

# Ending Abusive and Exploitative Child Labour through International Law and Practical Action

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## Abstract

Twenty years ago, the establishment of the *Convention on the Rights of the Child* provided hope that child labour would soon become a problem of the past. However, abusive and exploitative child labour is still a prevalent problem today, affecting up to 500 million children. Although the symbolic value of international law has facilitated real progress on the issue, the lack of enforceability of these instruments has weakened their efficacy. Approaches that regulate the issue of child labour specifically, whilst neglecting the contextual causes, can yield only limited results. Ultimately, international legal instruments must be met by practical action if the problem of child labour exploitation is to be solved.

## Introduction

The establishment of the *Convention on the Rights of the Child* ("CRC")<sup>1</sup> in 1989 provided hope that child labour would soon be a problem of the past. However, twenty years on, child labour is still a concern, with up to 500 million children globally estimated to be engaged in employment,<sup>2</sup> many receiving appalling treatment in dangerous conditions, and who may not receive an education.<sup>3</sup> Whilst child labour can occur in all areas, its concentration can be inextricably linked with poverty and disadvantage.<sup>4</sup>

Various international conventions have been established to address the economic exploitation of children.<sup>5</sup> Unfortunately, many have proven largely symbolic in nature, and lacking in substantive pragmatic enforceability.<sup>6</sup> Whilst international conventions

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1 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ("CRC").

2 David Parker, 'Child Labor: The Impact of Economic Exploration of the Health and Welfare of Children' (1999) 21 *Whittier Law Review* 177 at 181.

3 James Silk & Meron Makonnen, 'Ending Child Labor: A Role for International Human Rights Law' (2003) 22 *Saint Louis University Public Law Review*, 359 at 359.

4 Id at 360.

5 The earliest recorded law regulating child labour was a Venetian statute enacted in 1284 prohibiting children from working in the more dangerous aspects of glass production; Parker, above n2 at 178.

opposing child labour should be commended as steps towards a solution, states should be encouraged to take practical steps to meet the objectives enshrined in these agreements.

This article will outline the international conventions that address child labour, before examining the nature, causes and impacts of the child labour problem. It will subsequently detail the weaknesses that undermine the conventions, and conclude by outlining proposals for how the child labour problem could be further addressed.

## I. International Law on Child Labour

Progressively over the late 20<sup>th</sup> Century the international community recognised the need to protect children from economic exploitation.<sup>7</sup> A number of key international conventions now formally prohibit abusive and exploitative child labour.

### A. Convention on the Rights of the Child

The United Nations Convention, which is clearest in its prohibition on child labour exploitation, is the CRC.<sup>8</sup> Article 32 of the CRC states:

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.<sup>9</sup>

The article proceeds to oblige member states to take measures to implement child protections, including regulating working conditions, hours of work, providing a minimum age for entering employment, and imposing penalties for breaching these rules.<sup>10</sup>

What differentiates the CRC from other conventions is that it utilises the rhetoric of 'rights' rather than presenting children as the property of their parents or objects of charity.<sup>11</sup> This framework of 'rights' is both a strength and shortcoming of the CRC's enforceability, as discussed later.

The CRC is the most widely ratified international convention, having been signed by all but two states.<sup>12</sup> Theoretically, the CRC is therefore (at least symbolically) almost universally legally binding in its protection of children's rights.<sup>13</sup>

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6 Silk & Makonnen, above n3 at 359.

7 Ursula Kilkelly, 'Economic Exploitation of Children: A European Perspective' (2003) 22 *Saint Louis University Public Law Review* 321 at 322.

8 Silk & Makonnen, above n3 at 361.

9 CRC, article 32.

10 Ibid.

11 Nicholas Van Deven, 'Introduction to the Saint Louis Public Law Review Vol 22 2003' (2003) 22 *Saint Louis University Public Law Review*, 233 at 233.

12 The only two states not party to CRC are Somalia and the USA. Jaap Doek, 'The Protection of Children's Rights and the United Nations Convention on the Rights of the Child: Achievements and Challenges', 22 *Saint Louis University Public Law Review* 235 at 235.

13 Id at 238.

## B. UN International Bill on Human Rights

The conventions encompassed in the UN International Bill on Human Rights, (*The Universal Declaration of Human Rights*),<sup>14</sup> *The International Covenant on Economic, Social and Cultural Rights* ('ICESCR'),<sup>15</sup> and *The International Covenant on Civil and Political Rights* ('ICCPR')<sup>16</sup> also include a number of provisions relevant to the issue of child labour. ICESCR contains an overt prohibition of child labour in article 10(3):

Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.<sup>17</sup>

The ICCPR contains a broader provision in its protection of children, stating in article 24:

Every Child shall have... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.<sup>18</sup>

The Universal Declaration of Human Rights takes an even more indirect stance in its prohibition of child labour by articulating the universal right of children to an education in article 26(1).<sup>19</sup>

## C. International Labour Organisation

Various steps have also been taken through cooperation between states and non-governmental organisations ('NGOs').<sup>20</sup> For example, the International Labour Organisation ('ILO') (which is a specialised tripartite United Nations agency) has passed a number of resolutions targeting child labour.

The ILO has defined Child Labour as: 'Any work, which by its nature or employment conditions is detrimental to a child's physical, mental, moral, social or emotional development'.<sup>21</sup>

The ILO has passed more than a dozen child labour treaties since it was founded in 1919,<sup>22</sup> most of which are consolidated into ILO Convention 138 (*Convention (No 138)*

14 Universal Declaration of Human Rights, GA Res 217A, 3 UN GAOR (183<sup>rd</sup> plen mtg), UN Doc A/Res/217A (1948).

15 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) ('ICESCR').

16 *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').

17 ICESCR, art 10(3).

18 ICCPR, art 24.

19 Universal Declaration of Human Rights, art 26(1).

20 Silk & Makonnen, above n3 at 363.

21 Global March Against Child Labour, *Out of the Shadows: Global Report on the Worst Forms of Child Labour* (2002) <[www.globalmarch.org/worstformsreport/world/definitions.html](http://www.globalmarch.org/worstformsreport/world/definitions.html)> accessed 1 February 2009; Kilkelly, above n7 at 323.

22 Andrew Samet, 'Keynote Address: Child Labor and the New Millennium' (1999) 21 *Whittier Law Review* 69 at 70.

*Concerning Minimum Age for Admission to Employment*).<sup>23</sup> ILO Convention 138 implores states to abolish child labour and raise the minimum working age above the age of a child's full physical and mental development (article 1), seeks to protect children from harmful work (article 3), but does permit 'light work' which is not harmful to health, development or educational attendance (article 7).<sup>24</sup>

Other ILO developments include the International Programme on the Elimination of Child Labor ('IPEC')<sup>25</sup> and ILO Convention 182<sup>26</sup> on the Worst Forms of Child Labour.<sup>27</sup> ILO Convention 182 represents a significant regulatory development as it clearly identifies those types of work that are deplorable compared to the earlier ILO Convention 138, which only addressed the conditions under which work may be acceptable for children.<sup>28</sup>

There are also a number of international conventions, or clauses within the above conventions that indirectly regulate on the issue of child labour. Examples include ILO Convention 29 (*Convention Concerning Forced or Compulsory Labour*),<sup>29</sup> and *The Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery*,<sup>30</sup> which both forbid the use of slavery and bonded labour<sup>31</sup> and further rights provided by ICCPR and ICESCR including the right to liberty and security of person,<sup>32</sup> the right not to be subjected to cruel and degrading treatment,<sup>33</sup> the right to just, fair and safe working conditions,<sup>34</sup> and the right to education and healthcare.<sup>35</sup>

## 2. The Reality: Nature and Impact of Child Labour

When the various United Nations and ILO treaties are examined alongside each other, together with agreements such as the Millennium Goals,<sup>36</sup> a clear international legal prohibition on child labour is apparent.<sup>37</sup> Member states are obliged to codify these laws

23 *Convention Concerning Minimum Age for Admission to Employment*, opened for signature 26 June 1973, 1015 UNTS 297 (ILO No 138), (entered into force 19 June 1976) ('ILO Convention 138').

24 Kilkelly, above n7 at 327.

25 Which has received support from the USA, despite their refusal to ratify CRC. Samet, above n22 at 78.

26 *Worst Forms of Child Labour Convention*, opened for signature 17 June 1999, 28 ILM 1207 (ILO No 182) (entered into force 19 November 2000) ('ILO Convention 182').

27 Silk & Makonnen, above n3 at 362.

28 Samet, above n22 at 79; however, it is worth noting that many of the forms of exploitation listed in ILO Convention 182 are also contained in articles 32–36 CRC; Doek, above n12 at 243.

29 *Convention Concerning Forced or Compulsory Labour*, opened for signature 28 June 1930, 39 UNTS 55 (ILO No 29) (entered into force 1 May 1932) ('ILO Convention 29').

30 *Supplementary Convention on the Abolition of Slavery, The Slave Trade and Institutions and Practices Similar to Slavery*, opened for signature 7 September 1956, 226 UNTS 3, (entered into force April 30 1957). This Convention was supplementary to a previous League of Nations Convention prohibiting slavery: Shelley Inglis, 'Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework' (2001) 7 *Buffalo Human Rights Law Review* 55 at 57.

31 Parker, above n2 at 180.

32 ICCPR, art 9; Id at 59.

33 ICCPR, art 7; Id at 59.

34 ICESCR, art 7; Id at 59.

35 ICESCR, arts 12, 13; Id at 59.

36 All 189 UN Member States committed in 2000 to the United Nations Millennium declaration, in which they pledged to achieve universal primary education, and protect children from harm and exploitation. Doek, above n12 at 249.

into domestic practices, and punish those citizens who do not comply. These conventions have also helped identify connections between protecting children from economic exploitation and providing children with other rights such as education and healthcare.<sup>38</sup> However, the symbolic significance of these international statutes often outweighs their practical application, allowing child labour to remain a global problem.

A key obstacle to reducing the incidence of child labour is the difficulty of defining the problem and collating data.<sup>39</sup> It is estimated that there are 211 million children between five and fourteen years of age working worldwide, with 186 million of them in the worst forms of child labour, and about 110 million of them not receiving any education at all.<sup>40</sup> Some would argue that this estimate is too conservative, and that there may be up to 500 million children in employment.<sup>41</sup> Evidence also suggests that these children are working long hours, (see Table A below). For example, one study of 210 Malaysian children revealed that they were working an average 10-hour day, with many of them working six and a half to seven days a week.<sup>42</sup>

There are a number of explanations for the lack of reliable data on child labour. Many children are not aware of their rights under international law or do not have access to reporting mechanisms. Even those with available reporting avenues may choose not to report for fear of losing their jobs.<sup>43</sup> Another reason is that child labour often takes place within the private family sector, or is condoned by parents.<sup>44</sup> The limitations on gathering accurate data is also a key factor behind the lack of practical enforceability of international conventions on this issue.

It is important to recognise that child labour is not a phenomenon that is restricted to lesser-developed nations, but is also prevalent in well-developed states.<sup>45</sup> In its 2002 Global Report, the ILO recognised that child labour is found in all countries, to a greater or less extent.<sup>46</sup> However, there is still significant disparity between wealthier and poorer nations in relation to the number of children engaged in employment<sup>47</sup> and the number of hours that employed children work.<sup>48</sup> One could argue that the risk also remains

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37 Silk & Makonnen, above n3 at 362.

38 Doek, above n12 at 243.

39 Samet, above n22 at 72.

40 Doek, above n12 at 248.

41 This is based on estimates that at least 50 per cent of children in lesser developed countries do not attend school, and the assumption that most of them are probably working; Parker, above n2 at 181.

42 Cited in Parker, above n2 at 182, where he mentions that similar working hours were found in studies taken in Jerusalem, Pakistan, and Nigeria.

43 Joshua Briones, 'Paying the Price for NAFTA: NAFTA's Effect on Women and Children Laborers in Mexico' (1999) 9 *UCLA Women's Law Journal* 310.

44 Tom Lantos, 'The Silence of the Kids: Children at Risk in the Workplace' (1992) 43(2) *Labor Law Journal* 67 at 68.

45 Kilkelly addresses the prevalence of exploitative child labour in Europe, including Turkey, Russia, Italy, Greece and Portugal, above n7 at 321; Similarly, Lantos outlines the incidence of child injuries in the workplace in the USA, above n44 at 68.

46 ILO, *A Future Without Child Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (2002) at para. 53; cited in Kilkelly, above n7 at 321.

47 With only two per cent of children aged 5 to 14 in developed nations engaged in employment. Silk & Makonnen, above n3 at 360.

48 Parker, above n2 at 189.

greater for children in developing nations as domestic statute may not legislate on issues of child labour<sup>49</sup> and labour is more likely to prevent the attainment of an education.<sup>50</sup>

### A. *Abusive and Exploitative Nature of Labour*

In the process of collecting information on child labour it is important to draw the distinction between any labour, and work that is abusive and exploitative. There is wide consensus among international organisations and NGOs that abusive and exploitative labour is the area of most concern and which cannot be tolerated in any form. In particular, the Children's Rights Division of the Human Rights Watch<sup>51</sup> has identified forced and bonded child labour as the issue that needs greatest attention.<sup>52</sup> However, some organisations draw exception to this consensus, and oppose the international focus on abusive and exploitative labour. For example, The International Working Group on Child Labor has expressed concerns that excessive attention on the worst forms of child labour (despite being an important issue) may convey the message that other types of child labour are innocuous or acceptable.<sup>53</sup>

The various international conventions discussed earlier appear to adopt a moderate stance between these two positions. The conventions do not appear to condemn child labour in every form,<sup>54</sup> however, they create a general yardstick by prohibiting work that may be 'harmful' to children<sup>55</sup> (either by inhibiting their access to education, or harming them physically, mentally, spiritually, morally or socially).<sup>56</sup>

Due to this yardstick, there are some instances where child labour may be considered acceptable.<sup>57</sup> The Human Rights Watch identifies that a child's work may be beneficial to the child and the family, assuming the conditions are appropriate.<sup>58</sup> Examples of such work may include catering, deliveries, babysitting, or gardening; however, these types of employment could still be characterised as unfairly paid and lacking in job security.<sup>59</sup> Furthermore, it is unfortunate that in lesser-developed nations, where children are more likely to feel the economic pressure to seek employment, this kind of 'suitable' employment is less readily available.<sup>60</sup>

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49 Although statutes in developed nations may not always be enforced, their existence still might provide a disincentive for employers to employ child labourers in unsatisfactory conditions.

50 Silk & Makonnen, above n3 at 360. There are a number of factors why this may occur. Firstly, education may not be compulsory or as readily available in a lesser-developed nation. Secondly, economic pressures may force a child to work longer hours (preventing education) than would be necessary in a more developed nation. Discussed in Beth Colgan, Daniella Mayer, Janelle Savage & Lauren Hennessey Breit, 'Street Children in Tanzania Effects of Economy and Education' (2000) 20 *Children's Legal Rights Journal* 2 at 4.

51 An international NGO.

52 Silk & Makonnen, above n3 at 367.

53 Ibid.

54 Whilst others, such as the ILO Convention 138 permits 'light work'; Kilkelly, above n7 at 327.

55 Samet, above n22, 72.

56 These were the guidelines established in the Global March Against Child Labour mission statement, Global March Against Child Labour, *Mission* <[www.globalmarch.org/aboutus/](http://www.globalmarch.org/aboutus/)> accessed 1 February 2009; cited in Silk & Makonnen, above n3 at 367.

57 Lantos, above n44 at 67.

58 Silk & Makonnen, above n3 at 366.

59 Kilkelly, above n7 at 348.

However, it is important not to confuse the argument that some types of employment may be acceptable with cultural relativist arguments that exploitative or harmful child labour may be tolerable because of cultural differences.<sup>61</sup> Relativist arguments centre around the idea that efforts to eliminate child labour are a form of cultural hegemony, and that the term 'child' may have different meanings in various cultural contexts.<sup>62</sup> Measures designed to protect children also should not be obscured by 'economic discrimination arguments'. Developing nations have on a number of occasions quashed WTO attempts to address issues of labour conditions, arguing that labour provisions designed to raise pay rates and minimum wages are protectionist policies in disguise, aimed at undermining the competitive advantage enjoyed by lesser-developed countries with low labour costs.<sup>63</sup> Although the cultural power of the west<sup>64</sup> and the economic disparity among nations are causes for concern, these considerations alone cannot justify the abuse of children's rights.

Irrespective of the circumstances where child employment may be tolerable, harmful and exploitative child labour is far too prevalent, with many children working excessive hours (see Table A below), in dangerous conditions, using hazardous machinery.<sup>65</sup> Children work around the globe in various capacities, including working with leaded petrol, cutting rocks in quarries, working in toxic tanneries, in dangerous brick factories and granite crushing facilities.<sup>66</sup> Sweatshop labour is of particular concern, where children might work in dangerous and unhealthy conditions,<sup>67</sup> and be severely mistreated.<sup>68</sup> Many children are not engaged in formal 'sweatshop' labour, instead selling food or other goods, washing cars, or collecting garbage.<sup>69</sup> However, these forms of labour can be equally alarming, particularly in so far as they prevent educational attainment.

Furthermore, the living conditions in areas surrounding labour hubs are often undesirable for children, with rampant overpopulation, and children living in shanty housing, without sewage treatment, electricity or running water.<sup>70</sup>

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60 Colgan, Mayer, Savage & Hennessey Breit, above n50 at 2.

61 Samet, above n22 at 72.

62 An argument opposed by Silk & Makonnen, above n3 at 366.

63 Kilkelly, above n7 at 351.

64 Silk & Makonnen, above n3 at 366.

65 Lantos, above n44 at 67.

66 Parker, above n2 at 184.

67 Inglis, above n30 at 91.

68 Briones, above n43 at 308. There is ample anecdotal evidence of the mistreatment of child labourers. For example, Parker's article details the experience of a boy called Iqbal, who later toured the world speaking out against his mistreatment. At age four Iqbal laboured with other children in a carpet factory in Pakistan. The children worked 11-hour days for three cents pay, and were not allowed to communicate with each other. If they disobeyed, they were lashed or hung upside down as punishment. Discussed further in Parker, above n2 at 178.

69 Colgan, Mayer, Savage & Hennessey Breit, above n50 at 3. Whilst this informal employment may not be as exploitative or oppressive in nature, it is similarly undesirable as it may be dangerous and impede children from gaining an education.

70 Briones, above n43 at 309.

**Table A: Average Hours of Work per day by age and Type of work for 360 Children in Lahore, Pakistan<sup>71</sup>**

TYPE OF WORK	UNDER 9 YEARS	9-11 YEARS	OVER 11 YEARS
Automobile	10	12	12
Carpet	8	10	10
Lathe Machine	10	0	9
Hotel	12	12	10
All	8.5	9	9.8

Sexual exploitation of children is a particularly disturbing area of child labour, with girls facing the greatest risk.<sup>72</sup> Not only is the sexual exploitation of children unquestionably mentally and emotionally scarring, but the child victims are also vulnerable to life threatening infections.<sup>73</sup> Research by the Tanzania Media Women Association found that children as young as nine years old in Tanzania were victims of the sex trade, and were wandering the streets alone, working in illegal brothels, or engaged in exploitative sexual relationships.<sup>74</sup> Even where the nature of a child's employment is not primarily sexual, children (particularly domestic workers)<sup>75</sup> may face sexual or physical abuse through the course of their employment.<sup>76</sup>

## **B. Impact of Labour on Children**

The same factors that make it difficult to collect data on the incidence of child labour also impair the collection of evidence on its impact on the victims.<sup>77</sup> One can conclude, however, that child labour has a broad reaching and multifaceted impact. In particular, child labour appears to inhibit the attainment of education, as many children who are engaged in employment do not attend school (discussed later).<sup>78</sup> This is not only a further breach of a child's right to education, but is likely to reinforce cycles of disadvantage within communities.

Evidence also suggests a correlation between child labour and poor health (see Table B below), during and in the years following employment.<sup>79</sup> Children may be exposed to obvious physical risks by working with machinery or in dangerous environments, with

<sup>71</sup> Ahmed, cited in Parker, above n2 at 189.

<sup>72</sup> Kilkelly, above n7 at 349.

<sup>73</sup> Inglis, above n30 at 92.

<sup>74</sup> Cited in Colgan, Mayer, Savage & Hennessey Breit, above n50 at 2.

<sup>75</sup> Parker, above n2 at 186.

<sup>76</sup> Colgan, Mayer, Savage & Hennessey Breit, above n50 at 2.

<sup>77</sup> Parker, above n2 at 182.

<sup>78</sup> Id at 183.



little to no protective gear, or safety equipment that was designed for adults.<sup>80</sup> Consequently, hospitalisation is significantly more common among working children than non-working children.<sup>81</sup>

**Table B: Medical Conditions Found During the Examination of 210 Working Children in Malaysia<sup>82</sup>**

CONDITION	MALES	FEMALES	TOTAL
Anaemia	59	29	88
Stomatitis	39	19	58
Enlarged Liver	35	14	49
Ankle Edema	15	8	23
Underweight	69	32	101

The ramifications of child labour can also be emotional, with a WHO study revealing that 'long hours and days of uninterrupted work have a stultifying effect on the child, narrowing his horizons and often crippling him emotionally'.<sup>83</sup> This may be exacerbated by physical or sexual abuse during employment.

### C. Underlying Causes of Child Labour

Abusive and exploitative child labour can often be connected with poverty,<sup>84</sup> and informal economic growth. The ILO has confirmed that: opportunities for children to participate in the largely unregulated labour market have rapidly multiplied, especially in the expanding informal economy.<sup>85</sup> Those who argue against child protection laws often do so under the belief that such legislation will be of detriment to poor families, will damage the local economy, and may raise the price of consumer goods.<sup>86</sup> These

79 For example, a study conducted of 45 employed children in Tel Aviv showed 42 per cent to be in poor health, including being malnourished and having poor oral hygiene; There have also been WHO studies on the impacts of particular children's work environments, for example, children working with lead were found to be at higher risk of developing neurological damage; evidence has also emerged that child stonecutters and slate pencil workers in India have a significant chance (up to 75 per cent) of developing silicosis or tuberculosis; all cited in Parker, above n2 at 184–185.

80 Id at 184.

81 WHO, *Children at Work: Special Health Risks* (1987) at 15 <[http://whqlibdoc.who.int/trs/WHO\\_TRS\\_756.pdf](http://whqlibdoc.who.int/trs/WHO_TRS_756.pdf)> accessed 1 February 2009; cited in Silk & Makonnen, above n3 at 360.

82 Parker, above n2 at 189.

83 Above n81; cited in Silk & Makonnen, above n3 at 361.

84 Samet, above n22 at 76.

85 Above n46. Cited in Kilkelly, above n7 at 349.

86 Samet, above n22 at 73, 76.

arguments are shortsighted in nature, failing to recognise the greater long-term utility value of an economy comprised of educated citizens.<sup>87</sup>

As economic necessity underlies much child labour,<sup>88</sup> blanket legal prohibitions may be impractical and ineffective. However, it is equally irrational to wait for the complete alleviation of poverty before attempting to enforce child labour standards.<sup>89</sup> Instead, poverty alleviation must be addressed in concert with child labour standards, and the social values, lack of available education, and economic policies that also contribute to the child labour problem must be tackled.<sup>90</sup>

In many situations it appears that economic policy has stood in opposition to social policy goals (such as child labour prevention). This can be demonstrated through the Mexican experience, where industrial relations reforms and policies of 'flexibilization' in the late 1990s encouraged employers to strip away the minimal existing protections for child workers.<sup>91</sup> Additionally, the North Atlantic Free Trade Agreement that boosted trade between Mexico and the USA only exacerbated the problem, with farmers and factory owners increasingly using child labour to satisfy the increased demand for goods.<sup>92</sup>

In particular, structural adjustment policies, such as those encouraged by the IMF as part of the globalisation process, can be indirectly linked to child labour. Market liberalisation has often led to unemployment or even economic downturns with severe social consequences. Tanzania presents one such example, where the acceptance of structural adjustment policies in the mid 1980s led to widespread unemployment. One of the many social impacts of this unemployment was the growth of informal child labour, undertaken by children to help support families and alleviate poverty.<sup>93</sup>

Child labour can also be inextricably linked with education issues. High levels of child labour usually correspond with inaccessibility and low attainment of education.<sup>94</sup> Resulting high rates of adult illiteracy<sup>95</sup> can also have a negative impact on economic activity, increasing global inequality<sup>96</sup> and perpetuating the cycle of child labour. Child labour that interferes with a child's education is in breach of article 32, CRC,<sup>97</sup> however, difficulty of accessing education is often a cause as well as a symptom of child labour. In many instances schooling requires an enrolment fee, and additional costs for uniforms and supplies.<sup>98</sup> Such expenses may force children into labour either so that they may afford an education, or because they cannot afford it.<sup>99</sup> Therefore, free compulsory

87 Howard Gensler, 'The Economics of the Law of Children' (1999) 19 *Children's Legal Rights Journal* 32 at 36.

88 Lantos, above n44 at 67.

89 Silk & Makonnen, above n3 at 368.

90 Ibid.

91 Briones, above n43 at 318.

92 Id at 307.

93 Colgan, Mayer, Savage & Hennessey Breit, above n50 at 4.

94 Parker, above n2 at 117.

95 Id at 183.

96 Silk & Makonnen, above n3 at 360.

97 CRC, art 32.

98 Colgan, Mayer, Savage & Hennessey Breit, above n50 at 4.

99 Ibid.

education (discussed later in greater depth) might alleviate child labour in the present,<sup>100</sup> and improve long-term economic conditions, removing an underlying cause of child labour.<sup>101</sup> However, even if the cost of education is alleviated, the basic 'opportunity cost' between a day earning money working, and a day spent in school not earning money<sup>102</sup> must also be addressed to discourage children from choosing short-run earnings at the expense of education.<sup>103</sup>

Unfortunately, in some cases parents may also be responsible for their children's exploitation. In the worst cases, this may be forcing their children into labour for debt-bondage.<sup>104</sup> In less extreme circumstances, parents may encourage their children to work in order to help support the family. Parents may fail to understand that making short-term income sacrifices so that a child can be educated may yield greater long-term wages. Alternatively parents may believe that these future wages (although higher) would accrue solely to the child and not benefit the family.<sup>105</sup> As well as alleviating poverty, it is therefore also necessary to address the social customs and community perceptions that surround child labour.

Understanding parental responsibility could also lead to different perceptions of legal liability in relation to child labour. Not only could international and domestic law hold the state and employers responsible for abusive and exploitative child labour, but parents could also be held liable.<sup>106</sup> However, the effectiveness of extending liability as a way to curb child labour is limited, as the factors that give rise child labour greatly extend beyond parental encouragement.

### 3. Problems with the International Law on Child Labour

There are extensive international legal instruments prohibiting child labour; however, the greatest obstacle to their effectiveness is weak enforcement mechanisms.<sup>107</sup> The lack of enforceability of international conventions reflects concerns in the drafting process regarding the preservation of state sovereignty.<sup>108</sup> Although finding international consensus on human rights norms is a positive step, the shortcomings in enforceability leave states and employers relatively free to continue economically efficient and socially bankrupt child labour practices.<sup>109</sup> As Doek argues: '[a]n international human rights instrument like the Convention on the Rights of the Child cannot in and of itself improve the world for children'<sup>110</sup> as it must be matched by effective means of enforcement.

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100 Silk & Makonnen, above n3 at 368; CRC, art 28(a); Doek, above n12 at 236.

101 Samet, above n22 at 71.

102 Colgan, Mayer, Savage & Hennessey Breit, above n50 at 6.

103 Gensler, above n87 at 36.

104 Inglis, above n30 at 70.

105 Gensler, above n87 at 36.

106 Lynn Sudbeck, '*Strain v Christians*: The South Dakota Supreme Court Sends a Warning to Employers of Children in Dangerous Occupations' (1993) 38 *South Dakota Law Review* 452 at 469.

107 Silk & Makonnen, above n3 at 363.

108 Ibid.

109 Briones, above n43 at 317.

110 Doek, above n12 at 244.

One of the key ‘enforcement mechanisms’ adopted by some of the conventions is the requirement that member states make reports to the convention committees. For example, the CRC imposes compulsory reporting obligations upon member states.<sup>111</sup> Each state’s report to the CRC Committee must detail the steps that state has taken to meet the obligations imposed by the Convention.<sup>112</sup> Theoretically, the reporting system encourages cooperation between member states and NGOs, raises awareness of the child labour issue within the state, fosters national cooperation, supplies information to the UN, and allows the UN to make updated recommendations for future improvements.<sup>113</sup>

Unfortunately, reporting mechanisms rarely meet the objectives outlined above. There is no penalty for failing to report, and reports are often incomplete or lacking in information.<sup>114</sup> Furthermore, the internal ‘self regulatory’ nature of enforcement means there is no way to ensure that reports are objective and accurate. For example, research of reporting mechanisms in Mexico City found that in some instances, the government officials responsible for inspecting factories for exploitative labour had personal economic interests in these factories, or would accept bribes in exchange for overlooking labour violations.<sup>115</sup>

A lack of funding renders many of the convention committees unable to undertake meaningful independent investigation (despite utilising the resources of NGOs),<sup>116</sup> and action is limited to replying to submitted reports. However, committee responses to governments in violation are often restrained, using terms like ‘deeply concerned’ and ‘the Committee urges...’<sup>117</sup> rather than the rhetoric of obligation.<sup>118</sup> Furthermore, various conventions do not even include reporting requirements, (such as ILO Conventions, including ILO Convention 182), relying instead upon the good faith of member countries to instigate their own monitoring and compliance framework.<sup>119</sup>

Even when states are known to be in breach, the international conventions face the same problem as all public international legal instruments, which is a lack of substantive coercive power.<sup>120</sup> Whilst the conventions play an essential role in drawing attention to child labour and encouraging states to address this issue, state sovereignty will usually trump international obligations, rendering any ‘enforcement power’ illusory.<sup>121</sup>

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111 CRC art 44.

112 Silk & Makonnen, above n3 at 363.

113 Doek, above n12 at 239.

114 Silk & Makonnen, above n3 at 364. Furthermore, Kilkelly notes that many of the European states’ previous reports to the Committee failed to adequately address the issue of economic exploitation as prohibited under Article 32 CRC, or alternatively denied the existence of any child labour, above n7 at 324.

115 Briones, above n43 at 310.

116 Silk & Makonnen, above n3 at 364.

117 *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sri Lanka*, UN ESCOR, Committee on Economic, Social and Cultural Rights, 18th Sess., 25th mtg, UN Doc E/C.12/1/Add.24 (1998) at para. 12, cited in Silk & Makonnen, above n3 at 364.

118 Ibid.

119 ILO Convention 182, art 5.

120 Silk & Makonnen, above n3 at 364.

121 Briones, above n43 at 323.

Aside from enforceability, the international conventions are also weakened by their ‘blanket’ approach to child labour. Child labour manifests itself differently across cultures and political and social circumstances. Therefore, whilst international law can universally condemn abusive and exploitative child labour, it cannot effectively provide a uniform approach to addressing this issue.<sup>122</sup> The CRC and ILO Conventions provide a valuable function in setting out clear child rights standards; however, the means of meeting these requirements can only be determined by states on an individual, self-regulatory basis.<sup>123</sup>

Furthermore, it is arguable that the rhetoric of ‘rights’ adopted by the CRC is an obstacle to enforceability. Whilst the CRC is unique in its formal legal empowerment of children,<sup>124</sup> in practice children who are victims of abusive and exploitative labour do not have the freedom, ability or resources to take action against their state under this Convention. Therefore, international legal instruments might carry greater practical significance if they utilised the language of state *obligation* rather than the rhetoric of individual *rights*.

## 4. Proposed Solutions

### A. Stronger Committee Monitoring & Greater Use of NGOs

If the international conventions on child labour are to have practical efficacy in preventing child exploitation, the committees of the various international bodies must adopt a more rigorous monitoring role. The European Committee of Social Rights provides a model for this, by actively examining the affairs in member countries to ensure that practices meet their commitment to the European Social Charter.<sup>125</sup>

Furthermore, when breaches are identified, the Committee unequivocally condemns the state in violation of the Charter.<sup>126</sup> This authoritative language is likely to encourage compliance more than the temperate language used by the CRC Committee, as discussed earlier.

Partnerships with NGOs could also improve the monitoring and advocacy process.<sup>127</sup> NGOs can generate widespread public awareness by lobbying on social justice issues, demonstrated by the success of anti-sweatshop campaigns in the 1990s.<sup>128</sup> The role of NGOs in private monitoring and shaming campaigns against recalcitrant states could also be invaluable in giving weight to the seemingly unenforceable international prohibitions on child labour.

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<sup>122</sup> Doek, above n12 at 248.

<sup>123</sup> Id at 249.

<sup>124</sup> Van Deven, above n11 at 233.

<sup>125</sup> Kilkelly, above n7 at 345.

<sup>126</sup> Ibid.

<sup>127</sup> Silk & Makonnen, above n3 at 366.

<sup>128</sup> Id at 365.

## **B. Development Policy that Addresses Poverty & Education**

As outlined earlier, child labour is inextricably linked with circumstances of poverty. If international legal remedies are to be effective they must be partnered with development policies to improve social conditions in lesser-developed nations.<sup>129</sup> However, whilst poverty alleviation is a priority, it should be addressed alongside other more immediately attainable goals, such as improving education and healthcare, regulating the labour force<sup>130</sup> and establishing welfare systems.<sup>131</sup> Collectively, these aims may ensure the best environment for child protection regulation to be practically workable.

Education is a key area that should be addressed in alleviating child labour. International aid tied to the provision of compulsory primary education<sup>132</sup> would remove socio-economic barriers to education,<sup>133</sup> and provide children with an alternative to labour. States would also gain the long-term collateral benefit of literate and skilled workforces ensuring greater economic prosperity in the future.<sup>134</sup>

The CRC indicates that where possible and necessary states should offer financial assistance to make education possible for children.<sup>135</sup> The introduction of welfare systems would be invaluable in addressing instances where children must work in order to earn money to survive. Education programs could also be tailored in such situations (for example by providing lessons that only run in the morning so that money can be earned in the afternoon)<sup>136</sup> to incorporate education into the necessary labour schedule. Flexible programs such as this would help encourage regular attendance as required under article 28(e), CRC.<sup>137</sup>

## **C. Linking Trade and Labour Standards**

Another strategy for addressing child labour would be to place greater emphasis on the link between trade and labour rights.<sup>138</sup> By incorporating children's rights into existing trade and foreign affairs policies, the protections would no longer be a 'separate' and seemingly 'social' issue. Instead, anti-'child labour' policies would be integrated into economic regulation, gaining greater attention and legitimacy.

Additionally, the process of connecting trade and labour rights could lead to a 'preferences' model like the Generalised System of Preferences ("GSP") scheme used by the EU.<sup>139</sup> Under a preferences system, lesser-developed nations that substantially

129 Kilkelly, above n7 at 355.

130 Doek, above n12 at 251.

131 Gensler, above n87 at 36.

132 As required by CRC, art 28(a), which states that Parties will: 'Make primary education compulsory and available free to all'.

133 Gensler, above n87 at 36.

134 Colgan, Mayer, Savage & Hennessey Breit, above n50 at 9.

135 CRC, art 28(b).

136 This was the model established by the COBET program in Tanzania, which recognised the need for some children to work in order to earn money to support themselves and their family, described in Colgan, Mayer, Savage & Hennessey Breit, above n50 at 9.

137 Outlining that State parties should 'Take measures to encourage regular attendance at schools and the reduction of drop-out rates,' CRC, art 28(e).

138 Kilkelly, above n7 at 353.

139 Id at 354.

comply with the ILO and CRC Conventions would be given trade preference.<sup>140</sup> This policy would also encourage improved labour regulations among those states that have not ratified the international conventions.<sup>141</sup> Additionally, a system of preference could encourage 'best practice' approaches, with international obligations providing a 'minimum floor for child protection, not a ceiling beyond which states could not exceed',<sup>142</sup> as states with the best protection practices would receive greatest trade preference.

#### **D. Encouraging Individual State Action within Domestic Law**

Individual state action exceeding the requirements of international conventions should also be encouraged. The EU's GSP scheme discussed above provides one example of state driven policy toward preventing child labour. Furthermore, pursuant to an agreement made in May 1995 by the EU Council, the EU now includes a mandatory human rights clause in its agreements.<sup>143</sup> The Commission also recommended expressly in 2001 that the EU extend these compulsory clauses to core labour standards.<sup>144</sup> Such steps, taken outside the global forums of the UN and ILO highlight the importance of state driven efforts to codify international agreements within domestic law.

Further action to give practical weight to the symbolism of international law could include the introduction of laws imposing civil penalties for the use of child labour. Through such mechanisms, not only would states be liable under international law for incidences of abusive child labour, but the employers would also be penalised under domestic law.<sup>145</sup>

Consumer choice mechanisms could also be utilised to place economic pressure on states to ensure child labour is not used in the production process. Labelling laws might be modified to indicate that certain imports are 'Child Labour Free', encouraging consumers to uphold international law. Despite being unsuccessful at government level,<sup>146</sup> similar proposals have been privately explored by organisations such as the Rugmark Foundation, which uses labels to indicate which carpet manufacturers (whose factories are subject to unannounced inspections) do not engage in child labour.<sup>147</sup>

A final unique approach to dealing with the issue of child labour would be to adopt the rhetoric of anti-discrimination.<sup>148</sup> Abusive and exploitative child labour is arguably a

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140 However, such a model might face criticism as a form of economic 'protectionism' designed to disadvantage developing nations. Furthermore, this policy inaccurately suggests that exploitative child labour only takes place in developing nations.

141 Kilkelly, above n7 at 354.

142 Justice Wuest in *Strain v Christians*, 483 N.W.2d at 783 (South Dakota 1992), cited in Sudbeck, above n106 at 463.

143 Kilkelly, above n7 at 356.

144 Ibid.

145 Lantos, above n44 at 69.

146 For example, the United States Congress heard but never passed the *Child Labor Free Consumer Information Bill of 1999*, S. 1549, 106th Cong., 1<sup>st</sup> sess. (1999). The bill, proposed by Senator Thomas Harkin, embodied a plan to modify labelling laws for this purpose. Discussed in Silk & Makonnen, above n3 at 370.

147 Parker, above n2 at 187.

148 Kilkelly, above n7 at 330.

form of discrimination (not only on the basis of age), but also because children who are victims of child labour are usually from backgrounds of economic, social or racial disadvantage.<sup>149</sup> Breaches of child labour regulations could therefore also be understood as violations of more widely enforced international and domestic anti-discrimination statutes.<sup>150</sup>

## Conclusion

Although the lack of enforceability of the international legal instruments remains a problem, it is important to recognise the significant progress made by these conventions.<sup>151</sup> An examination of international child welfare statistics subsequent to the CRCs establishment reveals a noteworthy improvement in health and education levels. For example, primary education enrolment has increased, exceeding the 80 per cent global goal set in 1990; 21 countries reported in 2001 that female enrolment and retention in schooling had increased; and according to ILO reports,<sup>152</sup> from 2000-2001 approximately 300,000 children involved in labour and 30,000 parents benefited as a result of the ILO-IPEC programmes.<sup>153</sup> Furthermore, leaders from all over the world including Uganda, South Korea, Brazil, Pakistan, and South Africa have publicly spoken out against child labour and the need for greater reform.<sup>154</sup>

Nonetheless, abusive and exploitative child labour remains an issue of grave concern to the global community. Although it is not limited by economic and geographical boundaries, the situation appears to be worst in lesser-developed countries with respect to the exploitative nature of employment, the resulting interruption to education, and overall levels of child labour. Poverty alleviation is a fundamental step toward addressing this problem, however, it must be met with comprehensive social, economic and cultural policies to provide a suitable context for change.

International conventions such as the CRC and various ILO agreements have presented a powerful stance against child labour. Despite the above improvements, these conventions face a problem that is common with international public law; that is, that the symbolic significance of these conventions cannot be matched by their practical enforceability. Nonetheless, by drawing attention to the issue of child labour, encouraging state self-regulation, and facilitating partnerships with NGOs, the international law on child labour represents a step in the right direction.

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149 Silk & Makonnen, above n3 at 362.

150 Ibid.

151 Doek, above n12 at 246.

152 ILO/IPEC, *IPEC Action against Child Labour 2000–2001: Progress and Future Priorities*, (2001) cited in Doek, above n12 at 247.

153 Doek, above n12 at 246–247.

154 Samet, above n22 at 78.