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**THE QUESTION OF CHILD LABOUR  
IN A CHILD RIGHTS PERSPECTIVE \***

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1. Child labour is not a recent reality but has been for long tolerated with a mixture of indifference and apathy. Its wide practice made it part of the natural order of things against which it would be hard if at all necessary or valuable to fight. A natural solution for the survival of the poorest, an acceptable form of child's participation in social life, a learning experience for those who cannot afford to accede to or benefit from schooling, or an effective method to keep children away from criminal activities, all arguments have been tried to explain the intolerable or to justify passivity. Passivity so often associated with, and supported by, the invisibility surrounding the work performed by children, in illegal settings, in clandestine activities, in the private environment of the household or in family occupations which are not even considered as having social relevance to be identified as work.

It is true that some important steps have been taken in the past, including through the adoption of international standards to abolish slavery in all its forms or to suppress compulsory or forced labour. Although not necessarily drafted because of, or for children, such standards have nonetheless been invoked to protect them against drastic cases of economic exploitation.

ILO standards constitute an impressive reference in this regard. They have codified workers rights in general, to promote freedom of association, to ensure appropriate working conditions and compatible wages, to prevent discrimination and limit the involvement in dangerous activities. But children have frequently not been a distinct part of the agenda. Standards have addressed employment, but children were not a crucial element of the scenario ... And even when they are active in the working force, their presence has been denied in the programs of workers' organisations, and they have been excluded from their membership because of their young age.

It is true that the advances made have benefited children, but it has been almost by default, as if reality encompasses the child's presence but is not to be

modeled by it; as if any measure necessarily adjusts to children who are seen as no different in nature nor in needs from adult workers; as if the child is simply one more recipient and does not have a say in the design of policies to address his or her own situation.

Labour has been addressed, children have felled to be ...

2. In reality, it was only recently that child labour as such became highly visible in the political agenda of governments and organizations. Only since the last decade have we noted a movement against the economic exploitation of children and an evident change in social attitudes refusing its acceptance.

And the consideration of children as a distinct and priority concern in that same agenda is even more recent. In fact, it coincides with the adoption of the Convention on the Rights of the Child at the end of the 80's, a landmark in the history of the United Nations and a reference to all actions having an impact on children's lives.

3. Now that the Convention on the Rights of the Child has been ratified by virtually all countries of the world, the question of child labour, as well as any other related to the realization of children's rights, needs to be considered within the legal and ethical framework of this international legal instrument.

Above all, we cannot fail anymore to place children at the centre of our strategies and to be guided by their best interests!

We naturally recognise that child labour will not be eradicated by magic just because the Convention is so widely accepted. But the consensus built around this legal instrument reveals a determined willingness of the international community to promote cooperation and solidarity, to mobilise action towards the universal and effective enjoyment of children's rights and to the prevention of child rights violations. We cannot fail to seize such an opportunity!

In the context of the Convention, child labour becomes an emblematic reality. It allows to envisage the general situation of children, while challenging our real commitment to human rights and to the value of the child as a full citizen!

What the Convention tells us is that child labour is not simply a question of employment. It is rather a question which concerns children, children who become involved in activities incompatible with their human dignity, in work which is detrimental to their health, which compromises their education or their full and harmonious development. Work that challenges their fundamental right of being children.

4. The Convention calls for the consideration of a holistic and child centred approach. It recognises the fundamental rights of children and acknowledges the inherent synergism between all of them. With the Convention we realise the natural relationship between all measures adopted to ensure the realisation of children's rights, as well as the need for cooperation and coordination of activities between all bodies and mechanisms which are relevant to the life of children. In the light of the Convention, it is no longer sufficient to adopt dispersed or sectoral measures. A comprehensive and integrated agenda is required, based on an accurate assessment of the reality, guided by the best interests of the child.

The area of child labour is not an exception to this approach!

In the light of article 32 of the Convention, each and every child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous, to interfere with the child's education, to be harmful to child's health or to the child's development. Our efforts cannot therefore be limited to extreme forms of work in dangerous activities, in unhealthy environments or for excessive hours, like work in agriculture, in mines or in construction. Although they may constitute the most visible and urgent cases calling for the most pressing interventions, we need equally to address all other situations, at a first glance less serious, which nonetheless affect the right of the child to education and prevent a harmonious development.

Child work cannot be identified either with only those situations where there is a contractual relationship between employer and employee, where a payment is given for the activities performed. In fact, in the majority of cases, child labourers are not registered or envisaged as workers, written and signed contracts are non-existent and wages are rarely paid. In formal or informal contexts, inside or outside the home, in legal or illegal activities there may be room for abuse and exploitation. Our attention is therefore required in all these situations.

Article 32 of the Convention also illustrates the holistic approach of the Convention, the indivisibility of children's rights as well as the close relationship between measures designed to implement them. On the one hand, it specifically addresses the essential value of the rights to education, to health and to the full development of the child. On the other hand, it indicates the need for legislative reform to be combined with the adoption of administrative, educational and social measures. A comprehensive agenda needs therefore to be developed!

But the area of child labour cannot be *only* envisaged through the provisions of article 32 of the Convention. In fact, various other articles are relevant to the consideration of this reality. Can we question the value of the right to information,

to create awareness amongst children about their rights and the risks arising from hazardous work and to promote the safeguard of their fundamental rights in all circumstances? Can we deny the importance of the right to birth registration to ensure that children are recognised as persons, in their individuality and identity, and to prevent them from having an employment before the legal minimum age or from being abused and exploited in an invisible manner? Can we ignore the importance of the right to freedom of association, which allows children to create or join groups defending their rights, including trade unions? Would anyone hesitate on the value of the right to leisure and recreation, so important for the development of the creativity, imagination and self confidence of the child, in an environment free of the burden of responsibilities? Or can we ignore the decisive importance of international cooperation to foster the implementation of the Convention and support national initiatives designed to successfully promote the abolition of child labour?

5. The Convention has a special relevance in view of its binding nature. While setting an ethical behaviour towards children, this international instrument is not simply a moral reference. It is rather the source of specific legal obligations States are required to honour and fulfil. Thus, the agenda set up by the Convention cannot coexist with passivity or be simply perceived as a set of recommendations, which need vaguely to be taken into consideration when policies for children are designed or implemented.

It calls for action, for the adoption of all adequate measures to ensure the protection of children and to create the necessary conditions for the full enjoyment of their rights. It is an agenda which cannot be postponed or subject to compromise. Unfortunately, once missed, the opportunity for a child to develop through the stages of childhood has no chance to be recaptured.

Upon ratification of the Convention on the Rights of the Child, States parties endorse the recognition of the human rights of children. Both in law and in practice they cannot ignore such status or fail to provide adequate protection. For this reason States have a primary responsibility for the adoption of a national and comprehensive strategy to prevent the exploitation of children through labour, a strategy which fully harmonises their law and practice with the Convention and promotes action in accordance with its ethical values.

Let me address in more detail the areas of *legislation and education* to which this Conference will pay a particular attention.

6. National law needs to incorporate the right of the child to be protected from economic exploitation, from hazardous work and from the performance of harmful activities which may be detrimental to the health, education or development of the child. The national law is required to provide *at least* the same level of protection ensured by the Convention, in particular by article 32. But, in the light of article 41, it is further encouraged to introduce norms which are even more conducive to the realisation of the rights of the child than those agreed upon by this treaty.

Legislation safeguards children's rights, it echoes a clear message of what is wrong and right, of what is licit or unacceptable. It allows for all situations to be assessed against the same set of values, affirming the principle of equality before the law and preventing discrimination. It further places the authority of the State behind the protection of children and promotes the involvement of the civil society in a wider movement of promotion of their rights.

As in any other field, the law is further designed to prevent violations. For this reason, the Convention calls for a deterrent system of inspection, as well as of penalties and sanctions. But above all, it encourages behavioural change. Change towards a stage of universal respect for the individual child. Change to promote an increasing sense of social unacceptance of situations of child labour and which in turn will play a decisive preventive role.

National legislation needs further to be guided by, and ensure respect for, the general principles of the Convention, particularly non discrimination and the best interests of the child.

A) In fact, **article 2** of the Convention prohibits discrimination on any ground, including on the basis of the birth, property, national, ethnic or social origin of the child or of the child's parents. It calls on States to adopt all measures to ensure the protection of the child against all such forms of discrimination.

Yet, the majority of children exploited through labour belong to the poorest sectors of the population, to ethnic minorities, to illegal immigrants or to other disadvantaged groups of children. To a certain degree, this reality has helped maintaining the level of social indifference around situations of child labour. It has even led some to argue that the involvement of these children in working activities provides them with better conditions of living and brighter opportunities for the future than those they would ever enjoy, would they remain in their natural environment ...

In reality, it is the failure to recognise the fundamental value of children, with equal and inalienable rights, that has allowed to tolerate and to keep such a silence around situations which are incompatible with their human dignity and prevent the enjoyment of their fundamental rights.

- B) Pursuant to **article 3** of the Convention, the best interests of the child should be a primary consideration in all actions affecting children, not less in situations of child labour. When there is a conflict of interests between parents and the child, between employers and the child, the solution for the conflict should be determined in view of what is the best solution for the child, in the overall context of the Convention.

In this spirit, the law should forbid situations where children would be allowed to be engaged in an employment which may be detrimental to their education or development or below the minimum legal age, on the basis of the need or interests of the parents. In the light of the Convention, it is rather the best interests of the child that needs to provide guidance to our actions. The solution for the survival of the family cannot certainly be found in exploitative forms of child work. As the Convention recognises, however, other measures and incentives should be envisaged, including material assistance and support programmes in a broader context of human development.

In the legal area it becomes particularly important to set up a clear minimum age for admission to employment. A general minimum age which, as the Committee on the Rights of the Child has often stressed, should not be too low and should be brought to the same level of the age of the end of compulsory education.

In the light of the ILO Convention 138, which plays a decisive subsidiary role for the interpretation and implementation of the Convention on the Rights of the Child, such an age should not be lower than 15, or in special cases where the economy and educational facilities are insufficiently developed, less than 14. Below such an age, national laws may only permit light work, from which those below 12 should be excluded. Light work should not in any case be harmful to the health and development of the child or prejudice his or her attendance at school, or the child's capacity to benefit from the instruction received <sup>1</sup>. Also in these cases, the law is required to regulate the duration and the conditions of employment, both to protect the child and prevent any form of abuse.

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<sup>1</sup> ILO Convention 138, article 7.



But other minimum ages should be set in view of the special nature of activities performed. In the case of hazardous activities, it should not be less than 18 years <sup>2</sup>.

In a thematic discussion devoted to «the economic exploitation of children» the Committee on the Rights of the Child identified certain activities which should be strictly and clearly forbidden by law:

- Activities jeopardising the development of the child or being contrary to the child's dignity;
- those involving cruel, inhuman or degrading treatment, the sale of children or any form of servitude;
- those capable of jeopardizing the education of the child or being detrimental to the child's health;
- activities involving discrimination, particularly with regard to vulnerable and marginalised groups;
- activities performed under the minimum ages for employment, in the light of the Convention and relevant ILO standards;
- activities using the child for criminal acts, including drug trafficking.

It is very encouraging to note the strong convergence between that approach and the one reflected in the drafting process of the new ILO Convention and recommendation on the most intolerable forms of child labour. It clearly indicates the existence of a consensus on core areas, recognised as unacceptable and calling for their urgent elimination. To be consistent with such a consensus, there is need to clearly include hindering education amongst the extreme forms of child labour, both to honour the commitment to the Convention on the Rights of the Child, so widely ratified, and to confirm ILO standards previously adopted, from the Convention on agriculture, adopted in the early twenties, to Convention 138.

7. In addition to legal reform, the Convention on the Rights of the Child further calls for the adoption of educational measures by all States. As it has been stressed, it is imperative to prohibit any work that is detrimental to the education of the child, and at the same time to promote school enrolment and

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<sup>2</sup> Hazardous activities in view of the *physical risks associated* with them, including in construction work, the use of pesticides or chemical agents in agriculture or the work in the mines; in view of the *psychological harm* provoked, like in situations of abuse, often taking place in domestic service; for *heavy work* of porters in armed forces; or for requiring *long hours* of work, often in unhealthy positions and in badly ventilated settings.

attendance, to prevent school drop-outs and to ensure that the child benefits from the instruction he or she receives.

We all know that children tend to be more ready to participate in labour activities when education is not available or when the available form of education does not meet the criteria of affordability, quality and relevance. Many children who work stop going to school altogether. For many of those who tend to combine school and work, their ability to learn is seriously affected, including as a result of their fatigue. The younger the child starts to work the more negative the impact will be! The less education the child receives, the less specialised he or she becomes, the sooner joblessness will be hindering.

For this reason, States parties to the Convention are required to make primary education compulsory and free for all, and to ensure that children effectively benefit from equal opportunities in their access to school, as well as in their ability to evolve in the education system.

It is important to recognise, however, that what is often labeled as «free education» may in fact still constitute a very expensive investment for a family, where the cost of books and school material, of uniforms and of transportation gain a very difficult dimension. This high cost is often multiplied by the several children in the family, becoming economically impossible and leading in many ways to a «natural» selection of those who *should* go to school and those who *may need it less*, once again raising the important question of discrimination against the most disadvantaged, many of whom are girls! Thus, in the spirit of the Convention, budgetary allocation for education needs to constitute a priority, both nationally and in the context of international cooperation. It is both consistent with the principle of the best interests of the child, and instrumental to the prevention of discrimination!

School curricula also need to be carefully revised, to become relevant and provide the child with an opportunity to gain life skills as a citizen and experience for his or her future professional life. Education needs to be perceived by children, their families and society as a rewarding investment, and not as an irrelevant alternative or a lost opportunity.

In reality, the education of the child cannot be reduced to a physical presence in school. It should rather aim at the full development of the child's personality, talents and abilities to their fullest potential, it should provide an opportunity to experience childhood while preparing the child for a responsible life in society and for making free and informed choices in life.

In this context, school is a privileged setting for the child to exercise the right to participation. To feel free to express views, to raise questions and be given answers, to argue and disagree, to understand that one may differ,

sometimes will be right while others will be wrong, and still be respected in one's own individuality.

In the child friendly environment of the school, children will evolve in their learning skills and will become increasingly mature, able and confident to assume greater responsibilities in the school, in the community and generally in life.

For this reason, education is also instrumental for the participation of children in a future working environment. It will form competent professionals, informed to make free decisions and to prevent becoming victims of situations of abuse and exploitation. Without education, there will be no space for true participation, only the illustration of tokenism!

This leads to emphasise once again the importance of ensuring that the age of completion of compulsory education coincides with the minimum age for admission to employment. As the Committee on the Rights of the Child has often stressed,

- when the age of completion of compulsory schooling is too low, children feel encouraged to join the labour force even in situations of clandestinity and unlawfulness,
- when the age of admission to employment is too low, it actively promotes school drop-outs and makes education be perceived as inadequate or simply useless ...

Like legislation, education is clearly not the only way to go if child labour is to be eradicated. But without education poverty will perpetuate between generations, marginalisation will grow, unemployment will persist. Without education, children will be left with the false option of becoming either badly paid or jobless adults ...

8. Legislation and education are only two major areas amongst many others the Convention on the Rights of the Child addresses to ensure the protection of children against exploitation, including through labour.

Strategies may differ from country to country, they will adjust to specific national realities. Some may achieve quicker results than others ... But they will promote progress and will encourage further success. With a clear political will and social movement, so forcefully reaffirmed by this Conference, and guided by the principles and provisions of the Convention on the Rights of the Child, we cannot but succeed in our endeavour! And we will honour our commitment to children!