.<sup>59</sup> This can be regarded as a drawback of the Committee. Individual complaints would make its work more productive as numerous cases of violation of children's rights including large-scale occurrences of child labour worldwide would reach to it through applications submitted directly to the Committee. This mechanism for acting on the breaches of rights granted to children by the CRC would give to the Committee one more tool for enhancing

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<sup>56</sup> *Id.*

<sup>57</sup> See *supra* note 14, at 141.

<sup>58</sup> *Id.*

<sup>59</sup> Consider the general implications of documents referred in *supra* notes 54 and 55.

its work in direction to reducing illegitimacies perpetrated to children and among them millions of economically exploited minors.

As regards the Committee's attention devoted to the problem of child labour, the fact is that it dedicated only one general discussion to the matter in 1993.<sup>60</sup> This session mainly considered the situations of child labour, namely, the focus was made on the issues of domestic servants, child prostitution, child pornography and sale of children.<sup>61</sup> The Committee members referred to several types of economic exploitation and made several recommendations, mainly concerning the necessity for bilateral and regional co-operation among the states. Moreover, the Committee declared the following acts to be intolerable in any circumstances:

- “• Activities jeopardizing the development of the child or contrary to human values and dignity;
- Activities involving cruel, inhuman or degrading treatment, the sale of children or situations of servitude;
- Activities that are dangerous or harmful to the child's harmonious physical, mental and spiritual development or are liable to jeopardize the future education and training of the child;
- Activities involving discrimination, particularly with regard to vulnerable and marginalized social groups;
- All activities under the minimum ages referred to in article 32, paragraph 2, of the Convention on the Rights of the Child and in particular those recommended by ILO;
- All activities using the child for legally punishable criminal acts, such as trafficking in drugs or prohibited goods.”<sup>62</sup>

Even though it is highly valuable that the Committee separately considered the issue of child labour at its 4<sup>th</sup> Session, it still seems insufficient as since 1993 there has not been a special discussion devoted to this problem that in light of its large-scale dissemination truly needs more

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<sup>60</sup> CRC/C/20, 4<sup>th</sup> Sess., 35, para. 186 (1993) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7b7a4f2120b2aacb4125615100388678?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7b7a4f2120b2aacb4125615100388678?Opendocument)

<sup>61</sup> *Id.*, para. 193.

<sup>62</sup> *Id.*, at 14.

coordinated and alert action to be taken by the bodies directly responsible to dealing with this problem.

In the end of this sub-chapter it can be concluded that today's world in the face of the Committee on the Rights of the Child has a UN level mechanism with direct responsibility to work on implementation of the Convention on the Rights of the Child, the international multilateral and mostly ratified treaty on basis of which it was created. Within its competences, the Committee's work can be estimated as having its strengths and weakness which will be in more detail discussed in the next chapter.

## ***2.2 International Labor Organization and its work towards Elimination of Child Labor***

The International Labor Organization became a UN specialized agency in 1946<sup>63</sup> and represents one of the major international institutions working on the elimination of child labor worldwide with its twenty-five Conventions adopted on the matter at different times.<sup>64</sup> We find the reference to "the provision for child welfare" as one of the priority aims that ILO set in its Declaration concerning the aims and purposes of the International Labor Organization.<sup>65</sup> In order to make its work towards this particular goal more productive, ILO elaborated a special program

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<sup>63</sup> About the ILO Mandate, available at: <http://www.ilo.org/public/english/about/index.htm> , (last visited March 14, 2007).

<sup>64</sup> Anjali Gang, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. Int'l L. & Pol. \* 496 (1999) available at: <http://www.law.nyu.edu/journals/jilp/issues/31/pdf/31m.pdf>, (last visited March 29, 2007).

<sup>65</sup> Declaration concerning the Aims and Purposes of the International Labor Organization ,Part III (h) (1944) available at: <http://www.ilo.org/public/english/about/iloconst.htm>, (last visited March 18, 2007).

in 1992.<sup>66</sup> The International Program on the Elimination of Child Labor (IPEC) was initiated to address the growing need for effective struggle against dramatic phenomenon of child labor.

The work of IPEC comprises multiple dimensions and activities. For the purposes of this paper only one direction of IPEC activities will be discussed. It concerns Time Bound Programs (hereafter – TBPs) initiated by IPEC<sup>67</sup>. The goals and development of this Program achieved so far will be presented on the example of Nepal, one of the first three pilot countries where this program was launched by IPEC. According to ILO evaluation, TBPs may find reflection into social and economic development programs of states concerned though they are not intended to replace but only support them.<sup>68</sup> The progression of TBP in Nepal will be discussed in more detail below.

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<sup>66</sup> IPEC at Glace, available at: <http://www.ilo.org/public/english/standards/ipecc/about/implementation/ipecc.htm> , (last visited March 14, 2007).

<sup>67</sup> Time Bound Programs for the Eradication of the Worst Forms of Child Labor, available at: <http://www.ilo.org/public/english/standards/ipecc/themes/timebound/tbp.htm> , (last visited March 18, 2007).

<sup>68</sup> See *supra* note 8, at 36, para. 150, see also *IPEC: Time Bound Program: Manual for Action Planning* (2003) available at: <http://www.ilo.org/public/english/standards/ipecc/themes/timebound/map.htm>, (last visited March 25, 2007).

## Chapter 3 - Child Labor in Nepal and India – Causes of and Action against It at National and International Levels

### 3.1 Causes and Statistics of Child Labor in Nepal

This section of the paper outlines general picture of the causes of child labor in Nepal in accordance with the estimation of Nepali government and ILO. Poverty and social inequality is the most widely referred reason of child labor in Nepal.<sup>69</sup> Besides poverty, ILO names illiteracy of parents, non-existence of compulsory education for children and insufficient enforcement of respective legislation as other major determinants of child labor in the country.<sup>70</sup>

In a comprehensive study on child labor in Nepal conducted by B. Gilligan in cooperation with ILO, UNICEF and World Bank representatives, the author lists “household vulnerability” as the primary determinant of child labor in Nepal.<sup>71</sup> These are poor households with economic hardships that find no better means to live than depending on child labor as a main source of family’s income. The reason named by the researcher is also directly related to the lack of education of parents that opt to send their children to work rather than to school.<sup>72</sup> It is clear that Nepal has immense social-economic problems to overcome, at least improve initially, in order to make its fight against child labor more realistic and effective.

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<sup>69</sup> *Nepal Human Development Report 2004 Empowerment and Poverty Reduction*, United Nations Development Program, 65, available at: [http://hdr.undp.org/docs/reports/national/NEP\\_Nepal/Nepal\\_2004\\_en.pdf](http://hdr.undp.org/docs/reports/national/NEP_Nepal/Nepal_2004_en.pdf), (last visited March 20, 2007).

<sup>70</sup> IPEC Country Profile: available at: <http://www.ilo.org/public/english/standards/ipec/themes/timebound/downloads/nepal.pdf>, (last visited March 18, 2007).

<sup>71</sup> Brian Gilligan, *An Analysis of the Determinants of Child Labor in Nepal, the Policy Environment and Response*, An Inter-Agency Cooperation Project, 14 (2003) available at: [http://www.ucw-project.org/pdf/publications/childlabour\\_nepal.pdf](http://www.ucw-project.org/pdf/publications/childlabour_nepal.pdf), (last visited March 30, 2007).

<sup>72</sup> *Id.*

As for the government of Nepal, which is directly responsible for making effort to combat child labor in the county, it also relates the widespread phenomenon of child labor to the extreme poverty. In its initial report submitted to the Committee on the Rights of the Child in 1995, the government of Nepal states that child labor is “rooted in poverty”<sup>73</sup> and this makes fight against it exceptionally difficult.

The causes of child labor determine the scale of its dissemination throughout the country. First of all, it should be noted that in light of general complexity of counting all child laborers in the world, Nepal is not an exception in this respect. Last national child labor survey in the country was conducted by ILO-IPEC as part of a wider migration and employment survey<sup>74</sup> that disclosed dramatic picture with regard to the issue in the country. According the above-stated survey, 2.6 million children out of 6.2 million total child population of the country are child laborers.<sup>75</sup> The same survey indicates that the number of working children estimated by this study is incomplete based on the fact that it is not possible to include all children that work in the families as domestic servants.<sup>76</sup> It follows that the only survey directed on counting child laborers in Nepal was conducted 11 years ago that makes it outdated for current situation on the matter. Moreover, this study is not comprehensive as it fails to produce a full picture of child laborers in the country due to the fact that it only includes children who have official employers and excludes the ones hidden beyond the household duties.

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<sup>73</sup> CRC/C/3/Add.34, para 359 (1995) available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.3.Add.34.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.3.Add.34.En?Opendocument), (last visited March 30, 2007).

<sup>74</sup> Bhim Raj Suwal et al., *Child Labor Situation in Nepal (Report from Migration and Employment Survey 1995/1996)*, International Program for the Elimination of Child Labor (IPEC), International Labor Organization (ILO), 76 (1997).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

## **3.2 International and Domestic Action against Child Labor in Nepal**

### **3.2.1 International and Domestic laws In Relation to Child Labor in Nepal**

At international plane, Nepal is a state party to three major international documents relevant here. As it was discussed above, the CRC in its Article 32 protects children from exploitation in general terms while the two fundamental ILO Conventions No. 138 and No. 182 provide for more comprehensive regulation of child labor related matters. Nepal became the state party to the CRC in 1990<sup>77</sup>. The country ratified the ILO No. 138 Minimum Age Convention in 1997 and in 2002 it became the state party to the ILO No. 182 Worst Forms of Child Labor Convention<sup>78</sup>.

Therefore, by ratifying major Conventions on children's rights and protection, Nepal created solid international legal framework that obliges it to enhance its endeavors with regard to establishing and properly enforcing those international instruments through domestic legislative measures. Apart from submission of reports<sup>79</sup> to the bodies that are primarily responsible for checking on the effective enforcement of respective Conventions by states parties, it is the duty of Nepal to align its internal laws with international standards that it had adhered. As it will be demonstrated below, the state has undertaken several coherent but still incomplete measures for the fulfillment of the latter obligation.

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<sup>77</sup> Status of Ratifications to the UN Convention on the Rights of the Child, available at: <http://www.ohchr.org/english/countries/ratification/11.htm>, (last visited March 19, 2007).

<sup>78</sup> List of Ratifications of International Labor Conventions, available at: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>, (last visited March 19, 2007).

<sup>79</sup> See *supra* note 5 art. 44 and the Const. of International Labor Organization, Apr. 1919, art. 22, available at: <http://www.ilo.org/public/english/about/iloconst.htm>, (last visited March 30, 2007).

### 3.2.2 Domestic laws on child labor of Nepal and their consistence with international instruments

To begin with, the Constitution of Nepal in Article 20 (2) provides that: “no minor shall be employed in work in any factory or mine, or be engaged in any hazardous work”.<sup>80</sup> Constitutional prohibition of child labor can be regarded as one step forward into the direction of eliminating illegal work of children in the state though it still needs further elaboration in terms of specifying the exact meaning of “minor”. This is the major task of other domestic laws referred to below.

Here I will analyze the most important internal laws that pertain to child labor in Nepal. Child Labor (Prohibition and Regulation) Act was adopted in 2000.<sup>81</sup> The adoption of the Act that specifically regulates child labor issues should be viewed as a positive response of the state to demands that the scale of child labor determines in the country. Although, according to ILO Committee of Experts, the Act is not free from flaws.<sup>82</sup> In their comments on last report of Nepal submitted to ILO, the Committee particularly stressed the silence of the Act in relation to children who are employed in informal sector.<sup>83</sup> This flaw of the law imposes additional burden to children who by the very nature of the work are already left without due regard in terms of inclusion in the statistics of child laborers as indicated above. The Committee of Experts in the same report refers to the commitment of the state of Nepal to outlaw the employment of children

<sup>80</sup> Kingdom of Nepal Const., art. 20(2) available at:

<http://www.vakilno1.com/saarclaw/nepal/consitution/consitutionofnepal.htm> , (last visited March 19, 2007).

<sup>81</sup> Child Labor (Prohibition and Regulation) Act, 2056; Nepal Gazette 2057-3-7 (Jun. 21, 2000 A.D.).

<sup>82</sup> See generally ILO Committee of Experts comments concerning the reports of Nepal on the application of the Convention # 138 (Minimum Age Convention), available at: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> , (last visited March 19, 2007).

<sup>83</sup> *Id.*



under the age of 16 in hazardous work<sup>84</sup> and urges the state party to define the types of work that qualify as hazardous in order to make the application of law more effective. Even though, the Convention allows states with economic hardships to initially provide for 16 years<sup>85</sup> as an age for the involvement of children in hazardous occupations, the state of Nepal should focus on increasing the age of children occupied in these conditions. This argument is based on careful reading of the provisions of both ILO Conventions, namely, if we take into consideration the requirement of Worst Forms of Child Labor Convention which in Article 39(d) defines work that is: “likely to harm health, morals or safely of children” as one of the worst forms of child labor the age for which is unconditionally proscribed to be 18 and if we read this definition in conjunction with ILO Minimum Age Convention which gives the same definition to hazardous work, it becomes clear that hazardous work is regarded as one of the worst forms of child labor and no exceptions are allowed as to the age requirement (defined as 18 by the Worst Forms of Child Labor Convention) for the employment on it.

The Labor Act, 1992 regulates hours of work of minors that are determined as persons between the age of 14 and 18 and states, that except in cases of specified conditions, minors should be employed from 6 a.m. to 6 p.m.<sup>86</sup> The Labor Rules, 1993<sup>87</sup> refer to the provision of the Act and clarify that no minor between the age of 14 and 16 shall be employed more than 6 hours a day and more than 36 hours a week. Thus, these domestic legal acts further regulate the labor

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<sup>84</sup> *Id.*

<sup>85</sup> See *supra* note 33.

<sup>86</sup> Labor Act, sect., 5(1), (1992), Nepal Recorder, Vol. 16, No. 19, 220253 (12 June 1992) available at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/30019/64854/E92NPL01.htm>, (last visited March 16, 2007).

<sup>87</sup> Labor Rules, sect. 5(1) (1993), Nepal Recorder, Vol. 17, No. 39, 414-442, (25 December 1993) available at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/36026/64908/E93NPL01.htm>, (last visited March 16, 2007).

relations with children but it should also be noted that the Labor Act that refers to “specified conditions” when the working hours of minors can be changed, leaves broad space of interpretation to employers as it does not set the limits within which the conditions must be specified for the above-mentioned age group.

As it can be observed, Nepal has made effort to harmonize its internal legislation with international commitments undertaken by it. This should be regarded as positive impact of adherence to international standards though the laws of Nepal also show that the country is still far from being close to full correspondence to provisions of Conventions as there still is nonconformity with international standards as to the definition of ages for child labor. At the same time the Nepalese laws are significantly flawed in their reluctance to cover non-informal sector in order to provide protection of children working in households. The flaws indicated here show that the government of Nepal needs more effective measures to take in order to improve and make its laws more inclusive and efficient.

### **3.2.3 International Organizations against Child Labor in Nepal – the Work of the UN Committee on the Rights of the Child and ILO International Program on the Elimination of Child Labor (IPEC)**

Under its mandate, the duty of the Committee on the Rights of the Child is to review reports submitted to it by state parties<sup>88</sup>. Consequently, as a State party to the Convention on the Rights of the Child, Nepal is under the obligation to submit reports to the Committee which after their examination prepares concluding observations that are included in a respective report and communicated to the state party in question. This way, Nepal is recommended to follow the

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<sup>88</sup> See supra note 5, art. 44.

observations made by the Committee. The efficiency of the Committee's work will be further addressed and assessed below.

Another international instrument focusing on child labor is IPEC - the principal program of ILO with responsibility of dealing with the matter. As a member state of its Conventions, under Article 22 of ILO Constitution<sup>89</sup>, Nepal is responsible for reporting on the measures undertaken for the fulfillment of the provisions of those Conventions. The ILO Committee of Experts reviews and makes comments on state party reports. The Committee's work will be reviewed below in the part of the section devoted to ILO action in Nepal.

### **3.2.4 Work of the Committee on the Rights of the Child in Nepal**

As it was already mentioned, the only official work performed by the Committee on the Rights of the Child is related to its competence to listen to and review the reports of member states to the CRC and make respective conclusions in the form of concluding observations<sup>90</sup>.

The careful examination of the parts of concluding observations made by the Committee in relation with Nepal's reports reveals that the Committee lacks strong mechanisms to oblige the country to enforce its recommendations. For example, in its concluding observations of 1996, the Committee "suggests that Nepal consider ratifying ILO Convention No. 138 concerning the minimum age..."<sup>91</sup> As concluding observations have the force of recommendations only<sup>92</sup>, they

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<sup>89</sup> The Const. of the International Labor Organization, Apr. 1919, art. 22 available at: <http://www.ilo.org/public/english/about/iloconst.htm>, (last visited March 30, 2007).

<sup>90</sup> See *supra* note 5, art. 45(d).

<sup>91</sup> CRC/C/15/Add.57, 12<sup>th</sup> Sess., (1996) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/782327b48e0320aac1256361004964ad?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/782327b48e0320aac1256361004964ad?Opendocument), (last visited March 30, 2007).

are not mandatory to be complied by the states. Thus, even though, in this particular case, Nepal acted on respectively and ratified the indicated ILO Convention in one year, this is not always the case. For instance, in its concluding observations, made in 2005, the Committee refers to poorly enforced laws with regard to children working in hazardous conditions<sup>93</sup> but the very wording of Committee's concluding observations still bear only recommendatory character without stronger implications for their actual follow-up by the state party. This way, even though, work of the Committee should be given reasonable appreciation, it stills fails to play a role of international body the opinions of which are widely followed by member states.

At the same time, the Committee lacks controlling mechanisms<sup>94</sup> to see that its comments are respectfully observed. Its mandate only comprises the review of reports every two years and as it often happens that states delay submission of their reports, the work of the Committee becomes further hindered. Nepal's initial report to the Committee was due in 1992 but the country submitted it in 1995<sup>95</sup>. As for the second periodic report, Nepal delayed its submission for 6 years and submitted it in 2003 instead of 1997<sup>96</sup>. But at the same time, it can not be concluded that the Committee's observations are totally ignored. They acquire the value of binding documents to be followed at the UN level.<sup>97</sup> Respectively, the two concluding observations made so far by the Committee reflect the latter's attitude and examination of the country's

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<sup>92</sup> See *supra* note 58, at 136.

<sup>93</sup> See CRC/C/15/Add.261, Sess., 39 ( 2005) available at; [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9cdc0faeb06f27d9c1257018002dd2cb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9cdc0faeb06f27d9c1257018002dd2cb?Opendocument), (last visited March 30, 2007).

<sup>96</sup> See *supra* note 59, at 141.

<sup>95</sup> See Nepal's Reporting Round 1, available at: <http://www.unhchr.ch/tbs/doc.nsf/5038ebdcb712174dc1256a2a002796da/80256404004ff315c125638800542a99?OpenDocument>, (last visited March 20,2007).

<sup>96</sup> See Nepal's Reporting Round 2, available at: <http://www.unhchr.ch/tbs/doc.nsf/5038ebdcb712174dc1256a2a002796da/a5021b360a59ee8cc1256d0900541e48?OpenDocument>, (last visited on 20 March 2007).

<sup>97</sup> *Id.*

situation and progress made in relation with child labor and this way represent valuable official documents on which further actions can be undertaken at national or international plane for combating child labor in Nepal.

As for ILO commitments in relation to child labor problem in Nepal, the work performed by the Committee of experts was already referred to above. Here I will discuss Time- Bound Programs (hereinafter - TBP) of IPEC. According to the IPEC information on the programs<sup>98</sup>, they are designed to study the roots of the worst forms of child labor and coordinate state efforts for its elimination. The most important feature of the TBP is that it is designed at national level and needs to be fit in a particular local reality. Nepal was one of the pilot countries where the TBP started in 2002 as an experiment project. The program is intended to last for seven years and the comprehensive assessment of its final results is impossible at present. TBP in Nepal mainly concentrates on child bonded labor, child trafficking, child domestic labor. It will also work on child porters and children in hazardous occupations<sup>99</sup>. As a result of a mid-term assessment of the progress made by the program, its objectives have been adjusted to the reality created in the country as a consequence of political and economic hardships.<sup>100</sup> Elaboration and implementation of TBP is mainly the responsibility of Nepali authorities. IPEC assists the government in fulfilling its endeavors but lacks sufficient resources to supply it with adequate

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<sup>98</sup> Time-Bound Programs for the Eradication of the Worst Forms of Child Labor, available at: <http://www.ilo.org/public/english/standards/ipec/themes/timebound/tbp.htm> , (last visited March 20, 2007).

<sup>99</sup> IPEC Country Profile: Nepal, Child Labor in Nepal, available at: <http://www.ilo.org/public/english/standards/ipec/themes/timebound/downloads/nepal.pdf>, (last visited March 20, 2007).

<sup>100</sup> See Committee of Experts comments on the reports of Nepal on the application of the Convention # 138 Minimum Age Convention, Direct Request, CEACR 2005/76<sup>th</sup> Sess., available at: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> , (last visited March 20, 2007).

technical means. This particular difficulty is referred to in IPEC 2004-2005 report where the time-bound programs are indicated as part of work IPEC undertakes in general.<sup>101</sup>

IPEC action in the form of TBP in Nepal undoubtedly represents a positive trend in direction to eradication of child labor in the country. As the program is mainly maintained by government at national level, it presupposes the involvement of larger groups that makes it more consistent and comprehensive. The final outcome of the program will be possible to estimate after it has been finished in two years. Meanwhile, it is of significant importance that the government of Nepal in close co-operation of IPEC stayed alert to its commitment with regard to the above-identified types of child labor.

In overall assessment of IPEC activities in Nepal, it should be noted that the country has rather strong international support in the form of TBP, the implementation of which is currently under way. Nevertheless, there still are flaws mainly relating to the above-indicated lack of sufficient resources necessary to be directed from ILO to the target country for the enhancement of program's efficiency.

### **3.3 Problem of Child Labor in India**

This part of the paper will present the scale of child labor in India. The problem is viewed as having no sufficient attention from public.<sup>102</sup> The magnitude and dissemination of this particular

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<sup>101</sup> *IPEC Action against Child Labor 2004-2005 Progress and Future Priorities, International Labor Organization* (2006), available at: [http://www.ilo.org/iloroot/docstore/ippec/prod/eng/200602\\_implementationreport\\_en.pdf](http://www.ilo.org/iloroot/docstore/ippec/prod/eng/200602_implementationreport_en.pdf), (last visited March 20, 2007).

violation of children's rights will be established on the basis of various surveys undertaken in the country. The results of surveys are not free from discrepancies but still map the picture of the problem in an apparent way.

India is the member state to only one Convention subject to analysis in this research. It is the 1989 UN Convention of the Rights of the Child. With this regard I will evaluate to what extent Indian domestic legislation (only the most important laws on child labor will be tackled) is in line with the Convention, identify gaps in it and assess the work of the Commission on the Rights of the Child and its impact on the eradication of child labor in India. I will also refer to the importance of India's ratification of ILO core Conventions No. 138 and 182 that would provide additional solid international legal basis for polishing up its internal laws on the matter.

### 3.3.1 –Statistics and Causes of Child Labor in India

In its initial report to the Committee of Children's Rights, the government of India names the figure of 17 million working children in accordance with the 43<sup>rd</sup> National Sample Survey conducted in the country in 1987<sup>103</sup> and clarifies that by the date of the submission of the report the number of children involved in labor has increased to 20 million.<sup>104</sup> This number highly contradicts to the figure indicated by India in its second periodic report to the Committee. The country only refers to 1991 census that revealed 11.28 million working children throughout the

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<sup>102</sup> Nandana Reddy, *Child Labor: A Hidden Form of Child Abuse*, Vol. 4, Child Abuse Rev 207, 207 (1995).

<sup>103</sup> CRC/C/28/Add.10, para. 280 (1997) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.28.Add.10.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.28.Add.10.En?Opendocument), (last visited March 30, 2007).

<sup>104</sup> *Id.*

territory of India.<sup>105</sup> As there is no additional indication as to the statistical data pertaining to child laborers in the second report, it is more rational to rely on the number of working children specified by the reporting state in its initial report which refers to the figure relevant by a later date, namely, the year of 1997.

Another independent source from the international movement - The Global March against Child Labor points to a more recent 2001 Survey that revealed 12.66 million child laborers in 5 to 14 age group<sup>106</sup>. Even though it is difficult to establish an exact number of children engaged in labor on the grounds of statistical sources mentioned above, it is nevertheless possible to conclude that the degree of the problem is indeed high.

The immense magnitude of the problem is directly connected to the main reason that forces children to opt for work rather than to education. This reason is common to many countries where child labor represents an unfortunate reality breaching the rights of children. This reason is mainly related to imbalance in economic system of the country which provides for unjust distribution of the benefits of economic growth.<sup>107</sup> The government of India and IPEC both name poverty, illiteracy of parents and general low-level social-economic conditions as major facilitators and determinants of child labor in the country.<sup>108</sup> Even though this is the unfortunate present reality in India, social-economic hardships are not to be addressed on the expense of

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<sup>105</sup> CRC/C/93/Add.5, para. 1163, (2003) available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.93.Add.5.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.93.Add.5.En?Opendocument), (last visited March 30, 2007).

<sup>106</sup> The Global March against Child Labor, *Review of Child Labor, Education and Poverty Agenda, Country Report, India*, 12 (2006) available at: <http://www.globalmarch.org/images/india-report.pdf>, (last visited on March 30, 2007).

<sup>107</sup> Michaela Caesar-Leo, *Child Labor: the Most Visible Type of Abuse and Neglect in India*, Vol. 8, Child Abuse Rev., 75, 78, (1999).

<sup>108</sup> See *supra* note 104, para. 281 (1997); see also *supra* note 9 at 15.



health, educational opportunities leading to a decent social life in adulthood and what is the most important, “the best interests of child”<sup>109</sup> as enshrined in CRC.

The sub-section below will demonstrate to what extent Indian domestic provisions on child labor comply with its international commitments, namely - the CRC provisions and what would possibly change in the domestic legislation of India pertaining to child laborers if the country followed the recommendations of the Committee on the Rights of the Child<sup>110</sup> and ratified the ILO No.138 and No. 182 Conventions.

### **3.3.2 Impact of Adherence and non-Adherence to International Labor Standards on Child Labor Domestic Laws in India - The UN Committee on the Rights of the Child and influence of its Work on Child Labor Legislation in India**

This sub-section of the paper intends to show to what extent Indian domestic laws comply with international labor standards in force for the country, the necessity for adherence to international Conventions primarily concerned with regulation of child labor and possible improvements that the ratification of the latter documents would bring to the state party. For the first type of Conventions, the impact of the CRC on Indian internal child labor law in combination with the work of the Committee on the Rights of the Child will be analyzed. For the second purpose, ILO No. 138 and No. 182 Conventions will be referred to.

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<sup>109</sup> *Supra note 5*, art. 3(1).

<sup>110</sup> CRC/C/15/Add.115, para. 71 (2000) available at : [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6bfe919a361e8a498025687f005c9062?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6bfe919a361e8a498025687f005c9062?Opendocument) , (last visited March 30, 2007); CRC/C/15/Add.228, para. 73(d) (2004) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/35e5ebb72fcfadbac1256e83004a29a8?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/35e5ebb72fcfadbac1256e83004a29a8?Opendocument), (last visited March 30, 2007).

First of all, it should be noted that while acceding to the CRC, India made a declaration<sup>111</sup>, in accordance with which due to the existent social-economic situation in the country, it retains right to progressively enforce the Convention. This means that the Indian legislator deems inappropriate to immediately determine minimum ages for every type of employment. As a response to this declaration, the Committee on the Rights of the Child has twice underlined that it considers the existence of this declaration unnecessary based on numerous actions taken by the country for elimination of child labor.<sup>112</sup> An action in accordance with this recommendation has not yet been taken by the state party which provides ground for numerous flaws in its domestic legislation on child labor.

The most important law pertaining to child labor in India is Child Labor (Prohibition and Regulation) Act, 1986.<sup>113</sup> It is a comprehensive document that regulates the subject in light of the realities existent in India. In accordance with the law, child is defined as a person under the age of 14.<sup>114</sup> This definition corresponds to an exception allowed by the Minimum Age Convention that provides for countries with low economic development to initially decrease the age of employment for children and define it as 14.<sup>115</sup> This act states that children, i.e. persons younger than 14 should *not* be employed in occupations laid down in Part A and B of Schedule to the

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<sup>111</sup> See the Declaration of India in Declarations and Reservations to the CRC, available at: <http://www.ohchr.org/english/countries/ratification/11.htm#reservations>, (last visited March 25, 2007);

<sup>112</sup> See *supra* note 112 at para. 66 and para. 73(d) respectively.

<sup>113</sup> The United Kingdom Committee for UNICEF, *Child Labor Resource Guide Append. 5: Domestic Law as a Tool against Child Labor*, 102, available at: [http://www.unicef.org.uk/publications/clrg/pdf/appendix5\\_C.pdf](http://www.unicef.org.uk/publications/clrg/pdf/appendix5_C.pdf), (last visited March 30, 2007).

<sup>114</sup> The Child Labor (Prohibition and Regulation) Act, para. 2(ii), pt. I (Dec. 23, 1986) available at: <http://labour.nic.in/cwl/ChildLabourAct.doc>, (last visited March 30, 2007).

<sup>115</sup> *Supra* note 32.

Act.<sup>116</sup> Although, legislative determination of the types of work prohibited for persons below 14 years of age undoubtedly deserves positive assessment, the Act is still flawed for not providing for kinds of work where children under 14 years may be employed. At the same time, the Act does not prescribe employment rules for persons from 14 to 18 ages and thus leaves them beyond the scope of its regulation. These uncertainties grant substantial flexibility to employers who can themselves decide for what type of work to employ the children below or above 14 years of age.

One serious improvement in the internal child labor laws of India should be necessarily noted. The Committee on the Rights of the Child, in its concluding observations of 2004 on last periodic report submitted to India, commented that India should consider inclusion of household enterprises, government schools and training centers in Child Labor (Prohibition and Regulation) Act of 1986<sup>117</sup> that were not exempt from employing children by the Act. This flaw was partly addressed by the new law on Child Labor enacted by India in 2006 to exclude children under 14 years of age from labor in households, restaurants and hotels.<sup>118</sup>

This innovation is a positive step taken by the Indian legislator as it provides for legal protection from occupation in informal sector but Human Rights Watch emphasizes important flaw in it which concerns the exclusion of children from 14 to 18 years of age from its regulation.<sup>119</sup> This once again leaves the children of the mentioned age group without necessary legal protection and calls for immediate and adequate actions to be taken from respective authorities.

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<sup>116</sup> *Id.*

<sup>117</sup> CRC/C/15/Add.228, para. 73(b ) (2004).

<sup>118</sup> *India: Child Labor Law Welcomed, but Needs Enforcing*, Human Rights News (Oct. 5, 2006), available at: <http://hrw.org/english/docs/2006/10/04/india14264.htm>, (last visited March 24, 2007).

<sup>119</sup> *Id.*

Factories Act of 1948 should also be referred to as it also covers child labor in the sense that in section 63 the Act prohibits employment of children under 14 years of age in factories.<sup>120</sup> The law further states that no child should be required to work more than four and a half hours and during the night in factories.<sup>121</sup> Young persons who have completed their 14 years and adolescents, i.e. persons from 15 to 18 years of age<sup>122</sup> can only start working at a factory if they present the health certificate of fitness.<sup>123</sup> Even though, the Act provides for regulation of children and adolescents at factories, it still can not be considered to be without flaws in terms of its correspondence with international standards as in part devoted to hazardous work,<sup>124</sup> the law does not refer to the age group of children that should not be subject to employment in hazardous occupations. Provided that children from age 14 are allowed to work at factories, this omission of the law provides for possibility of their employment at hazardous occupations.

Here the crucial importance of ratification of ILO core Conventions becomes relevant. Despite the recommendation of the Committee on the Rights of the Child, these Conventions have not been yet ratified by India.<sup>125</sup> The laws of India are free to disregard the provisions of ILO No. 138 Minimum Age Convention as a landmark document for determination of ages with regard to different kinds of occupations. Its ratification would entitle the ILO Experts Committee to require the submission of reports by India and make relative conclusions/comments on them. IPEC as a primary program on eradication of child labor worldwide would in addition be able to

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<sup>120</sup> Factories Act, sect. 63 (1948) available at: <http://www.vakilno1.com/bareacts/factoriesact/factoriesact.htm>, (last visited March 30, 2007).

<sup>121</sup> *Id.*, sect. 71.

<sup>122</sup> *Id.*, sect. 2(b).

<sup>123</sup> *Id.*, sect. 69.

<sup>124</sup> *Id.*, chapt. IVA.

<sup>125</sup> *Supra* note 105.

include India in its time-bound programs to further enhance and make more productive its cooperation with the state.



## Conclusion

Summing up the evaluation of international provisions on child labor, it is obvious that the UN and ILO documents regulating the matter represent rather well-worded commitments drafted at international level in order to address the issue in question of the paper. CRC in its Article 32 provides for general prohibition of exploitation of children while ILO Conventions further elaborate on the matter in more consistent and detailed way.

To be adequately applied, these international instruments need respective enforcement by states parties to them. Without due regard attached to implementation of international obligations imposed on states by above-mentioned Conventions, their prescriptions lose significance and stay articulated only on paper.

Main findings of this research were made through the overview of Nepali and Indian domestic legislation on child labor. Both states determine the age of 14 at which a child can start working which is primarily related to their insufficiently development economies. While the Minimum Age Convention does provide for such exclusion for underdeveloped countries, the legislators of Nepal and India should concentrate their efforts to progressively raise the minimum age of employment to a general standard enshrined in the Convention.

Thus, examination of major provisions of domestic laws of these countries having impact on child laborers reveals a common flaw to both legislations - they still need to elaborate on precise

definition of minimum ages for employment of children, especially in hazardous conditions. Nepal further needs to regulate the situation of children occupied in informal sector. As a positive trend of Indian legislation, this latter issue found its reflection in a respective law.

As regards to international assistance to states in their efforts to combat child labor, works of international bodies – CRC and ILO-IPEC, while not being without flaws, remain significant. This contains a message to the states referred to in the paper that they need to continue co-operation with them through on time submission of reports and continuing to work on further harmonization of national laws with international standards on child labor. This point has another important implication for India which undoubtedly needs to ratify ILO Minimum Ages and Worst Forms of Child Labor Conventions in order to create one more solid ground for its action against the problem.



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