

Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters

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Introduction

Child labour in its worst forms is prevalent in developing countries and seems to have re-emerged in developed countries.¹ Unquestionably, children in the developed countries do not face the same intensity of exploitation that is faced by children across the developing world. Nevertheless, even in the developed countries all the historical problems associated with child labour have not been solved. Workers under-18 play an essential economic role in most of the developed world, and no country has been successful in protecting them from physical, economic and social harm. In particular, at least some of the worst forms of child labour and practices similar to slavery as enumerated in the ILO Convention 182, like hazardous work, prostitution, child trafficking, remain relatively widespread. Official data does a poor job of conveying the extent of child and youth employment, and illegal worst forms of child labour exists everywhere.²

In the third world, where the exploitation of child labour is widespread, it is not restricted to marginal activities. Children are part and parcel of the whole system of production. They work in agriculture, industry, artisan activity, the rug trade, repairing things, and as street traders.³ Children are camel jockeys in the Gulf States.⁴ They are contract labourers in carpet factories and factories making explosives, matches and cigarettes in India, miners in Colombia, Bolivia and Peru, diamond miners in ex-Zaire. They clean out the hulls of oil tankers in Pakistan, manufacture cotton goods in India, Pakistan and Bangladesh, pick jasmine by night in Egypt, make bricks from the age of five in India and Pakistan, sew footballs in Pakistan, dive for pearls in Malaysia and Burma, and pack frozen fish and prawns in Morocco and the Philippines.⁵ In South Asia, millions of people live their lives under the oppression of debt bondage, a system whereby people are enslaved to money-lenders in order to pay off money lent to some distant member of their

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¹ International Labour Organization. A Future without Child Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work Para. 53, 65. (2002); Jane Humphries, "The Experience of Today's Advanced Economies and lessons from the Past", paper prepared for a conference on "The Economics of Child Labour" organised by Zafiris and Kaushik Basu, Oslo May 28th and 29th 2002.

² P. Dorman, Child Labour in the Developed Economies, International Programme on the Elimination of Child Labour, International Labour Office, 2001, at <http://www.ilo.org/public/english/standards/ipecc/publ/policy/papers/brasil/fourth.pdf> (last visited 9 Apr. 05).

³ Invisible but Real Organising Against Child Labour, at <http://mondediplo.com/1998/06/13slave2> (last visited 25 Aug. 04).

⁴ J. McGirk, *Ban on Child Camel Jockeys Sends A Brutal Trade Underground*, The Independent, 29 April 2005 at 35.

⁵ Invisible but Real Organising Against Child Labour, *op .cit.*

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family. The money-lender thus gains the right of life or death over whole families who are shackled to debts that can never be paid off.⁶ In short, children do every kind of work – including work in the major growth sector, which is the forced provision of sexual services. Here, they are often the victims of terrible violence and sexually-transmitted diseases which may prove fatal.⁷ The list is endless.

This Article will explore some of the worst forms of child labour and practises similar to slavery. This article questions the following issues: What is the difference between child work and child labour? Do the international human rights and labour standards provide an effective protection against the worst forms of child labour and practices similar to slavery? How do the worst forms of child labour infringe the basic human rights of the children? It will examine the problem in the light of criteria laid down by the relevant human rights conventions and the ILO Convention 182 regarding elimination of the worst forms of child labour. The Convention provides a new international legal standard for the protection of child labourers and considers that the term “worst forms of child labour” comprises: slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict, child prostitution, pornography, the use, of a child for the production and trafficking of drugs. Further, any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children would also be considered as worst form of child labour.

Child Work, Labour and Practices Similar to Slavery

Certainly, engaging children in the worst forms of child labour and practices similar to is an absolute violation of human rights. However, occasional or part-time work by children is now accepted as part of the maturing process.⁸ Even in developed countries, some child work is the norm rather than the exception.⁹ Work, including legitimate apprenticeships or helping parents in a family business, can be formative learning experiences for children.¹⁰ Many children manage to combine school and work. Children’s earnings often enable them or their siblings to attend school. The majority of teenagers take on part time jobs to boost their pocket money.

However, not all this work can be defined as child labour or practices similar to slavery. The type of child labour that is the focus of current international eradication efforts is abusive economic exploitation of children, which is either hazardous work that has

⁶ Ibid.

⁷ Ibid.

⁸ H. Cullen, “The Limits of International Trade Mechanisms in Enforcing Human Rights: The Case of Child Labour”, (1999) Vol. 7, No. 1, *The International Journal of Children’s Rights*, 1 at p. 3.

⁹ C. Grootaert and R. Kanbur, “Child Labour: An Economic Perspective”, (1995) Vol. 134, No. 2, *International Labour Review*, 187 at p. 188; E. Mendelievich, *Children at Work*, 1st edition, Geneva, ILO, 1979, p. 4.

¹⁰ ILO, *Human Rights at Work, The Elimination of Child Labour*, World Labour Report, Geneva, International Labour Organization (1992) p. 13.

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adverse impacts on children's health or prevents them from receiving education.¹¹ This phenomenon is generally known as "Child Labour".¹² Work is not necessarily harmful to the child.¹³ Nevertheless, where such work is exploitative, hazardous or detrimental to the child's development, or where it relates to very young children, it is objectionable. There is a range of jobs children do, from helping at home or caring for a baby brother or sister, to being a child soldier or prostitute.

The question is how do we define something as exploitative? United Nations Children's Fund (UNICEF) makes a distinction between dangerous and exploitative work and beneficial work.¹⁴ The former represents a clear violation of the rights of a child as a human being and includes all those harmful and abusive forms of work that interfere with a child's development, because of the type of activity itself or the conditions in which it is carried out. The work is considered exploitative: when it is carried out fulltime at too early an age; the working day is excessively long; it is carried out in inadequate conditions; it is not sufficiently well-paid; it involves excessive responsibility; it undermines the child's dignity and self-esteem.¹⁵ However, beneficial work is defined as that which promotes or stimulates the child's integral, physical cognitive and social development, without interfering with his/her academic or recreational activity or rest. This type of work contributes to children's socialisation, offering them opportunity to carry out certain tasks that provide them with feelings of competence and independence that are fundamental to the proper development of their self-concept and self esteem.¹⁶ Further, the ILO, which has established a series of norms setting down the minimum age for starting work and for working in certain specific sectors, distinguishes between dangerous work and light work. According to the ILO, dangerous work is defined as "that which due to the nature or the conditions in which it is carried out, may be dangerous for the health, security or morality of minors". On the other hand, light work is understood as "*those activities which, due to their nature, do not affect attendance at school or on programs of technical training, nor reduce children's capacity to benefit from the instructions received.*"¹⁷

Both the UNICEF and the ILO consider that the key factor for determining when child labour becomes a serious problem is the fact that it affects optimum development, i.e. physical, cognitive and social. The difference between child work and labour depends on

¹¹ Art. 32 (1) the CRC, 28 ILM 1468 (1989); E. Mendelievich, *Children at Work*, *op. cit.*, p. 3.

¹² ILO, Child Labour Report of the Director General, International Labour Conference, 69th. Session 1983, cited in ILO, Governing Body Report, ILO Doc. Gb.265/2 para. 3 (1996); E. Mendelievich, *Children at Work*, *op. cit.*, p. 3.

¹³ The ILO recognises that work may form a part of a child's education. Article 6 of the Minimum Age Convention allows children to engage in work in schools. Article 7 allows children of thirteen to fifteen years of age to engage in "light work" even outside the school, provided the work is not harmful to their health or development, ILO, Convention No. 138 on Minimum Age (1973) ILO Official Bulletin, Vol. LVI No. 1; 1015 UNTS 297.

¹⁴ UNICEF, State of the World's Children Report for 1997, Reducing Exploitative Child Labor, at <http://www.globalmarketplace.org/unicef.html#sowc1997> (last visited 21 Mar. 05).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ ILO, Convention No. 138 on Minimum Age (1973) Art. 7(a) & (b).

the age of children, the conditions in which they work and the level of exploitation which they face. Hence, child work is not exploitative and can play a positive part in a child's development whereas child labour is a particular form of evil to be eliminated.

Worst Forms of Child Labour: Applicability of the ILO Convention No. 182 and Other International Standards

The "worst forms of child labour" are understood to be those types of work for children described in Article 3 of the ILO Convention 182 on the Elimination of the Worst Forms of Child Labour. The Convention states that the term "worst forms of child labour" comprises:

- (a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁸

Article 3 provides the "unconditional worst forms" (in points a, b, c.) but leaves the definition of hazardous work (point d) for countries themselves to determine, Article 4 requires each country to prepare its own list of what constitutes hazardous work because economies, industries, customs and production process differ from place to place. Further, the types of hazardous work in which children are engaged will differ as well, as will the ways of addressing the problem, so the national laws and regulation¹⁹ having regard to relevant international standards shall determine the type of work, which is likely to harm.²⁰ What are the "relevant international standards" that are to be taken into consideration when determining hazardous work? They are too numerous to list, but would include, for example, ILO standards concerning toxic substances, dangerous processes, heavy weight, night work, etc. Again, such references do not make un-ratified instruments binding – the obligation is merely to take them into consideration.²¹ The authority concerned shall identify where the type of work so determined exists, and that list shall be revised periodically.²² This requirement was added by an amendment during the first discussion. It would appear that the point is to make sure that the national authority scrutinizes the question of hazardous work thoroughly, not just establishing an

¹⁸ Art. 3.

¹⁹ Art. 4 (1).

²⁰ Paras. 3 & 4 Recommendation, No.190.

²¹ International Programme on the Elimination of Child Labour, Fact Sheet, at <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/faq.htm#07> (last visited 1 Apr. 05).

²² Art. 4 (2) & (3).

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abstract list of hazards, but monitoring their existence in the country.²³ Hence, ILO Convention 182 gives full protection against the worst forms of child labour to children working in both formal and informal sectors

Child labour is a complex problem, which demands a range of solutions and sensitive treatment. The ILO, a United Nations agency represented by 177 countries up to 29 September 2003, has taken the lead in international efforts to eliminate child labour.²⁴ The ILO makes significant contributions to the general practice of child labour prohibitions.²⁵ Further, specific efforts have also been made to eradicate the worst forms of child labour as a matter of urgency. The ILO Convention 182 is central in this regard. Furthermore, Convention 182 and its Recommendation draw attention to ways in which children are involved in forced labour and serfdom, in situations ranging from prostitution, to bonded labour and slavery.

Child Slavery and Practices Similar to Slavery

The first human rights issue to arouse wide international concern was slavery. Yet, in the face of universal condemnation, slavery-like practices remain a grave and persistent problem. The word “slavery” today covers a variety of human rights violations. In addition to traditional slavery and the slave trade, these abuses include the sale of children, the exploitation of prostitution, child pornography, the exploitation of child labour, the use of children in armed conflicts, debt bondage, the traffic in persons and in the sale of human organs, etc. According to Article 1 of the 1926 Slavery Convention, slavery “is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. The convention defines the slave trade as “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged and, in general, every act of trade or transport of slaves”.²⁶ Hence, slavery is the most extreme form of economic exploitation as it can only occur where apparent powers of ownership are exercised over human beings.

Nowadays, slavery is prohibited by international law both in peacetime and in wartime. The 1977 Additional Protocol II to the Geneva Conventions states, “*Slavery and the slave trade in all their forms... are and shall remain prohibited at any time and in any place whatsoever.*”²⁷ Even though a number of countries did not ratify that protocol, the prohibition against slavery is regarded as a binding rule of customary international law in all conflicts, whether international or internal.

²³ International Programme on the Elimination of Child Labour, Fact Sheet, *op. cit.*

²⁴ ILOLEX: Database on International Labour Standards, at <http://www.ilo.org/ilolex/english/mstasese.htm> (last visited 8 Apr. 04).

²⁵ J. Mann, *Working to Protect Children From Work*, Washington Post, 8 December 1999, at C14.

²⁶ Slavery Convention (1926) 60 LNTS 253.

²⁷ Art. 4 (f).

The Nuremberg Charter and the 1998 Rome Statute of the International Criminal Court, describe enslavement as a crime against humanity, when it is part of a widespread or systematic practice against a civilian population (enslaving a person is a crime against humanity regardless of the age of the victim).²⁸ It defines enslavement, in line with the 1926 Slavery Convention, as “*the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.*” Protection against violation of human rights which fall within the broad definition of slavery is a feature of the Universal Declaration of Human Rights.²⁹ The International Covenant on Civil and Political Rights emphasises that freedom from Slavery and Servitude are rights from which there are no derogations.³⁰ Hence, as a legally permitted labour system, slavery has been abolished everywhere. Nevertheless, in practice, slavery has not been fully eradicated. For example, there are growing signs that economic pressures and growing poverty in Africa are leading to a reappearance of the traffic in child slaves. This illegal trade is going on in several countries including Benin, Burkina Faso, Cameroon, Cote d’Ivoire, Gabon, Nigeria and Togo.

There are still reports of slave markets.³¹ A children’s slave market was tracked down in Lagos. In 1996 this illegal market was discovered full of malnourished children, aged between seven and 17 years old. A special child slave market has long been common in the Marche du Plateau – a market in Abidjan in Cote d’Ivoire where rich local women come to buy their ‘helpers’.³² Nevertheless, given its illegal status, the slave trade has become very cautious and complex and finding the slave markets, is difficult for a number of reasons. For example, the slave markets are usually highly mobile, situational, and discussions around the buying and selling of slaves are coded.³³ Therefore, the detection of the slave trade is another problem to be tackled.

The ILO Convention 182 defines slavery as one of the worst forms of child labour and states that slavery means: “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict”. So Convention 182 expressly gives protection against slavery and practices similar to slavery in Article 3 (a) and implicitly in its Article 3 (d) which declares that the term worst forms of child labour includes work which, by its nature or the circumstances in which it is carried out, harms the health, safety or morals of children. Irrefutably, slavery and practices similar to slavery have all the above-mentioned effects and fall within the

²⁸ Art. 6 (c) Nuremberg Charter: Charter of the International Military Tribunal Annexed to the London Agreement of (1945) (Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis) 58 Stat. 1544, E.A.S. (No. 472) at 82 UNTS 280; Art. 7 (c) Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (1998).

²⁹ Art. 4.

³⁰ Art 4 & 8 of ICCPR.

³¹ S. Cotton, Demographics and the Modern Slave Trade, at <http://members.aol.com/casmasalc/demographics.html> (last visited 1 Apr. 04).

³² BBC News Online: World: Africa Friday, 6 August, 1999, 09:48 GMT 10:48 UK West Africa’s Child Slave Trade, at <http://news.bbc.co.uk/1/low/world/africa/412628.stm> (last visited 10 Oct. 03).

³³ S. Cotton, Demographics and the Modern Slave Trade, *op. cit.*

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category of the worst forms of child labour. Even when abolished, slavery leaves traces. It has psychological repercussions among its victims and their descendants and among the inheritors of those who practised it, long after it has formally disappeared. The ILO Convention 182 is the most recent and potentially the most effective means of combating slavery and slavery-like practices. The Convention offers protection to children at risk from sexual, economic, and other forms of exploitation, including their sale, trafficking and involvement in prostitution etc.

Child Trafficking: A Practice Similar to Slavery

Although no definitive data exists on child trafficking, some estimate that 1.2 million children are trafficked each year. Girls as young as 13, mainly from Asia and Eastern Europe are trafficked. Children used as domestic servants are denied access to education and often sexually abused within the homes of their “employers”. In Africa, child trafficking is a major concern in at least half of the countries.³⁴

The trafficking of children occurs in relation to different but overlapping practices, e.g. trafficking for the purposes of forced labour or for sexual exploitation. Further, child trafficking for the purpose of sexual exploitation, like child prostitution, and child pornography are not exclusive. Often these are interlinked and form a series of exploitation. According to one study commissioned by UNICEF, children who are used in the production of pornography may also be involved in prostitution.³⁵ Further, these children are at greater risk from dependency upon narcotics which may lead to greater dependency on prostitution.³⁶

Child trafficking refers “to any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.³⁷ Hence, child trafficking refers to the process that puts children in a situation of commercial exploitation. In order to obtain financial and other material benefits.³⁸ Many of them end up working as slaves or child domestics, prostitutes, soldiers, etc. Thus, child trafficking does not include cases of kidnapping where there is no commercial consideration. “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power i.e., undue influence or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the

³⁴ UNICEF, 12 June 2003, On World Day Against Child Labour, UNICEF Highlights Link With Child Trafficking at: <http://www.reliefweb.int/w/rwb.nsf/0/1a4f0b58146cbe2e49256d4300193323?OpenDocument> (last visited 1 Apr. 04).

³⁵ G. Van Bueren, *The International Law on the Rights of the Child*, op. cit., p. 275.

³⁶ Report on the Sale of Children, Child Prostitution and Child Pornography, U.N.Doc.E/CN.4/1992/ 55 (1992).

³⁷ Out of the Shadows, at <http://www.globalmarch.org/worstformsreport/world/definitions.html> (last visited 5 Nov. 03).

³⁸ Art. 2 (a) The United Nations Convention Against Transnational Organised Crime and its Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

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purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.³⁹ The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.⁴⁰ Children are trapped into trafficking most directly by abduction or kidnapping. However, the vast majority of trafficking victims are trapped in more seditious ways. Typically the traffickers promise their victims that they will have respectable work in another country.⁴¹ Hence, the element of deception or coercion is present in almost all the cases of trafficking, and thus justifies the disregard of the consent of the victim.

The protocol has a victim centred approach. The main feature of an anti-trafficking law utilizing a victim centred approach is the irrelevance of the victim's consent. That is to say, even if the victim initially consented to be trafficked, she/he still has a legal claim as a victim.⁴² The victim centred approach establishes what constitutes a victim, a trafficker, and the act of trafficking itself.

Further, child trafficking is also banned under the Convention on the Rights of the Child and the ILO Convention No. 182 on the Prohibition and Elimination of the Worst Forms of Child Labour, which obliges the states parties to take "immediate and effective measures" to eliminate child trafficking "as a matter of urgency". Not only does the Convention 182 explicitly include child trafficking as one of the worst forms of child labour, but since child trafficking harms the health, safety or morals of children and hinders their education, it can also be considered one of the worst forms of child labour under Article 3 (d). Children are seen by traffickers as commodities because they are more easily influenced, and can be demoralized over a longer period. Hidden from view and often from legal protection and scrutiny, children are tempted by promises of a good

³⁹ Art. 3 (a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_20traff_eng.pdf (last visited 6 Apr.04).

⁴⁰ Art. 3 (b).

⁴¹ Trafficking need not necessarily involve moving children across international borders. UNICEF, Faces of Child Exploitation Child Trafficking, at http://www.endchildexploitation.org.uk/issue_child_trafficking.asp (last visited 1 Apr. 04); The United Nations Convention against Transnational Organised Crime and its Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) have recently been adopted, adding to the framework of international legislation that addresses international agreement on the definition of trafficking and also, significantly, addresses the demand side of exploitation that leads to trafficking. The text of the Convention is available, at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf (last visited 6 Apr. 04).

⁴² Similarly, The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was passed in 1949 and its Article (1) recognizes that trafficking and prostitution occur even with the consent of the victim. In this manner, the 1949 Convention acknowledges the explicit and/ implicit economic, societal, psychological and political coercion underlying a child's or woman's so-called choice to be trafficked. UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, 96 UNTS 271, entered into force July 25, 1951.

education or a better job and smuggled across borders. Faraway from home⁴³ or in a foreign country, trafficked children – disoriented, without papers, and excluded from any protective environment – can be forced to undergo prostitution, domestic servitude, forced marriage, or hazardous and exploitative labour.⁴⁴ Common to all contemporary forms of trafficking, forced labour and slavery-like practices is that victims are deprived of control over their working and living conditions. Further, they have no recourse to law or society for protection or remedy.

Child trafficking is not only a worst form of child labour in itself but it also abets the other worst forms of child labour. As pointed out by UNICEF, efforts to end the worst forms of child labour cannot succeed without effective cooperative efforts to fight the trafficking of children within and across national borders.⁴⁵ “How can we put an end to the most abhorrent forms of child labour when the trafficking of children and women continues unabated?” asked Carol Bellamy, Executive Director of UNICEF. “Children are increasingly treated as commodities by organized crime networks, where the profit derives from these children being sold into servitude or forced labour”. Trafficking in human beings is beginning to rival the illegal trade in drugs and arms, with estimated revenue of \$12 billion a year, according to a 2003 ILO report.⁴⁶ Constant poverty and unemployment are major factors behind trafficking. Moreover, traditional practices, wars and conflicts, corruption, high amount of illegal profits, lack of enforcement of relevant laws and supporting system further aggravate trafficking and slavery like practices. The issue of trafficking is a cross-border and cross-cultural one which can only be tackled appropriately with multiple instruments using various strategies. The problem will not be controlled only by the efforts and commitment of the government.⁴⁷ Each and every person and institution of the society should fight against trafficking for prostitution, forced labour and other purposes and they should contribute in activities, to prevent the problem. Further, national, regional and international policies and programmes can be effective means to tackle the problem.

Another effective way to control the trafficking is to make people aware of the consequences. The role of the media is important in this regard. However, there exists a communication gap between the places of origin and operation. The media can provide information on the networking and activities of criminals in the places of origin by establishing two-way communication between vulnerable areas and operation centres. Additionally, the media can also pressurise governments to adopt effective policies and programmes. Certainly, the governments are primarily responsible for ensuring that child trafficking is criminalized and children are effectively protected from this worst form of exploitation.⁴⁸ However, trafficking is a global problem, and efforts to stop it must be regional and global in nature.

⁴³ UNICEF, *Faces of Child Exploitation Child Trafficking*, *op. cit.*

⁴⁴ UNICEF, 12 June 2003, On World Day Against Child Labour, UNICEF Highlights Link With Child Trafficking, *op. cit.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

Several governments are signatories to the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Trafficking and Child Pornography. Nevertheless, much more needs to be done to ensure its effective implementation, for example, essential legal reform, universal birth registration and strong international cooperation.⁴⁹

Further, governments have to show a strong political commitment to combat child trafficking. This includes ensuring essential legislation to tackle trafficking and punish traffickers. Necessary resources need to be made available to ensure swift and effective enforcement. Children need to be aware of the dangers of trafficking so that they can protect themselves. Children need to be given practical skills that allow them to avoid risk of being trapped. The skills could include vocational training or income-generating activities at the community level.⁵⁰ All governments must ratify the ILO Convention on the Worst Forms of Child Labour which specifically prohibits the trafficking of children and consider it as one of the worst forms of child labour. Further, reintegration and rehabilitation for victims of trafficking according to the convention 182 is needed.⁵¹ Trafficked children need services which help them to escape their appalling situation, and to return to a safe environment. Serving policies for child victims of trafficking should be guided by the best interests of the child.⁵² In order to revive the confidence of vulnerable trafficked children they should be considered victims and not the offenders.

In fact, the economic exploitation of children, including child trafficking, has flourished due to the instability of employment for adults, low or no minimum wage standards and inadequate governmental welfare programmes in developing countries. Economic hardship and poverty is the major driving force behind parents pushing children to work. Population explosion is another reason. Hence, controlling population and poverty alleviation can provide the best solution. The drafters of the ILO Convention 182 comprehend the intensity and complications which surround the economic exploitation of child workers and therefore, development, close cooperation, poverty reduction and universal education are central features of child labour strategy of the Convention. The Convention provides ways of implementing this cooperation by establishing consultation between governments, employers and workers.⁵³ Furthermore, the Convention provides that each state should design and implement programmes of action to eliminate the worst forms of child labour and take measures and establish mechanisms to ensure proper implementation and monitoring of those programmes.

Debt Bondage: A Practice Similar to Slavery

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Convention 182, Art. 7 (b).

⁵² UNICEF, 12 June 2003, On World Day Against Child Labour, UNICEF Highlights Link With Child Trafficking, *op. cit.*

⁵³ ILO Convention 182 Arts. 5& 6.

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The 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery provides a clear concept of debt bondage. The Convention defines it as a form of slavery where “the status or conditions arising from a pledge by a debtor of his personal service or of those under his control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited or defined”.⁵⁴

The interest on the loan can be so high that it cannot be repaid in a single lifetime, and the loan is inherited by the children, who work either for the money lender or for the landowners as bonded labour to pay off the debts of family members. It reflects a feudal relationship, in which children are regarded as a source of production. One of the reasons that debt bondage persists is that it is a type of slavery which is difficult to identify in practice, because it assumes various forms and has a variety of local names, some of them intended to hide the exploitation. For example, in Pakistan, child bondage, under the system of advances known as “*peshgi*”, is common in agriculture, particularly in Sindh and Punjab provinces. The word *peshgi* is also used for any money paid in advance. Arguably, use of the same word for the advances of child bondage could hide the exploitation of the bonded child labour.⁵⁵ In fact debt bondage can hardly be distinguished from traditional slavery because it prevents the bonded labourer from leaving his job or the land he cultivates until the whole amount is repaid. Even though in theory a debt is repayable over a period of time, a situation of bondage arises when, despite all efforts, the borrower cannot repay it. Usually, the bonded labourer’s children inherit the debt. In agriculture sharecropping is a common way of leading them into debt bondage.⁵⁶ Sometimes, this debt bondage takes very curious forms. In Sudan, for example, when slave traders bring back some children to territory controlled by the Dinka rebels, the children’s families have no money to pay the dealer. The trader agrees that the parents may keep the child, but reserve the right that the child will remain his property until the family has paid off their debt.⁵⁷

Hence this worst form of child should be eliminated as a matter of urgency. Further, the removal of children from the workforce should be accompanied with backup programmes for their rehabilitation, education, and direct assistance as are provided by the ILO Convention 182. The Convention considers debt bondage as one of the worst forms of child labour. Further, it obligates states parties to ensure that children removed from the worst forms of child labour be given direct assistance to ensure their removal, rehabilitation, and social reintegration. Most importantly, the Convention mandates that children removed from labour be ensured access to free basic education, and wherever possible and appropriate, vocational training. In this way the Convention takes a holistic

⁵⁴ Art. 1 (a).

⁵⁵ Child Bonded Labour, Global March Against Child Labour, at <http://www.globalmarch.org/cl-around-the-world/copy-sweat-toil95/pakistan-bonded.php3> (last visited 1 Apr. 04).

⁵⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR) Fact Sheet No.14, Contemporary Forms of Slavery, at <http://www.unhchr.ch/html/menu6/2/fs14.htm> (last visited 1 Apr. 04).

⁵⁷ P. Richard, Crimes of War, Slavery, at <http://www.crimesofwar.org/thebook/slavery.html> (last visited 7 Oct. 03).

approach to the elimination of the worst forms of child labour, including child debt bondage.

During the drafting of the Supplementary Slavery Convention, opinion was divided among the Ten Members Drafting Committee. The representative of the USSR considered the words 'progressively' to weaken Article 1 of the Convention and to be contradictory to the standards of the United Nations Charter. In contrast, the argument of the United Kingdom was that practices similar to slavery were rooted in the 'tradition of many centuries in some parts of the world and that their immediate abolition would cause considerable disorganisation'.⁵⁸ The arguments put forward by the United Kingdom succeeded and the progressive duty was enshrined in the Slavery Convention.⁵⁹ Nevertheless it is arguable that the states parties to the ICCPR and the ILO Convention 182 on the Elimination of the Worst Forms of Child Labour are now under a duty to eradicate immediately those specific child exploitations which amount to Slavery or Slavery-like practices.

Undoubtedly, that debt bondage is rooted in the institutional economic and legal structures of rural areas in some of the developing countries,⁶⁰ mainly, where land is the principal source of wealth, land reforms and the provision of adequate credit would assist in undermining the system. For example, the Food and Agriculture Organisation (FAO) help member states to implement changes in land ownership and management and to provide with access to the land.⁶¹ Accordingly, positive change could be achieved through backup programmes.

Current International Standards and the Role of ILO Convention 182 as a New Criterion

The objective of the new Convention and Recommendation 190 is not to replace Convention 138 and Recommendation 146, which are still the fundamental child labour instruments. Rather, the purpose is complementing them by providing basic measures to secure the immediate suppression of all the worst forms of child labour.⁶² It is important to differentiate between the Worst Forms of Child Labour Convention, and the ILO's other core convention on child labour, the "Minimum Age Convention". The Minimum Age Convention, which was adopted by the International Labour Conference in 1973 and

⁵⁸ G. Van Bueren, *The International Law on the Rights of the Child*, *op. cit.*, p. 279.

⁵⁹ The same approach applies to state parties to the European Convention on the Human Rights (1950); the African Charter on Human and Peoples Rights (1981) and the American Convention on Human Rights (1969).

⁶⁰ In countries where the caste or class system still prevails, such as India, Nepal, and Pakistan, families and children of the dalits, or kamaiyas, are still found in relationships of bondage to landowners, and to the upper class caste, despite of laws that prohibit slavery in all three countries. Bonded children are found in agriculture, domestic work, brick kilns, glass industries, tanneries, gem polishing, and many other manufacturing and marketing industries. Child Workers in Asia, at http://www.cwa.tnet.co.th/about_child_labor_in_asia/worst_form_of_child_labor.htm (last visited 1 Apr. 04).

⁶¹ *Ibid.*

⁶² ILO Convention 182 and Recommendation 190, at ILOLEX, Database of International Labour Standards, <http://www.ilo.org/ilolex/english/newcountryframeE.htm> (last visited 10 Aug. 05).

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entered into force in 1976, aims at the overall abolition of child labour, rather than focusing on its worst forms, and stipulates that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling. Hence, Convention 138 provides for the framework of the minimum age for admission to employment or work; while Convention 182 provides for the prohibition and immediate action for the elimination of the worst forms of child labour.⁶³ The recent global mobilisation to eliminate child labour has been reflected in the significantly increased ratification rate for the Minimum Age Convention.

The pace of ratifications of this previous Convention has increased rapidly, from only a few per year in the early 1990s. Up to 7 April 2005, 136 ILO member states had ratified Convention No 138.⁶⁴ Convention 182 on the Worst Forms of Child Labour declares that some of the worst forms of child labour are covered by other international instruments, such as the Forced Labour Convention of 1930 and the 1956 UN Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to slavery.⁶⁵ The prohibition of slavery has been a rule of a customary international law for over a century, as well as a peremptory norm, *jus cogens*. Thus the Convention further reinforces the assertion that the prohibition on forced child labour (the child labourer usually lacks the choice of whether to work, and lack of choice may equate to slavery), is developing into a peremptory norm of general international law. Peremptory norms, *jus cogens*, enjoy the highest status within international law.⁶⁶ If the prohibition against forced child labour has risen to the level of a peremptory norm, *jus cogens*, the jurisdiction to ban child labour may be premised on violation of that norm. Further, the prevention of slavery is an international obligation. An obligation towards the international community as a whole is of the character obligation *ergo omnes* and hence, should be universally carried out.

Conclusion

Not all child work is hazardous and exploitative. Often it enables children to gain money and experience which benefit them and their families. The criteria which distinguish the harmful from the beneficial are the age of the child, the working conditions and the impact on the child's education and development. It is recognized that children have

⁶³ Art. 3 (d) of Convention 182 covers "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children". This wording is slightly different from that of Art.3 (1) of Convention 138, which deals with: employment or work which ... "is likely to jeopardize the health, safety or morals of young persons". A country that has already ratified Convention 138 and determined a list of hazardous work there under will still be required to make a determination for the purpose of C.182, which may turn out to be the same as that under Convention 138, or different in view of the different objectives.

⁶⁴ Ratification of ILO Conventions, at ILOLEX, Database of International Labour Standards, *op. cit.*

⁶⁵ Slavery Convention 25 September (1926) 60 LNTS 253; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery, 7 September (1956) 18 UST 3201, 266 UNTS 3.

⁶⁶ M. G. Bullard, Child Labour Prohibitions are Universal, Binding and Obligatory Law, *op. cit.*, pp. 146, 158.

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rights of their own and those rights have been protected by various conventions.⁶⁷ Public opinion worldwide has been outraged by the appalling extent to which some of these rights have been violated through particularly repugnant and unacceptable forms of child labour. The eradication of these practices is not something that can wait. The worst forms of labour can have even more devastating effects on children than on adults because of physiological and anatomical differences; and in some cases children are forced into outrageously hazardous situations to which even adults are not exposed. Children should not be exposed to them at all, and if they are, they should be removed immediately from such situations, which are much more likely to be life-threatening or to cause irreversible physical and psychological damage to children. The eradication of these forms of child labour is a matter of saving lives and children's future.

Child labour is a complex problem with several causes, mainly rooted in socio-economic conditions, and particularly in poverty. The scope of the problem requires action on all fronts, as the legal prohibition of child labour alone will not eliminate the problem. Such legislation therefore needs to be supported by a variety of economic and social measures and proper enforcement. Despite its weakness, child labour legislation is a vital tool, and although insufficient on its own, child labour cannot be fought without it. The ratification of the relevant ILO and human rights conventions creates a binding obligation on the states concerned, to take action against child labour.

The ILO Convention 182 insists that governments must act immediately for the elimination of the worst forms of child labour.⁶⁸ The Convention urges the eradication of worst forms of child labour through international cooperation, dialogue and partnership.⁶⁹ This means that there should be no child slavery, child trafficking, child prostitution or pornography, no children forced to join armed conflicts, no use of children for crimes, including drug trafficking and no work that harms the health, safety and morals of children. Hence, governments should consult with employers and workers to identify what work is harmful for children. Further, governments, communities, employers, adult workers NGOs and community activists would come together (which is one target of the ILO) to initiate some type of direct action, through awareness-raising with the aim of prevention, withdrawal and rehabilitation. Governments must do everything necessary to implement relevant conventions, including penalising offenders. Countries should assist each other to end the worst forms of child labour. However, the prohibition of child labour is evolving as a rule of customary international law, and where the practice of child labour has characteristics of torture, debt bondage, or compulsion it should be banned as a norm of universal obligation. Clearly, all the worst forms of child labour have those characteristics. Hence, the international abhorrence for harmful child labour

⁶⁷ Convention on the Rights of the Child 1989; ILO, Minimum Age Convention No. 138 1973; ILO, Convention No.182: Elimination of Worst Forms of Child Labour 1999; International Convention for the Suppression of the Traffic in Women and Children 921, as amended by the Protocol on 20 October (1947); Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000.

⁶⁸ Art. 6 (1).

⁶⁹ Art. 8.

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practices should give birth to a rule that does not recognize borders, one that makes a crime against a child anywhere, a crime everywhere.