



Submission to the UN High Commissioner for Human Rights on the right to work and the implementation of the Sustainable Development Goals.

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Introduction

Globally, some 215 million children work, not including the millions of children in 'hidden' work. They work for different reasons, while some choose to do so for their own development or to help support their family, others are duped into abusive labour - particularly in the sex trade - by traffickers who promise them a better life in a faraway land, or are sold or given up by their family out of poverty.

Article 32 of the Convention on the Rights of the Child (CRC) requires States to protect children from economic exploitation and work which is hazardous, interferes with a child's education, or is harmful to their health or physical, mental, spiritual, moral or social development. It presses States to establish a minimum age of admission into employment, ensure regulation of working hours and conditions and apply appropriate penalties and other sanctions in cases of non-compliance. While article 32 establishes safeguards to protect children from economic exploitation and abuse, it does not set a blanket prohibition on work for children.

In this submission we discuss how imposing a blanket ban on all child work without addressing the economic conditions which push children to work in the first place is not the best way to advance children's interests. The submission also looks at ways of applying a rights based approach to child work in the context of the sustainable development goals, particularly Goal 8.

Decent work for all

Through Goal 8 on decent work and economic growth, the Sustainable Development Goals (SDGs) aim to 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.' When it comes to children, Goal 8 is often only seen as relevant to child labour. While Goal 8.7 focuses on ending child labour in all its forms, not all working children perform activities that can be defined as child labour. Many children choose to work, often in part-time jobs or light work. Particularly, Goal 8.8 on the protection of labour rights and the promotion of secure working environments for all workers, applies also to children.

The ILO estimates that 152 million children, aged between 5 and 17, are trapped in child labour. The majority of child workers are found in agriculture and domestic service, where they may be exposed to harmful chemicals, long hours and abuse.

Child labour is both a cause and consequence of poverty.¹ Extreme poverty, lack of job opportunities for adults, and poor access to schools perpetuate the need for families to send children to work. Gender, caste and ethnicity are also factors that make child labour more common among certain population groups, as entrenched discrimination on these grounds determines education and employment opportunities.

The International Labour Organization (ILO), in its Convention 138, calls for a blanket removal of all children under the age of 15 (or 14 in developing countries) from all salaried occupations. This approach is grounded in guaranteeing children's rights are respected, most notably the right to health and protection from abuse and exploitation when the form of labour is mentally or physically dangerous to a child, and the right to education when the work prevents them from attending school or compels them to drop out.

Prohibition should indeed target activities that affect children's health and personal development, but in countries where poor economic conditions which push children to work in the first place are expected to continue, a blanket ban cannot be the best way to advance children's interests. Imposing an outright ban on all child work leaves open the possibility that children will only go back to performing the same labour activities, and risk becoming part of the illegal economy where abuse and exploitation are most prevalent. This consideration calls for a more nuanced approach to protecting children's rights in the context of child labour. While we acknowledge that the solution is not straightforward, it remains clear that the implementation of ILO Convention 138 on the minimum age of admission to employment can have harmful consequences for children's rights. A thorough impact assessment of the Convention is needed to evaluate the consequences of setting such a strict minimum age on child employment.

Regulation of working activities and labour rights

If children have to - or want to - work, it should be safe, fairly paid, and should not interfere with their other rights, especially their education and development (recognising that some work can be considered educational). In other words, instead of prohibiting children from working, governments should formalise and regulate their labour activities, establish safeguards to ensure their protection and that the decision to work is the child's own. Goal 8.8 focuses on the protection of labour rights and the promotion of secure working environments for all workers, including children.

¹ See: <http://www.globalissues.org/article/62/child-labor>

The Committee on the Rights of the Child, in its General Comment No. 20 on the implementation of the rights of the child during adolescence,² explains: "The introduction to age-appropriate forms of work plays an important developmental role in the lives of adolescents, equipping them with skills and enabling them to learn responsibilities and, where necessary, to contribute to their families' economic well-being and support their access to education (...) The Committee recommends that States adopt a transitional approach towards achieving a balance between the positive role of work in adolescents' lives while ensuring their right to compulsory education, without discrimination".

The safeguards include affording them the same rights as adults, including the requirement of a legally binding employment contract between a child and an employer in order to provide guarantees of their basic employment rights. Safeguards should impose the timely payment of the employee's salary, appropriate rest periods for the work that is undertaken,³ sickness pay for when the employee is unable to work due to illness,⁴ adequate rest breaks and clearly defined maximum working hours per week.⁵

A key example of this approach can be found in Bolivia. In 2014, the country overturned its no-exceptions ban on labour performed by under-14s, enacting in its place legal protections for working children from the age of 10. The new provisions came about thanks to the lobbying efforts and input of the country's largest union of child workers,⁶ which argued that children start work at a much younger age and should therefore also enjoy labour guarantees.

The new Code for Children and Adolescents sets out rules for two groups of working children. The first keeps 14 as the minimum working age for children in third-party employment and stipulates that their salaries be no lower than the national minimum wage, and that their working day must not exceed eight hours, and two hours must be dedicated to studying. It then allows for the exception of 12- and 13-year-olds to be employed by others with prior approval from the office of the local children's ombudsperson through a needs assessment.

The second set of rules applies to children who are self-employed, with the minimum age being lowered in such cases to 10 years. For these children to work legally, however, the office of the children's ombudsperson must first verify that the nature of the work is not hazardous to the health and development of a child, does not exceed six hours daily, and does not interfere with their schooling.

All child workers aged 10 to 18 years, must have voluntarily decided to work, and consent from the parent or guardian is also required. National insurance contributions and entitlement to state

² The Committee on the Rights of the Child doesn't define adolescence but "focuses on the period of childhood from 10 years until the 18th birthday" (para. 5 of General Comment No. 20).

³ Committee on the Rights of the Child, General Comment 17.

⁴ Committee on Economic, Social and Cultural Rights, General Comment 19.

⁵ Convention on the Rights of the Child, Art. 32(2b).

⁶ Liebel, Manfred, "Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach," 4 September 2014. Available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/deve/dv/liebel_policy_paper_bolivia_liebel_policy_paper_bolivia_en.pdf.

benefits apply to all over-10s. The employment ministry is charged with organising workplace inspections to ensure working children's labour rights under the law are respected.

A rights based approach to the work of children

Right to be heard and to join trade unions

Article 12 of the CRC upholds children's right to be heard and to express their views freely in all matters that affect them. Article 15 sets out children's right to freedom of association and peaceful assembly, this includes the right to join trade unions. With any policy that directly affects children, the ideal is that children's opinions and their right to be heard be respected - even if in practice this rarely happens. For instance, children experience numerous barriers to joining trade unions or associations, many of which have membership restrictions based on age, nationality or ethnic background, denying children a vital means of challenging rights violations.

General Comment No. 12 of the Committee on the Rights of the Child on the children's right to be heard explains that "working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. Children and, if existing, representatives of working children's associations should also be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated."

Access to justice

The incorporation of labour guarantees for children into national legal systems can have only limited impact if those rights are not enforceable and the mechanisms for their enforcement are not accessible to children. Indeed, access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights⁷ as well as a the focus of Goal 16.3, and as such should be at the core of realising children's rights in all settings.

Appropriate and effective mechanisms to file complaints should be available to children whose rights are violated. Children should be aware of the existence of such mechanisms and how to use them. Complaints procedures should take into account children's increased vulnerability and that violations of their rights can have lifelong effects and should therefore provide timely redress. Steps should also be taken to protect children from further harm and link them to services to enable them to reach a full physical and psychological recovery.⁸

⁷ 'Report of the United Nations High Commissioner for Human Rights,' A/HRC/25/35, 16 December 2013, para. 3.

⁸ For further information and good practices on access to justice for children, see CRIN, Rights, Remedies and Representation: A global report on access to justice for children, February 2016. Available at: www.crin.org/node/42383.

Recommendations

We therefore urge the High Commissioner to include in his report:

- The recognition that the current economic conditions in many countries are such that children will work and therefore governments should formalise and regulate their labour activities instead of imposing a blanket ban on all child work.
- A call for a thorough impact assessment of ILO Convention 138.
- The recognition that children, like adults, have the right to be heard and the right to freedom of association and peaceful assembly,⁹ ensuring that children are able to form and join trade unions to protect their interests,¹⁰ as guaranteed by the CRC.
- A clear reference to children's right to access justice to enforce their labour rights and that access to courts and other forms of redress for children requires that they have a right to legal aid and assistance where their rights are at stake.
- A call to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.¹¹

⁹ Convention on the Rights of the Child, Art. 15(1).

¹⁰ International Covenant on Civil and Political Rights, Art. 22(1); International Covenant on Economic, Social and Cultural Rights, Art. 8.

¹¹ Convention on the Rights of the Child, Arts. 19(1), 34.