CHAPTER - 3

CHILD LABOUR AND ILO AND OTHER INTERNATIONAL AGENCIES

3.1 Introduction

Children are the most important asset of a society and future of a nation depends upon how the children are educated and trained and how their physical and mental development is taken care. It is indeed unfortunate that the energy of the growing children which should go into their physical and mental growth and development, is exploited by the owners of capital assets owing to unfavorable social economic setting of the country. Various International Conventions and recommendations are adopted by International Organizations for the elimination of child labour.\textsuperscript{80}

In the early 21\textsuperscript{st} century, child labour remains a serious problem in many parts of the world. Studies carried out in 1979, the International year of the child, show that more than 50 million children below the age of 15 were working in various jobs often under hazardous conditions. Many of these children live in under developed countries. Their living conditions are miserable and their chances for education minimal. Frequently, these families lack the basic necessities of life adequate food, clothing and shelter, and even water for boiling. In India, for example some 20,000 children work 16-hours days in match factories. Child Labour problems are not, limited to developing nations.

3.2 International Labour Organisation (ILO) on Child Labour

One of the ILO's major strengths is its role as a standard-setting organization, together with its supervisory mechanisms for the application of these

\textsuperscript{80} Assefa Bequele, “Towards a strategy of Combating : Child Labour in very Poor Countries” 3 (ILO, 1990).
standards. Since its inception in 1919, the ILO has adopted over 180 Conventions (which have force of domestic law, once a Member States ratifies an individual Convention), and a similar number of non-binding Recommendations. Some of these instruments are of direct relevance to the fight against trafficking. Others can usefully be harnessed, to provide guidance for preventive measures and law enforcement against trafficking.

A benchmark Convention, one of the most widely ratified of all ILO instruments, is its Forced Labour Convention, No. 29 of 1930. This provides a basic definition of forced labour, which is still applicable to such present-day international instruments as the Palermo protocols against smuggling and trafficking. Under the ILO's Convention No. 29, the term forced or compulsory labour shall mean "all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily". The Convention requires the suppression of the use of forced or compulsory labour in all its forms within the shortest possible time. A quarter of a century later - at a time when there had been growing use of forced labour for political purposes - the ILO adopted an additional instrument on the subject. Its Abolition of Forced Labour Convention, (No. 105 of 1957), calls for the suppression of forced labour as a means of political coercion, labour discipline, or racial, social, national or religious discrimination; as a method of mobilizing and using labour for purposes of economic development; and as punishment for having participated in strikes. Convention No. 105 has also been ratified by the vast majority of ILO Member States.

The activities of the ILO in this area fall under three main headings: (1) Prohibition and limitation of child labour in the framework of international instruments concerning minimum age of admission to employment. (2) protection of children at work through regulation and supervision of working conditions. (3) Development of fitness for work through pre-vocational training. One of the principal ways for ILO has also contributed to the cause through study and research as well as technical assistance.

The ILO has adopted several conventions and made special recommendations concerning minimum age, working conditions, and medical
examination of child labour. There are several others relating to health and safety of workers also.

The other main conventions which deal with child labour are:

1. *Minimum Age Convention*. 2. *Worst Forms of Child Labour Convention*. Both have been adopted by I.L.O. The ‘Minimum Age convention’ (1973) (No. 138) is based on the principle that children should not start work before reaching minimum age. Between 1919, when ILO was set up, and 1970’s; it adopted 10 separate conventions specifying the minimum age at which children could start various jobs. In 1973, a general minimum age convention (Convention No. 138) was adopted to apply to every type of employment in every country.

**Minimum age convention (No. 138) 1973** - The foundations of the International Labour Organization’s policy on child labour are set out in the Preamble of the Constitution, the Declaration of Philadelphia and relevant international labour standards, as well as in resolutions adopted by the International Labour Conference and in decisions taken by the ILO Governing Body.

The basic minimum age defined by ILO is 15 years and not lesser than 15 years. Although it has allowed various member states to set up their own minimum age for employment, but in no case the minimum age should be lesser than 15 years age or 14 years on a temporal basis. The convention had been ratified by 135 states by the end of 2004.

1. The fundamental objective of ILO policy in this matter is the abolition of child labour. The International Labour Organization set this as the goal in the very year of its creation, by adopting Convention No. 5, prohibiting work done by children less than 14 years of age in industrial undertakings. Sectoral Conventions and Recommendations on the minimum age for admission to employment which were adopted after 1919 (employment at sea, agriculture, trimmers and stokers, non-industrial employment, industry, fishing and fishing and

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underground work) also adopted this perspective, as did the most recent ILO instruments on this subject, the Minimum Age Convention (No. 138) and Recommendation (No. 146), 1973.\textsuperscript{83} The International Labour Conference, in the preamble of Convention No. 138, considered that "the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour".

2. The emphasis placed by international labour standards on the abolition of child labour attests to the conviction of the ILO's constituents that childhood is a period of life which should be consecrated not to work but to education and development; that child labour, by its nature or because of the conditions in which it is undertaken, often jeopardizes children's possibilities of becoming productive adults, able to take their place in the community, and finally that child labour is not inevitable and that progress towards its reduction and even its elimination is possible when the political will to fight it exists.

3. This conviction is especially reflected in Convention No. 138 which requires member States to pursue a national policy designed to ensure the effective abolition of child labour, to set a minimum age for admission to employment or work and to raise this progressively to a level consistent with the fullest physical and mental development of young people. This minimum age must not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years. It should be noted that Convention No. 138 applies to work done by children both for another person (wage employment) and on their own behalf (self-employment).

4. Convention No. 138 is a flexible instrument.\textsuperscript{84} This flexibility is illustrated by provisions which:

a. permit employment or work by children on light work from 13 years of age;

\textsuperscript{83} United Nations Minimum Age Convention, 1973 (No. 138).

\textsuperscript{84} It is interesting to note that India is yet to ratify the ILO Convention No. 138 which prescribes Minimum Age for children in Employment till date.
b. allow for lower minimum ages (14 years in general and 12 years for light work) in the case of countries whose economy and educational facilities are insufficiently developed (for as long as this situation lasts);

c. permit exclusion from the Convention's application for limited categories of employment or work in respect of which special and substantial problems of application arise (for as long as these problems exist);

d. authorize member States whose economy and administrative facilities are insufficiently developed to initially limit the scope of application of the Convention, provided that it should be applicable as a minimum to: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes.

5. Convention No. 138 and especially Recommendation No. 146 also contain some visions concerning the protection of working children. It should be noted that:

a. these provisions apply only in the following cases, which are provided for in the Convention: light work; limited categories of employment or work excluded because the application to them of the Convention would give rise to special and substantial problems; and branches of activity and types of enterprise excluded pursuant to the option granted to member States to initially limit the scope of application of the Convention;

b. Protection basically concerns conditions of work (remuneration; hours of work, rest and leave; social security; and occupational safety and health).
Worst Forms of Child Labour Convention, 1999 (Convention No. 182):

In the midst of 1990s there was evidence that vast numbers of children below the age of 14 were working full time. Then I.L.O. began to draft a new convention, that is, ‘Worst forms of Child Labour’. The worst forms of child labour include children of any age below 18 who are involved in forms of slavery, forced labour, hazardous work.

The type of work regarded as ‘Hazardous’ is :-

i. Physical, psychological or sexual abuse

ii. Work under ground, underwater, at dangerous heights or in confined spaces.

iii. Work with dangerous machinery, equipment and tools.

iv. Work in an unhealthy environment which would expose children to hazardous substances.

Further I.L.O. has adopted 12 major conventions concerning child labour, which either prohibits the employment of children or set basic standard and conditions.

The General Conference of the International Labour Organisation having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999 and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned
from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20th November 1989, and

Recalling the ILO Declaration on Fundamental Principles Rights Work and its Follow-up, adopted by the International Labour Conference its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Protections Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

On June 17, 1999, this ILO Convention was adopted. The new Convention defines for the first time what constitutes the 'worst forms of child labour', and includes a ban on forced or compulsory recruitment of child soldiers. It calls for international cooperation on social and economic development, poverty eradication, and education to realize its terms, and provides for broad consultations among governments, workers, and employers—the 'social partners' in the ILO's tripartite structure. It defines the worst forms of child labour as:
All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom, and forced or compulsory labour;

Forced or compulsory recruitment of children for use in armed conflict;

Use of a child for prostitution, production of pornography or pornographic performances;

Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and

Work which is likely to harm the health, safety, or morals of children.

The Convention requires ratifying States to 'design and implement programmes of action to eliminate the worst forms of child labour as a priority and to 'establish or designate appropriate mechanisms' for monitoring implementation of the Convention, in consultation with employers' and workers' organizations. It also says that the ratifying States should 'provide support for the removal of children from the worst forms of child labour, and their rehabilitation; ensure access to free basic education or vocational training for all children removed from the worst forms of child labour; identify children at special risk; and take into account the special situation of girls'.

The ILO has elaborate supervisory machinery for the application of its Conventions and Recommendations. These include a regular reporting system by Member States, supervised by an independent Committee of Experts: a tripartite Conference Committee on the same subject, which meets at the ILO's annual Conference: and special procedures for representations and complaints. In recent years there has been a growing tendency of the Committee of Experts to refer to trafficking in persons (sometimes, in particular the trafficking of women and children) in its comments under Convention No. 29. At its 71" Session in 2000 for example, the Committee formulated a general observation on Trafficking in persons under the Forced Labour Convention, No. 29. It noted the growing
awareness of present-day trafficking in persons, which affects "developing countries, countries in transition and industrialized market economy countries, as countries of origin of destination of victims, or both". The Committee observed, moreover, "While the magnitude of the problem is thus generally recognized, it has found little reflection so far in government reports under the Forced Labour Convention, in particular as regards industrialized market economy countries, which are choice destinations of the trafficking in persons. Reasons for this may be found, in part, in the efficiency with which organized crime shields its activities from interference by the authorities, inter alia, through intimidation of the victims; but part of the reason may also lie in the fact that the victims are all too often likely to be perceived by the authorities as illegal aliens rather than as victims of organized crime".

The Committee noted that the penal legislation of countries having ratified Convention No. 29 provides in some cases for specific sanction aimed at the trafficking in persons. However, the persistence of trafficking in persons tends to show that in actual practice the enforcement of the legislation is "often jeopardized by difficulties which remain to be analyzed". The Committee thus formulated this general observation intended to elicit information from all States bound by the Forced Labour Convention on measures taken or contemplated to ensure that, in practice, those responsible for the trafficking in persons could and would indeed be strictly punished, and that the trafficking in persons was really suppressed.

This kind of regular supervision, under Conventions Nos. 29 and 182 can provide useful guidance for Member States. Furthermore, recommendations by an independent Committee of Experts can also provide the basis for specific programmes of technical assistance, either by the ILO or its partners in the UN system. The important thing is that information of this kind be widely circulated beyond the ILO's normal social partners, and be made available to other governmental and non-governmental actors involved in the fight against human trafficking.
Further Steps taken by ILO towards the abolition of Child Labour

In its first global report on the subject in 2002, the ILO reported that child labour is a stubborn phenomenon, whose complete elimination has not yet been accomplished in any economic sector or in any region of the world.\(^{85}\) The second global report, in 2006, significantly titled *The End of Child Labour: Within Reach*, reported an 11 percent decrease in the number of working children worldwide between 2000 and 2004.\(^{86}\) This led the Director-General to claim that the goal of 'eliminating the worst forms of child labour within the next ten year's was ‘ambitious but achievable’.\(^{87}\)

There are many reasons to be skeptical about the ILO's optimism. The scale of the problem remains uncertain. Child labour tends to be hidden in the informal economy and in illegal and clandestine activities. There are doubts about the reliability of statistical estimates based on extrapolation of available information in a limited number of countries.\(^{88}\)

There have been real achievements in the fight against exploitative child labour since 1992 when the International Programme for the Elimination of Child Labour (IPEC) was launched. The conception of child labour has been transformed into a fundamental human right of children against exploitative labour and this is now (arguably) enshrined in customary international law. Positive duties to protect the rights of children have been developed. The elimination of exploitative child labour has been brought from the margins into the mainstream of socio-economic development policies.

Yet these achievements are not guaranteed, and serious challenges remain. There are undoubtedly still millions of child labourers, whatever the precise numbers. Countries are reluctant to introduce a minimum age for access to


\(^{87}\) Ibid., ix

employment. There is defective application of international standards and a lack of effective enforcement. Children in many countries are still not getting to school and some are even conscripted into armed conflicts. Above all, poverty remains a root cause of child labour in developing countries, and the rights of the child have not yet been embedded into the world trade systems. So the elimination of exploitative child labour - characterized by the Director-General of the ILO in 1983 as an affront to the conscience of the international community\(^{89}\) remains an urgent project.

### 3.3 Freedom from child labour as a fundamental human right

The most conspicuous achievement has been the transformation of concerns about child labour into a fundamental human right of children.

The earliest laws on the employment of children were essentially public health measures. When the first industrial revolution started in cotton manufacturing in 18\(^{th}\) century Britain, children were regarded as the best operatives because of their small size and the delicacy of their touch. They were a cheap source of labour, often 'apprenticed' to factory owners by local communities who had the responsibility to support pauper children. When epidemics of fever broke out in 1784 and 1796 in Manchester, agitation led to the Health and Morals of Apprentices Act in 1802, aimed at preventing abuses which endangered not only children but also the health of the community.

Humanitarian concerns of entrepreneurs like Robert Owen led to the British Act of 1819 limiting the hours of work of children in factories was the real beginning of industrial legislation.\(^{90}\) The ambition of international labour legislation was never achieved, but in 1919, Article 427 of the Treaty of Versailles declared that one of the 'methods and principles' of 'special and urgent importance' for the new ILO would be 'the abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuance of their education and ensure their proper physical development'. True


\(^{90}\) J.W. Follow, Antecedents of the ILO, Oxford.
to the spirit of Article 427, the ILO gave a high priority to setting standards, from 1919 onwards, on the minimum age for access to employment.

The 1998 Declaration of Fundamental Principles and Rights at Work symbolized the transformation of humanitarian concerns into human rights. Convention 182 and Recommendation 190 gave concrete expression to those rights in the context of the worst forms of exploitation. Children were no longer simply 'victims' but were turned into rights-holders. This was not a sudden or unexpected development. Since the 1960s the children's rights movement has campaigned for the recognition of children as rights-holders. This rests on a developmental model of childhood: every child has the right to be prepared to have an individual life in society and to be brought up in the spirit of the ideals proclaimed in the Charter of the UN. This rights-based approach finds its expression in the crucially important UN Convention on the Rights of the Child (1989) (CRC). This sets out a number of rights of the child including 'the right of children 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 be harmful to the child's health or physical, mental, spiritual, moral or social development' (article 32).

The CRC and Convention 182 together constitute a striking rejection of the notion that children are too young, immature or incompetent to claim rights. However, a problem with this rights-based approach is that children are often dependent on those who may be acting in breach of their rights. Moreover, the mere face that international treaties and conventions assert children's rights does not mean that children have enforceable rights in practice. Indeed, some argue that by declaring children's 'rights' in formal terms, States are able to cloak their inactivity behind a smokescreen of rhetoric. In domestic contexts, many assertions of children's rights are simply aspirations and not reality. The rhetoric of rights is no more than a hollow promise unless matched by effective

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91 Cf. Sanna who points out that C182 bans the worst forms of child labour because children are the 'victims' of those activities, important rider that C182 also turns those 'victims' into rights-holders, and this is the most important feature of C182.

international supervision and domestic enforcement of these rights by the state, trade unions, NGOs and other agencies.

A question which arises is how we should classify children's rights as they appear in the various international instruments. Hammerberg\(^93\) suggests a classification based on the four Ps: participation, protection against discrimination, protection against harm, and provision for assistance with basic needs. Participation is recognized in respect of the rights of the child to freedom of association (CRC, article 15), and children are clearly 'workers' protected in their rights to freedom of association and collective bargaining under ILO Conventions 87 and 98. Protection against discrimination is specifically recognized in article 2(1) of the CRC, and children as workers are covered by the ILO conventions on discrimination. Protection against harm is recognized in both the CRC and in C182's provisions on hazardous work. Provision for assistance with basic needs is to be found mainly in the CRC. This shows the importance of the links between these international instruments in creating children's rights.

### 3.4 Rights against exploitative Child Labour are being transformed into Customary International Law

The unique character of the 1998 Declaration is that the obligations to provide minimum ages for employment and to eliminate the worst forms of child labour are placed on all ILO member States not by reason of their ratification of named conventions but 'from the very fact of membership'. This is a constitutional obligation and not one which rests upon voluntary acceptance.

It might be argued that those few countries that have failed to ratify C182 are bound by the principles of the relevant conventions by virtue of their membership of the ILO. Such an argument is unlikely to make any practical difference, however, because the Declaration is purely promotional.

The more interesting question, from a legal perspective, is whether the rights embodied in C182 have become a part of customary international law. If

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exploitative child labour is to be treated as universally contrary to international law, in the same way as piracy, slavery and forced labour, it would need to be shown that standards on child form part of 'habitual state practice' and that States appreciate that this practice is required by international law. The state practices must be 'broadly consistent'. These criteria clearly cannot be met in respect of the minimum age for employment. Despite the significant increase since 1998 in the number of ratifications of C138, only 150 out of 181 ILO member States had done so by 2007.

However, by 2007 there had been 165 ratifications of C182, which became the most rapidly and widely ratified of all ILO conventions. The conclusions are that C182 has had demonstrable positive effects in bringing down the extent of exploited child labour - particularly in regard to trafficking and commercial sexual exploitation and hazardous work - and that there is a major a long way towards habitual and consistent practices to eliminate the worst forms of child labour. This supports the case for arguing that the elimination of the worst forms of child labour (as identified in C182) can now be recognized, or may soon be recognized, as part of customary international law.

3.5 Combating Child Trafficking: the ILO's International Programme for the Elimination of Child Labour (IPEC)

The International Program on the Elimination of Child Labour is a global program launched by the International Labour Organization in December 1991. India was the first country to join it in 1992 when it signed a Memorandum of Understanding with the ILO.

India has during the period 1992-2002, supported over 165 action programme. The government of India and the U.S. department of Labour have also initiated a U.S.$ 40 million project aimed at eliminating child labour in 10 hazardous sectors across 21 districts in five states namely Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and NCT of Delhi. This project popularly known as INDUS is being implemented by ILO. An estimated 80,000 children will be withdrawn and rehabilitated through this project.
The long-term objective of IPEC is to contribute to the effective abolition of child labour. Its immediate objectives are:

- Elimination of the capability of ILO constituents and Non-Government Organizations to design, implement and evaluate programs for Child Labour Elimination;

- To identify interventions at community and national levels which could serve as models for replication; and

- Creation of awareness and social mobilization for securing elimination of child labour.

At the International level, IPEC has a Program Steering Committee consisting of representatives of the ILO, the donors and participating countries. At the national level in India, there is a National Steering Committee of which the Labour Secretary is the Chairman. This is tripartite in its composition with representation from NGOs as well. There is a National Program Coordinator based at New Delhi who coordinates between IPEC work and the Ministry of Labour, the agencies receiving assistance and ILO Headquarters. ILO has made an allocation of $4.15 million between 1992 and 1996 for the IPEC program in India.94

In recent years the ILO has given particular attention to the serious problem of child trafficking. The activities of its International Programme for the Elimination of Child Labour (IPEC) commenced in Asia in the mid 1990s. Following the World Congress against Commercial Sexual Exploitation in Children, held in Stockholm in 1996, IPEC expanded its activities to combat trafficking in children worldwide. Its programmes now cover some 30 countries in Africa, Asia and Latin America. It has recently given attention also to Central and Eastern Europe, in the first stage developing a methodology to assess the nature and dynamics of child trafficking in several Balkan countries and the Ukraine. This methodology is based on an adaptation of the ILO/UNICEF Rapid Assessment Manual on the worst forms of child labour to

the specific situation of trafficked children. The aim of the country assessments is to come up with effective prevention and rehabilitation strategies to reduce the vulnerability of children at risk and meet the needs of those who have been trafficked.

IPEC’s prevention framework has been built around four major components: data collection and analysis, policy development and direct support including educational opportunities, community mobilization, and outreach. Its data collection and analysis has included mapping not only of the problems of trafficking per se and the victims, but also of responses by government and judicial agencies, and of the resources made available by different donors, governments and non-governmental agencies. IPEC has had some success in the use of its rapid assessment methodology, developed together with UNICEF, which relies on small but reliable samples of

(i) children at risk; and victims or recovering victims of trafficking for sexual or labour exploitation

(ii) traffickers and exploiters, and

(iii) Workers and other interested parties who have first-hand knowledge of the situation in the chosen research site.

As regards policy development, a key feature of the IPEC approach has been the use of the Time-Bound Programme (TBP), as a tool for implementing the provisions of the ILO standards on eliminating the worst forms of child labour. In brief, the TBPs involve a set of integrated policies and programmes to prevent and eliminate the worst forms of child labour within a defined time-frame. The TBPs aim to address the root causes of child labour, linking actions against it to national development efforts, with a particular emphasis on economic and Trafficking in Human Beings in Southeastern Europe, UNICEF, UNOHCHR, OSCE/ODIHR, June 2002, social policies to combat poverty and to promote universal basic education and social mobilization. At the national level, all TBPs support the creation of an enabling policy environment, addressing such issues as employment creation and health policies within the framework of overall poverty reduction programmes. At the secondary level, they comprise also a series of
targeted direct interventions aimed at highly vulnerable groups of children, families and communities. Some participating countries have also designed action frameworks at the local level. In Chiang Rai province of Thailand, for example, the plan emphasizes surveillance networks to monitor children in hazardous work and those at risk. It includes direct actions such as scholarship programmes to keep children at school, skills training in a wide range of employment sectors, job training for border communities, non-formal education, community-based income generation schemes, job placement schemes, and labour inspection services.

Direct action can take many different forms, adapted to the national context. A constant challenge for the IPEC programme has been overcoming the fact that young people especially are attracted to work in sectors where they can earn more than in agricultural, light industry or other similar work near their homes. The indications that many children, as well as young women, are prepared to endure what they see as short-term exploitation and even abuse if this means that they can earn significant sums of money. They are unaware of the severity of the hardship, the long-term repercussions, and the likelihood that the remuneration will be below their expectations. It is for this reason that skills training and income-generation projects must aim to equip children with marketable skills linked wherever possible to their aspirations. This means undertaking surveys in the home and neighbouring communities, identifying changing demands for skills and labour and providing appropriate skills while at the same time improving the general educational level where possible. In the Mekong countries of Asia, IPEC has supported community-level prevention programmes that combine all of these features. Moreover, community-based organizations and groups have been mobilized and strengthened, to participate actively in the planning and implementation of these programmes.

Such community mobilization is essential for the effective prevention of trafficking. Asian examples can once again be useful. In the Philippines for example, the organization of society into community-level structures of governance known as barangays a noteworthy role.
3.6 Impact of ILO’s Conventions No. 138 and 182

International legal obligations are generally framed as duties on States to 'recognize' or to 'protect' certain rights, in this case those of children. The special feature of C182, as he indicates, is that States are obliged to 'design and implement programmes of action to eliminate as a priority the worst forms of child labour'. This marks a shift of international legal obligations from a negative to positive duty.

The elimination of child labour as a development goal

The campaign against child labour has, in the past, suffered from a Western-centric approach. This was a legacy of the early history of industrial legislation which started in Europe, and was reflected in ILO conventions on child labour from 1919. Attempts to extend the Western levels of minimum ages for access to employment to developing countries, emerging from colonialism, were seen as 'social imperialism', an attempt by developed countries to seek to exclude competition by imposing standards that they themselves ignored in the process of industrialization.\(^95\). It is no surprise, therefore, that there were relatively few ratifications of C138 before the adoption of the ILO Declaration in 1998, and of C182 in 1999.

Achievement of a minimum age for access to employment

One of the most effective ways of eliminating abuses of child labour would be the adoption and enforcement of minimum ages for admission to employment. However, the history of C138 shows that it is too prescriptive and inflexible to take account of the circumstance of both developed and developing countries, and it lacks priorities for national policy C182 has proved to be more effective because it emphasizes the shared values of all countries in eliminating the worst forms of child labour. The new convention concentrates on the most intolerable forms of child labour and it provides for progressive implementation of its norms. However, the International Labour Conference decided not to

abandon or revise C138, but instead to list it alongside C182, as a core convention for purposes of the Declaration of Fundamental Principles and Rights at Work in 1998. This has led to an extraordinary increase in ratifications of C138, but there are few signs that this has resulted in widespread elimination of child labour.

A new approach is needed. This would involve a revision of C182, going beyond the worst forms of child labour set out in C182 into a statement of more positive and longer-term objectives for the elimination of all forms of child labour. This integrated approach would indicate clearly the circumstances in which child labour is permitted.

**Alternative Strategies**

The first important new strand is the social and employment dimensions of regional economic treaties. How effective the TNC directives and other measures have been in eliminating child labour, and how regional policies have also promoted fundamental rights of children in the foreign relations of the EU.

A second strand is the culture of corporate social responsibility developing in transnational corporations (TNCs), mainly in the forms of voluntary codes of conduct and collective agreements. Most of these contain prohibitions on exploitative child labour either expressly or by incorporation of ILO standards. These codes and agreements have the potential to harness processes within the market activities of TNCs that favour the raising of labour standards, that is a 'race to the top'. The essential point is that the internal labour markets of TNCs usually provide better labour standards that domestic firms. The enforcement of these codes needs to be strengthened, and national laws should place States under legal obligations to observe their own codes. There needs to be effective national and international complaints mechanisms.

A third strand is the empowerment of local actors. Unions and new social movements - including the children's rights movement - need to build alliances with groups in developing countries. Social labeling and other campaigns have already raised public awareness of abuses of child labour. It is in this context selective
trade boycotts by consumers and disinvestment in companies abusing child labour become relevant and important.

A fourth strand is to improve the application of international labour standards on child labour. The revision of C182 so as to integrate C138. The rights based approach to child labour, has been the most important achievement of the past 15 years, has not yet been matched by changes in the ILO's supervisory structure. The biggest gap in supervision is the absence of express linkage between the follow up mechanisms under the Declaration and the regular supervisory machinery of the ILO. A more satisfactory follow-up of the core conventions on child labour would be to create a Governing Body committee, similar to the Committee on Freedom of Association, to consider complaints of breaches of the core standards. This committee would report to the Governing Body which could then consider further action against defaulting States. Moreover the ILO should adopt methods of coordination of national policies similar to those of the EU's open method of coordination. This would require the targeting of specific groups of countries at a similar stage of development so as to maximize peer pressure, with an effective monitoring system, as an essential part of expanded ILO technical assistance. The measures include:

1a. knowledge of the problem: little is known about the extent and distribution (by branch of activity or type of occupation) of child workers, about the conditions in which these children work and about the effects of this work on their physical, intellectual, moral or social development. Because of this ignorance, most existing programmes of action have principally benefitted the most visible or "appealing" child workers (such as street children), and have helped very little those children who work out of the public eye (in domestic service, agriculture, or small workshops, as traders in the urban informal sector, or in home work). It is particularly urgent to identify the most dangerous forms of child labour. Likewise, a critical evaluation should be undertaken urgently of measures at the national level to combat child labour, so as to identify gaps and promising lines of intervention;
b. mobilization of the public opinion around the issue of child labour, especially by supporting pressure groups (human rights or children’s rights committees, for example) in their efforts to keep a systematic tally of abuses, to make them public and to highlight the breaches of their responsibilities by the public authorities;

c. informing and sensitizing the general public, and in particular the actors in the struggle against child labour (governments, employers' and workers' circles, NGOs and other pressure groups), using the data gathered under (a) above and making wide use of the mass media (press, radio and TV);

d. education of children and of those responsible for them (parents and teachers) on children's rights as workers, on the long-term costs of child labour and the possible alternatives;

e. training of the people involved in the struggle against child labour (government ministry staff, labour inspectors, trade unionists, representatives of employers' organizations, NGO leaders, etc.);

f. review of protective legislation and better supervision of its application: the substantial disappearance of child labour in the organized sector of the economy is mainly due to the existence of legislation prohibiting it. In many Third World countries there are gaps in legislation on child labour. Its scope does not include certain activities, occupations, or enterprises (agriculture, home work, domestic service, small enterprises) in which child labour is very widespread and often performed in dangerous conditions. Further, where work by children has not been outlawed their conditions of employment are often unregulated. These deficiencies should be corrected. Likewise, labour inspection has frequently not fully lived up to its responsibilities as regards supervision of protective legislation. Measures are needed to reinforce its effectiveness;

g. implementation of programmes of action aimed at preventing child labour, at withdrawing children from dangers working situations, at
facilitating their access to education, apprenticeship and vocational training services, or at improving their conditions of work and life; evaluation of the results of these programmes; their adaptation in the light of this evaluation, and their application on a larger scale;

h. creation of an institutional mechanism within government, with responsibility for setting the main policy priorities, for coordinating the activities of the various Ministries and state institutions, for ensuring that the measures taken by the public sector and those of the private sector complement each other, and for giving financial and technical support to the programmes of direct action referred to in clause (g) above.

Since its foundation in 1919, the International Labour Organization was carrying out the work of a pioneer in the struggle against child labour. It has since been joined by other international organizations, either non-governmental or UN agencies, which strive together against the exploitation of children.96

The abolition of child labour one of the aims for which the ILO was created, and the promotion of well being of children in the fields within the ILO’s competence have been the focal points of much of the organization’s work throughout its existence. A major part of that work has been the adoption by the International conference of a series of conventions, recommendations and resolutions dealing with the employment of children. The ILO study entitled “children at work” has emphasized that the problem of child labour cannot be solved through legislation. In the developing countries, it has not unfortunately been possible to put an end to child labour, despite the fact that almost all these countries have good legislation in this respect.97

India is a party to the ILO and as such has an obligation to adopt the ILO conventions on child labour. Some of the conventions have special provisions for countries like India; they lay down lower standards than those to be followed by

developed countries. In the matter of labour laws relating to children, India tries to follow the standards set by ILO conventions. So far, the ILO has adopted 18 conventions concerning their minimum age for admission to employment, medical examination and night work. On these subjects nine recommendations have also been adopted by ILO.98

3.7 Limitations of I.L.O.

Child labour falls broadly under the following types: (1) non-domestic, (2) non-monetary work, (3) tied or bonded labour, (4) marginal (5) semi-economic activities, and (6) others. The conventions and recommendations adopted by the ILO concern mainly wage labour although bulk of the children at work are employed in other types of activities. Some of the conventions also specifically exclude children's work in domestic occupations or in school as a part of the school curriculum. The scope of the conventions is therefore very limited.

3.8 Appraisal of I.L.O.

The ILO can contribute to their success by offering technical cooperation in the fields of employment and incomes, manpower training and social protection. In this regard, particular attention should be paid to ILO operational activities aimed at mitigating the negative social repercussions of structural adjustment policies, at promoting more balanced development between town and country (access of peasants to land, credit, improved seeds and better production techniques, as well as provision of drinkable water and education and health services in rural areas), or at enhancing the productivity of the urban informal sector and the conditions of work and life of the workers in it.

At the international level, the ILO obviously has a leading role to assume in the struggle against child labour. Nonetheless, some of the action required to attack the underlying causes of child labour (poverty, insufficient economic growth and deficiencies in the education system) is within the competence of other international organizations (IMF, World Bank, GATT, UNESCO). UNICEF,

for its part, is concerned with working children, especially those living or working on the streets, in the framework of its programme for children in particularly difficult circumstances. The UN’s Human Rights Commission has a working group on modern forms of slavery, before which cases of forced labour or bonded labour are regularly exposed. The diversity of mandates for action in the struggle against child labour should therefore be reflected in strengthened cooperation between the ILO and these other organizations and, most importantly, by close collaboration with UNICEF.

3.9 The United Nations Organisation on Child Labour

The first point of reference to any discussion on international action concerning child labour is the Declaration of the Rights of the Child proclaimed by the United Nations General Assembly on 20th November 1959.

The Declaration of the Rights of the Child is the name given to a series of related children's rights proclamations drafted by Save the Children founder Eglantyne Jebb in 1923. Jebb believed that the rights of a child should be especially protected and enforced, thus drafting the first stipulations for child's rights.

Jebb's initial 1923 document consisted of the following criteria:

1. The child must be given the means requisite for its normal development, both materially and spiritually.

2. The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succored.

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3. The child must be the first to receive relief in times of distress.

4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.

5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

These ideas were adopted by the International Save the Children Union, in Geneva, on 23 February 1923 and endorsed by the League of Nations General Assembly on 26 November 1924 as the World Child Welfare Charter. However, these proclamations were not enforceable by international law, but rather only guidelines for countries to follow.\(^\text{102}\)

The original document, in the archives of the city of Geneva, carries the signatures of various international delegates, including Jebb, Janusz Korczak, and Gustave Ador, a former President of the Swiss Confederation.

The SCIU merged into the International Union of Child Welfare by 1946, and this group pressed the newly formed United Nations to continue to work for war-scarred children and for adoption of the World Child Welfare Charter.

On 20 November 1959 the United Nations General Assembly adopted a much expanded version as its own Declaration of the Rights of the Child, adding ten principles in place of the original five.\(^\text{103}\) This date has been adopted as the **Universal Children's Day**.

United Nations Declaration of the Rights of the child, 1959 and particularly Principle 9, stipulates that the child should be protected against all forms of neglect, cruelty and exploitation; that he should not be admitted to employment before and appropriate minimum age; and that he should in a case be caused or permitted to engage in any occupation or employment which would


\(^{103}\) United Nations General Assembly Resolution 1386 Session 14 Declaration of the Rights of the Child on 20th November 1959.
prejudice his health or education, or interfere with his physical, mental or moral development.  


The convention reaffirms the principles of the Universal declaration of Human Rights (1948) with regard to civil and political rights. It induces or encourages State parties to help to realize these rights. Article 8 states that no person should be kept in slavery or servitude or be required to perform forced or compulsory labour.

It also reaffirms the principles of the Universal Declaration of Human Rights with regard to economic, social and cultural rights.

Article 10 enjoins state parties to protect young people from exploitation and from employment in work which is harmful to their physical moral and mental lives. It also commits state parties to set age limits by which child labour can be prohibited and punished by law.

For effective implementation of the action plan, three important points were suggested:

1. All concessions and incentives given to industries should be withdrawn.
2. The District Magistrate should be empowered to take action against the units found violating the relevant laws.
3. National child labour elimination and protection of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance.

The family, as the fundamental group of society and the natural environment for the growth and well being of all its members particularly

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children should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.\textsuperscript{105}

* Recognizing that the child, for the full and harmonious development of his or her personality should grow up in a family environment in an atmosphere of happiness, love and understanding.

* Considering that the child should be fully prepared to live and individual life in society and brought up in the spirit of the ideals proclaimed in the charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

* Bearing in mind that the need to extend particular care to the child has been stated in the Geneva declaration of the child of 1924 and in the Declaration of the Rights of the child adopted by General Assembly on 20 November 1959 and recognized in the Universal declaration of Human Rights in the international convenient on civil and political Rights (in particular in Article 23 & 24) in the International Covenant on Economic Social and Cultural Rights and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

* Bearing in mind that, as indicated in the Declaration of the child, “the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.

* Recalling the provisions of the declaration on social and legal principles relating to the protection and welfare of children, with special reference to Foster placement and Adoption Nationally and Internationally; the United Nations standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the declaration of the protection of women and children in emergency and Armed conflict,

* Recognizing that, in all countries in the sold, there are children in exceptionally difficult conditions, and that such children need special

\textsuperscript{105} Anker and Melkas, Economic Incentives for Children and Families to Eliminate Child Labour 32 (ILO) 1996.
consideration, taking due account of the importance of the traditions and cultural values of each people for protection and harmonies development of the child.

* Recognizing the importance of international cooperation improving the living conditions of children in every country in particular in developing countries.


The UN CONVENTION ON THE RIGHTS OF THE CHILD (1989) was a landmark in International law. It became an unprecedented success as it reached almost universal acceptance with 190 states ratifications in less than ten years. Although the question of child labour was dealt with in only a few of the convention's provisions, the massive political support for CHILDREN'S RIGHTS, as such, also enhanced the commitment to working children. In international law, labour issues have been reserved for the International Labour Organization (ILO). In the traditional perspective of the ILO, child labour must be eradicated from the labour market. Hence, from its establishment, the ILO strategy to combat child labour was to secure international agreements on a minimum working age for children. During the 1920s and 1930s a series of international treaties covering different sectors urged states to set a minimum working age. In 1973 these instruments combined into the Convention concerning Minimum Age for Admission to Employment. The overall aim, as stated in Article 1, was to "ensure the effective abolition of child labour."

Parallel to the endeavors to regulate the (adult) labour market, the League of Nations and later the United Nations (UN) strived to abolish slavery and forced labour. Children were not dealt with specifically until the UN's Supplementary Convention on the Abolition of Slavery (1956), which included children “delivered ... to another person ... with a view to the exploitation of the child” in a list of slavery-like practices (Article 1). Ten years later children were mentioned in one of the fundamental UN human rights treaties, the International Convention on Economic, Social and Cultural Rights (1966), which obliges state

parties to criminalize employment of children under conditions "harmful to their morals or health" (Article 10). The perspective of the human rights treaties of the UN differed from that of the ILO, the former addressed the well-being and development of the child, and thus adopted the protective approach that had long prevailed in philanthropy and welfare legislation throughout the industrialized world.\footnote{107}

With the Convention on the Rights of the Child of 1989 a child-centered approach became popular. In line with the Convention on Economic, Social and Cultural Rights, it demands protection of the child against economic and social exploitation (Article 32).\footnote{108} Furthermore, the 1989 convention included new aspects of protection against sexual and other forms of exploitation (Articles 34 and 36) and against recruiting children to any form of war activities (Article 38).

The importance of the 1989 Convention on the Rights of the Child (CRC) is now widely accepted and recognized. The General Assembly of the United Nations adopted a Declaration on the Rights of the Child in 1959 in which it declared that “the child by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection, before as well as after birth”. Taking into account the various efforts made in this direction, the General Assembly adopted the Convention on the Rights of the Child on November 20, 1989 which entered into force on September 2, 1990 after requisite ratifications made under Article 49. India is a party to this convention which was ratified by it on December 11, 1992. As on June 2005, the Convention had 192 state parties.

In 1989, the Convention on the Rights of the Child was adopted by UN General Assembly. On September 2, 1990 it became international law with one notable exception: the US signed the Charter but has not ratified it. The Convention consists of 54 articles that address the basic human rights to children everywhere and they are entitled:


• the right to survival;
• the right to develop to the fullest;
• protection from harmful influences, abuse and exploitation;
• the right to participate fully in family, cultural and social life.\textsuperscript{109}

The four core principles of the Convention are non-discrimination, devotion to the best interests of the child, the right to life, survival and development, and respect for the views of the child.

Under the Convention, a child is defined as “........... every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.

\textbf{3.9.3 United Nation’s General Assembly’s Resolution on May 2002}

‘\textbf{A World Fit for Children’}

The U.N. General Assembly has adopted a document entitled “A world fit for children”. The member nations have called upon all members of society to join in a global movement that will help to build a world fit for children by upholding the commitment to the following principles and objectives:

1. Put children first. In all actions related to children, the best interests of the child shall be a primary consideration.

2. Eradicate poverty: invest in children. WE reaffirm our vow to break the cycle of poverty within a single generation, united in the conviction that investments in children and the realization of their rights are among the most effective ways to eradicate poverty. Immediate action must be taken to eliminate the most forms of child labour.

3. Leave no child behind. Each girl and boy is born free and equal in dignity and rights; therefore, all forms of discrimination affecting children must end.

\textsuperscript{109} UNICEF 2008.
4. Care for every child. Children must get the best possible start in life. Their survival, protection, growth and development in good health and with proper nutrition are the essential foundation of human development. WE will make concerted efforts to fight infectious diseases, tackle major causes of malnutrition and nurture children in a safe environment that enables them to be physically healthy, mentally alert, emotionally secure, socially competent and able to learn.

5. Educate every child. All girls and boys must have access to and complete primary education that is free, compulsory and of good quality as a cornerstone of an inclusive basic education. Gender disparities in primary and secondary education must be eliminated.

6. Protecting children from harm and exploitation. Children must be protected against any acts of violence, abuse, exploitation and discrimination, as well as all forms of terrorism and hostage-taking.

7. Protect children from war. Children must be protected from the horrors of armed conflict. Children under foreign occupation must also be protected, in accordance with the provisions of international humanitarian law.


9. Listen to children and ensure their participation. Children and adolescents are resourceful citizens capable of helping to build a better future for all. We must respect their right to express themselves and to participate in all matters affecting them, in accordance with their age and maturity.

10. Protect the Earth for children. We must safeguard our natural environment, with its diversity of life, its beauty and its resources, all of which enhance the quality of life, for present and future generations. We will give every assistance to protect children and minimize the impact of natural disasters and environmental degradation on them.
3.10 Other International Agencies’ Role in Child Labour Abolition

Among the major international agents in the field, in particular the ILO, UNICEF, and the World Bank, a consensus has been reached to focus efforts to curb the worst forms of child labour. All three organizations assist governments in developing policies and strategies, and they also support implementation programs.

Though only a very small share of working children is involved in export businesses, trade mechanisms including sanctions are prominent in the public debates on the issue. In the World Trade Organization (WTO), however, binding statutes against trade involving child labour are being strongly opposed, particularly by developing countries that see protectionism as the underlying motive.

There is a broad consensus that trade sanctions are a double-edged instrument that may have adverse effects on children. Collaborative initiatives between the human rights and business sectors are on the other hand a fast-expanding field. In 2000 the UN launched a program, Global Compact, to work directly with companies, with "effective abolition of child labour" as one of the goals.

Regionally, under the North American Free Trade Agreement (NAFTA) there is a mechanism to monitor labour rights within member countries. The United States has a long tradition of unilaterally applying certain labour standards, encompassing prohibition of child labour, to trade agreements. In the early 2000s, both the United States and the European Union (EU) have a so-called General System of Preferences granting trade benefits to countries that live up to certain labour standards. While the U.S. system focuses solely on import goods, the EU system, installed in 1998, also focuses on applicant state policy to abolish child labour more broadly.

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Other measures to combat child labour have been developed by individual companies as well as business sectors, often in cooperation with nongovernmental organizations. These initiatives include the promotion of investment and trade principles, demands on suppliers in developing countries, and the labelling of products.

Despite these efforts, given the many and complex interests embedded in child labour issues, strategies to combat the adverse effects of child labour must operate at many different levels and include all stakeholders, including children themselves.

3.11 International Conventions and India

The ILO has adopted 18 conventions related to child labour, of them 11 have not been ratified by India. Most of those, our country has not ratified related to minimum age and medical examination. India has also not ratified convention No. 138 of 1973, which calls for the pursuit of a national policy designed to ensure the effective abolition of the child labour.

India is a signatory to the United Nations Convention on the Rights of the Child, which was adopted by the UN in 1989. It recognizes the Right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or interferes with the child's education, or to be harmful to the child's health or physical, mental spiritual, moral and social development (Art. 32).

But India's endorsement of Article 32 of the Convention is highly conditional. The text of India's declaration includes limitations like: "Certain rights of the child... can only be progressively implemented in the developing countries, subject to the extent of available resources;... nothing that for several reasons children of different ages do work in India; It is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India...". Such conditions contradict the provisions of other Articles in the convention which emphasise the rights of the child in various areas of life, such as Article 6 says, “state parties shall ensure to the maximum extent possible the survival and development of the child".
ILO Minimum Age convention No. 138 supersedes prior instruments applicable to limited economic sectors. The convention obliges members states to pursue a national policy designed to ensure the effective abolition of child labours. In this connection it establishes that no child can be employed in any economic sector below the age designated for the completion of compulsory schooling, that is below 15 years. The minimum age for admission to any work likely to jeopardize health, safety morals is 18 years.

The Government of India is in the process of framing the second India Country Report to the UN Child Rights Committee. The Country CRC Report preparation process is underway since August 1999. There have been consultative-workshops a mix of community-based NGOs and those with experience of national/ global meetings on child rights and child representatives. There is a provision in the CRC for Non-Governmental Organizations in member countries to propose and undertake to submit Alternate Reports to those of the national governments. The first Alternate Report suggested that the Indian child is deprived and vulnerable in more ways than one. Wide consultations are on amongst the NGOs for framing the Second Alternate Report.

As far as India is concerned, the UN Committee on the Rights of the Child observed that the State party should establish a statutory, independent National Commission for Children with the mandate of, inter alia, regularly monitoring and evaluating progress in the implementation of the Convention at the federal, State, and local levels. Further, such a Commission should be empowered to receive and address complaints of violations of child rights, including those with respect to the security forces. Subsequent to the observations of the UN Committee, the Indian Government has established National Commission for Children.

Since signing its agreement to the Convention, the Indian Government has made several attempts to bring the country up to the standard, such as organizing reviews of the existing laws pertaining to children, increasing publicity around children's issues by organizing conventions with key functionaries and the public, and so forth.
Children’s Code Bill 2000

A Children's Code Bill 2000 (CCB 2000) has been drafted for the setting up of a National Commission for Children (NCC) which is likely to be placed before Parliament any time. A draft National Policy and Charter for Children (NPC 2001) has been drawn up. Policy documents like the ninth Five-Year Plan and population and health policies have reiterated the government's commitment to protecting the child.

During the 11th Plan Period, three Projects viz., INDUS Project, Andhra Pradesh Phase-II & Karnataka Project were implemented in the country under ILO-IPEC. Jointly funded by the Ministry of Labour, Government of India and the Department of Labour, United States of America (USDOL), the INDUS Child Labour Project was implemented in ten hazardous sectors in 21 districts across five states. The project has also operationalised a beneficiary tracking system, for tracking and following up on the progress of all project beneficiaries. Through this project, an estimated 103,152 children and adolescent workers were withdrawn and rehabilitated. The Project was concluded in March 2009.112

By December 2005, it was operational in 86 countries. IPEC is the largest programme of its kind globally and the biggest single operational programme of the ILO. The number and the range of IPEC’s partners has also expanded over the years and now includes other international, government agencies, employers, NGO’s, etc. Their aim is progressively to eliminate child labour through education, social mobilization, awareness raising and legal enforcement.

3.12 Right to Education and Relevant International Law Provisions

The right to education is recognized in the Universal Declaration of Human Rights and guaranteed mother treaties like the International Covenant on Economic Social and Cultural Rights and the Convention on the Rights of the Child. Primary

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education must be "compulsory and available and free to all." Secondary education, including vocational education, must be "available and accessible to every child," with the progressive introduction of free secondary education. Under the CRC different forms of secondary education including vocational education must be accessible to all children and appropriate measures must be taken to introduce free education and financial assistance in case of need. With regard to the connection between child domestic labour and education, the Convention on the Rights of the Child explicitly guarantees children the right "to be protected from performing any work that is likely ... to interfere with the child's education ...." Access to secondary education also works to impede child labour because families, and children especially, might be willing to commit a few additional years of education for the greater freedom of career choice and greater remuneration possibilities it makes available.

In addition, the International Covenant on Civil and Political Rights guarantees each child the right to "such measures of protection as are required by his status as a minor," a provision that the Human Rights Committee has interpreted to include education sufficient to enable each child to develop his or her capacities and enjoy civil and political rights. Although the right to education is a right of progressive implementation, meaning that implementation may take place over a period of time, subject to limits on available resources, the right to education is

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113 CRC, Art. 28(1)(a). The principle of compulsory education in Article 28 of the CRC is only applicable to children, thus illustrating the high premium that the CRC places on the child's right to education. Article 28 (d) also prohibits discrimination in access to education between different groups of children.

114 The International Covenant on Economic, Social and Cultural Rights provides that primary education "shall be available to all” and that secondary education "shall be made generally available and accessible to all by every appropriate means”. International Covenant on Economic, Social and Cultural Rights, art. 13.

115 Article 28 of the Convention on the Rights of the Child recognizes "the right of the child to education;” states parties undertake to make secondary education "available and accessible to every child."

predicated on the basis of equal opportunity. Thus Article 28 (1) places a duty on state parties to recognize the right of the child to education on the basis of equal opportunity. State parties also undertake to implement immediate measures to prohibit discrimination from arising and eliminating discrimination when it has already occurred when a state party to the International Covenant on Economic, Social and Cultural Rights agrees "to take steps . . . to the maximum of its available resources" to the full realization of the right to education.\footnote{International Covenant on Economic, Social and Cultural Rights, art. 2(1). See also Convention on the Rights of the Child, art. 28. Still “[t]he realization of the right to education over time, that is ‘progressively,’ should not be interpreted to mean that States have unrestricted discretion to apply these rights. Progressive realization means that states parties have a continuing obligation ‘to move as expeditiously and effectively as possible’ towards the full realization of article 13” of the covenant. Committee on Economic, Social and Cultural Rights, General Comment 13. The Rights to Education, U.N. Doc. E/C.12/1999/10 (1999), para. 44, in Compilation of General Comments and General Recommendations, p. 79.}

According to the General Comment No. 13 of on The Right to Education by the Committee on Economic, Social and Cultural Rights, both primary and secondary education must include elements of "availability, accessibility, acceptability and adaptability.\footnote{U.N. Doc. E/C.12/1999/10, December 8, 1999, para. 6.} The CESCR defines availability to mean "functioning educational institutions and programmes... to be available in sufficient quantity within the jurisdiction.\footnote{Ibid., para 6 (a) U.N. Doc. E/C.} Educational institutions must be accessible to all without discrimination, to be within safe physical reach either by attendance at some reasonably convenient geographic location" and to be "affordable to all.\footnote{Ibid., para 6 (b) U.N. Doc. E/C.} The Committee stated that although primary education should be "free to all" states parties are "required to progressively introduce free secondary and higher education.\footnote{Ibid., para 6 (b) U.N. Doc. E/C.}

The CRC Committee also provides insights and concrete examples of how to combat child domestic labour using a gender perspective. The Committee has consistently referred to the need to strengthen rights of the child to access education. In the Concluding Observations of the Committee on the Rights of the Child to the
Ethiopian State Party report, the CRC recommended that the State Party take urgent steps to provide, among other things, education, health care, nutritional aid and alternative care to children living or working in the streets. Further, the Committee was very concerned at the very low rates of primary and secondary school enrolment and was especially concerned at the low rate of enrolment among girls and the very high drop-out rates among girls.\textsuperscript{122} With regards to Pakistan, the CRC Committee has stated that eradication of child domestic labour should take place by addressing its root causes through poverty eradication and access to labour.\textsuperscript{123}

The CEDAW also clearly guarantees the equal access to education for the girl children and women. Article 10 of the CEDAW provides for the elimination of discrimination against girls in education, including access to schooling, reduction of female student drop-out rates and programs for girls who have left school prematurely. The CEDAW also guarantees equal conditions for career and vocational guidance in educational establishments of all categories both in urban and rural areas. The Convention especially mentions that “this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.” Article 10 of CEDAW is extremely useful in guiding alternative policies to child domestic labour and providing the opportunities to escape the sometimes intergenerational trap of domestic work. The Article provides for the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of text books and school programs and the adoption of new teaching methods.

Article 10 of the CEDAW is particularly important in the context of child domestic labour. This article guarantees equal access to education on a basis of equality of men and women. This right reiterates the rights guaranteed by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The equality of women is to be ensured in

\textsuperscript{122} U.N. Doc. CRC/C/15/Add. 144 (2001).
pre-school, general, technical, professional and higher technical education, and all types of vocational training. Article 10 supports Article 2 of the CEDAW, which prohibits *de facto* and *de jure* discrimination and guarantees formal and substantive equality as well as relates to Article 5 of the CEDAW, which prohibits negative cultural traditions that devalue women. The CEDAW also recognizes women's and girls' equal opportunities to participate in sports and physical education and the equal resources available to promote those activities. Article 10 (g), which requires the same opportunities to participate actively in sports and physical education, is specially relevant to the girl child domestic worker who may not be able to exercise this right.

The use of CEDAW in conjunction with the CRC and other conventions provide a strong base to prevent child domestic labour as well as to make sure that even child domestic workers have access to the enjoyment of their rights. The consideration of CEDAW will provide the analytical framework to examine the plight of the girl domestic worker.

The CEDAW and CRC guarantees on education must be read with the UNESCO Convention and Recommendation against Discrimination in Education (1960), which defines educational discrimination as:

Any distinction, exclusion limitation or preference ... based on race, colour, sex, language, and religion, political or other opinion ... and in particular:

- Of depriving any person or group of persons of access to education of any type or at any level;
- Of limiting any person or group of persons to education of an inferior standard;
- Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.