

A CRITICAL ANALYSIS OF INTERNATIONAL LEGAL
REGULATIONS OF CHILD LABOUR: A CASE STUDY OF
TANZANIA

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Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the Master of Law Degree in Commercial law in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

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ANGELA A. BAHATI
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CHAPTER ONE

1. INTRODUCTION

This research examines the problem of child labour in Tanzania. It seeks to explore the magnitude, scope, causes and consequences of child labour, and the worst forms of child labour. Children are defined as persons less than 18 years and child labour refers to specific categories of children between 5 years and 18 years who are economically active. Children may be involved in paid as well as unpaid work within the formal and informal sectors, or in urban and rural areas. The Worst Forms of Child Labour include slavery, prostitution or pornography, illicit activities and hazardous work.

As in many African societies, Tanzania's children are expected to carry out several tasks as they progress to adulthood under the principle of preparing them to be adults; this is generally referred to as 'socialization'. These tasks often place children in danger or expose them to unhealthy, dirty, strenuous, moral and exploitative conditions and constitute the type of child labour that the Tanzanian government is concerned about.¹

1.2 Statement of the problem

Child labour is one of the major problems facing the developing world today. The spectacle of the child worker presents a picture where the child often works continuously. Child labour is simply the single most important source of child exploitation and child abuse in the world today.

The problem is on the increase in Tanzania. Research done by the International Programme on the Elimination of Child Labour (IPEC) indicates that child labour in particular labour of a hazardous and exploitative nature is becoming

¹ Beguele, A and Boyden, 'Working Children: Current Trends and Policy Responses' 2 [1988] 172 *International Labour Review* 153-171.

rampant.² Statistics on child labour are elusive not only because of the special and practical difficulties involved in the design and implementation of child surveys but also because of differences in perceptions about what constitutes a child, child work, or child labour. Even so, the evidence reveals a problem found throughout the world, and especially in Africa, Asia and Latin America.³

The available statistics show that children between the ages of 5 and 18 are employed in domestic service, mining, agriculture, and child prostitution. Figures also show that a child at some point has been physically or sexually abused in their life. Children are more at risk from exploitation. The above statistics show that the problem is endemic and thus calls for urgent remedial action. They also show that children are employed in the informal sectors. These figures are evidence of the inadequacy of the existing state machinery to prevent child labour.⁴

Child labour has presented an explicit challenge to society at least since the Industrial Revolution.⁵ With the progressive adoption of universal primary and secondary education, child labour came into direct conflict with children's access to education, and in many countries the labour of children was withdrawn from production.⁶ With the dramatic economic gains of the 20th century child labour became far less prevalent, though the absolute numbers are still high.⁷ Now the financial and legal means are at hand to address the problem directly, even in low-income and in the least developed countries.⁸

² Website on Worst Forms of Child Labour <http://www.globalmarch.org/worst_forms_report/world_definitions.html>(accessed on 12 May 2004.)

³ Website on IPEC: Child Labour Report: Targeting the Intolerable <<http://www.ilo.org/public/english/standards/ipecpublic/clrep96.html>>(accessed on 27 October 2004.)

⁴ *ibid.*

⁵ Mark Larsky, 'Child labour How the Challenge Is Being Met' *International Labour Review*, 136 [1997] No 2 (Summer) 233.

⁶ *ibid.*

⁷ *ibid.*

⁸ *ibid.*

1.2.1 Background to the Problem

There are problems associated with the abolition of child labour. First there is no international agreement on the definition of child labour. Countries not only have different minimum age work restrictions, but also have varying regulations based on the type of labour. This makes the limits on child labour very ambiguous. Most would agree that six years old is too young to work, but whether the same can be said to a child of twelve years is debatable. Until there is global agreement that can identify cases of child labour, this problem will be very hard to solve. There is also the view that work can help a child in terms of socialization, in building self-esteem and for training.⁹ The problem is then, not child work itself, but the conditions under which it operates.¹⁰ Child labour in Tanzania is prevalent in areas such as domestic cores, mining, and agriculture and prostitution activities.

1.3 Objectives of the Study

This document seeks to discuss the extent of the problem in the light of the legal position in Tanzania. Additionally, it explores the social and economic factors that inform the development of child labour. The chapter seeks to awaken state responsibility under international law for the protection of children from the worst forms of labour. The paper further looks at the international legal perspective and a lesson thereof which Tanzania can benefit from. Various Issues will be discussed such as; what the international instruments do in the countries about child labour, domestic Tanzania legislation thereof, and whether these approaches suffice or we should find another alternative to protect children. This research seeks to raise vital issues on the application and implementation of international law governing the child labour.

While acknowledging the need for universal standards, this research will point to inherent problems in the application of international laws in specific cultural settings. It will also highlight the potentially counter-productive effect of the African Charter on the Rights and Welfare of the Child. It can be argued that provisions on the

⁹ Collins, 1983.

¹⁰ Boyden, J, 'Working Children in Lima Peru' in W.E Myers, (ed) Protecting Working Child London.1991.

'duties' of the child¹¹ have actually encouraged child labour. In international rights conversation it is now well established that child labour constitutes the infringement of children's rights guaranteed in various instruments such as the UN Convention on the Rights of the Child, the ILO Conventions on Minimum Age and Worst Forms of Child Labour. As regards the protection of child rights, the CRC is unique, as it is the first international instrument that specifically was accepted by most countries, except Somalia¹² and the United States.¹³ Governments are urged to work towards the elimination of all worst forms of child labour. The ILO Convention and Recommendation set out measures that government should adopt as national policy for the elimination of child labour.

The paper will argue that if we are to prevent children from being exploited there is an urgent need to offer a wide range of supporting systems, which are not currently in place. This paper seeks to reinforce the need to protect the basic rights of children in general, best interests of a child, right to education, right to play, right to consent and other related rights, which international Conventions guarantee.

Tanzania has ratified the above named international instruments and therefore has an obligation to transform these fine pronouncements into reality for children. A major limitation of the existing mechanisms is that they are reactionary, only offering protection after there is a threat of violation or when the violence has occurred. Prevention is not provided for. From the standpoint of the victim the greatest protection that can be offered is prevention against the occurrence of the exploitation in the first place and building a consciousness that child labour is intolerable and unacceptable. It is of significance that the ILO provides for the protection of the rights

¹¹ Article 31 on African Charter of the Rights and Welfare of the Child.

¹² Somalia is currently unable to proceed to ratification, as it has no recognized government.

¹³ By signing the Convention, the United States has signaled its intention to ratify – but has yet to do so. Reluctance to ratify the Convention on the Rights of the Child is not an indication that the U.S. government is indifferent toward children. On the contrary, the U.S. has some of the best domestic laws, policies and programs for children in the world. The United States was among the first group of countries to ratify International Labour Organization Convention 182 that addresses the worst forms of child labour; it has instituted groundbreaking legislation to combat sex trafficking, and will be among the first 40 countries to ratify the Optional Protocols to the CRC.

of child in the same article that provides for the State's obligation to protect the children.

The study critically examines both the existing state responses to child labour and the Employment and Labour Relations Act¹⁴ that came in force 2004. In particular, the study emphasises that success in dealing with this problem will be realised when the focus shifts to the causes of child labour rather than on its consequences alone. Child work finds justification in cultural attitudes; therefore, social actions challenging the practice must accompany legislative measures to successfully eradicate child labour.

Indeed, though the study is going to single out Tanzania as a case study, the position is not quite different in other jurisdictions around the globe especially among Low-Developed Countries (LDCs).

1.4 Research Methodology

The research is document based. Reference is made to text books, journal articles, Conventions, newspapers, reports and Statutes. Materials were also obtained from the Internet.

1.5 Structure of the Study

The study is divided into five chapters.

1.5.1 Chapter One

Chapter one has set out the statement of the problem, the rationale and objectives of the study.

1.5.2 Chapter Two

This chapter will examine the global overview and historical development of the international law on child labour in the various international legal perspectives to which Tanzania is a State Party. It will discuss child labour as a form of exploitation.

¹⁴ Employment and Labour Relations Act, No 7 of 2004.

The chapter traces developments in international law leading to the expansion of state responsibility to include accountability for the acts of private individuals. The chapter will introduce the debate about the definition of 'child', 'child labour' in the domestic sphere and with the assistance of case study. Also, it will critically look at the conflict between international and domestic concepts. Even though the Convention on the Rights of the Child defines a child as a person below the age of 18, the chapter will, by using examples, highlight the cultural and legal differences that exist in the conception and duration of childhood. The vagueness of international law in this regard will be pointed out.

This chapter will inevitably point out the cultural and legal variations in the determination of duty bearers in various cultural and legal settings, which make the application of international law difficult.¹⁵ The Conventions on the ILO and CRC form the basis of the international definition of child labour.¹⁶

Examples will demonstrate the scope of the child labour problem, with emphasis placed on the worst forms of child labour as identified in the International Labour Organization (ILO) Convention No. 182. These forms include: trafficking of children for exploitative labour; forcible recruitment of children for use in domestic work and on plantations; exploitation of children in the commercial sex industry and the involvement of children in other hazardous labour that places at risk the health, safety, and morals of children.¹⁷

1.5.2 Chapter Three

This chapter will focus on the extent and magnitude of the problem in Tanzania and demonstrate the extent to which children are engaged in exploitative and harmful work in such industries as mining, plantations, domestic services and prostitution. The effects of child labour such as psychological, health and mental will be noted. The

¹⁵ Child Labour in the Sports Goods Industry Jalandhar-A Case Study. <<http://www.ficci-sedf.org/fsedf/jdrchild.htm>>(accessed on 30 April 2004.)

¹⁶ Bjorne Grimsrud, "The next Steps, Experiences and analysis of how to eradicate Child labour" <<http://www.fafo.no/pub/rapp/932.pdf>>(accessed on 20 May 2004.)

¹⁷ Website on ILAB - Advancing the Campaign Against Child Labour <http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/Advance%20Camp_11.htm> (accessed on 1 October 2004.)

chapter will also explore the connections between the HIV/AIDS pandemic and child labour.

This chapter will also provide economic perspectives on child labour and shall look into the role of poverty in child labour.

1.5.3 Chapter Four

This chapter will discuss the existing legal framework in Tanzania. The historical background and the new Employment and Labour Relations Act that has been enacted recently in 2004.

It will discuss the problems inherent in the application of international law in various domestic jurisdictions, and whether domestic laws are in compliance with the international labour standards. A further issue is the conflict of laws which inevitably arises in countries where legal dualism exists.

The chapter critically analyses the provisions of the legislation and its policies. The enactment of the new labour law is significant as it represents the first attempt by Tanzania to incorporate International child Rights provisions on the protection of children from hazardous worst forms within domestic legislation. The Chapter examines the provisions of the legislation in detail to determine its likely effectiveness in preventing child labour.

1.5.4 Chapter Five

This chapter concludes the study. It seeks to draw out the lessons learnt from the challenges against child labour and make some recommendations.

CHAPTER 2

INTERNATIONAL LEGAL PERSPECTIVE

2. INTRODUCTION

This Chapter shall discuss a global overview of child labour and the historical development of the international labour law. It shall analyse the concept of the child, child labour and child work, the best interest of a child, hazardous and light work, minimum age and see whether these can be incorporated in the Tanzanian legislation and, if not, what are the potential obstacles to their incorporations.

The chapter will further focus the weaknesses of the international law. The focus will be on the ILO Conventions,¹⁸ UN Convention¹⁹ and African Charter.²⁰ This chapter shall discuss certain rights of the child in relation to child labour for instance, the right to education, freedom from forced labour, leisure, culture, health and the impact on HIV /AIDS to child.

2.1 GLOBAL OVERVIEW OF CHILD LABOUR

Child labour remains a serious problem in the world today. According to the ILO there are an estimated 250 million child workers between the ages of five and 14, working part time and full time. But the ILO admits that this number does not include children especially millions of girls.²¹ Child domestic workers throughout the world are frequently 'invisible because each child is separately employed and works in the seclusion of a private house, unlike children in factory or on the streets, the UNICEF international child development centres noted.²² The majority of the world's working

¹⁸ Convention on Minimum Age for Admission to Employment No.138, 1973.

¹⁹ Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

²⁰ African Charter- African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986:

African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

²¹ Website on What is Child Labour

<<http://www.childlabourphotoproject.org/childlabour.html>>(accessed on 7 June 2004.)

²²UNICEF, Child domestic work, Innocent digest no 5 (Florence: UNICEF International Child

children are found in Asia (61 percent) followed by Africa (32 percent), Latin America and the Caribbean (7 percent). While Asia has the highest number of child workers, Africa has the highest proportion of children working, with 41 percent of children between five and 14 years engaged in some form of economic activity.²³

Child labour is a problem throughout the world, Tanzania inclusive. Africa and Asia together account for over 90 percent of total child employment.²⁴ Child labour is especially prevalent in rural areas where the capacity to enforce minimum age requirements for schooling and work is lacking.²⁵ Children work for a variety of reasons, the most important being poverty and the pressure placed upon them to escape from this plight. Though children are not well paid, they still serve as the major contributors to family income in developing countries. Schooling problems also contribute to child labour, whether it is the inaccessibility of schools or the lack of quality education which spurs parents to enter their children in more profitable pursuits.²⁶ Traditional factors such as rigid cultural and social roles in certain countries further limit educational attainment and increase child labour.²⁷

Empirical evidence on the impact of globalisation of child labour is scant. Recent research finds *no prima facie* evidence that globalisation will necessarily result in no more child labour.²⁸ Nevertheless, there are signs that the intense competitive pressures may lead to more *exploitative patterns* of child labour. Examples may be found in low skill-segments of sectors such as commercial agriculture and tourism. Globalisation has also been associated with rapid social change, family disintegration, rising consumerism and discrimination against minorities, which may have exacerbated the problem of child labour. The adverse

Development centre) 1999, 3.

²³ Website on Bureau of International
Affair <<http://www.ilo.org/public/English/bureau/stat/child/childhaza.htm>> (accessed on 10 June 2004.)

²⁴ Website on Capital development and operations policy
<<http://www.worldbank.org.html/extdr/hddflash/workflash/workp/docs/wp-00056.doc>> (accessed on
27 August 2004.)

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Website on Capital development and operations policy
<<http://www.worldbank.org.html/extdr/hddflash/workflash/workp/docs/wp-00056.doc>> (accessed on
27 August 2004.)

²⁸ Website of The Social dimension of Globalisation, ILO activities on the dimension of globalisation:
Synthesis Report
<<http://www.ilo.org/public/english/wcsdg/global/documents.htm>> (accessed on 2 December 2004.)

social implications are one reason for the growing demand for the elimination of child labour.²⁹

Despite the fact that restrictions on child labour exist in most nations, many children do work. This vulnerable state leaves them prone to exploitation. The ILO office reports that children work the longest hours and are the worst paid of all labourers.³⁰ They endure work conditions, which include health hazards and potential abuse. Their working conditions do not provide the stimulation for proper physical and mental development. Finally; these children are deprived of the simple joys of childhood, relegated instead to a life of hard work.³¹

2.2 PROTECTION OF CHILD LABOUR

The protection of children from economic exploitation is part of the fundamental mandate assigned to the ILO's standard setting activities to combat child labour. The profile of child labour has risen in recent years, in particular due to the drafting and adoption of the new International Labour Organisation, Convention on the Worst Forms of child Labour (WFCL), as well as the Global March against Child Labour. Abolition of the worst forms of child labour Convention, 1999(Convention No.182) and its accompanying Recommendation (No.190) has placed child labour high on the international agenda, and as a priority issue in many countries around the world.³²

The need for children, because of their vulnerability and immaturity, to be protected against all forms of exploitation first appeared in the Declaration on the Rights of the child 1924, "the child must be protected against every form of exploitation", and was reiterated and expanded in the 1959 Declaration.³³

²⁹ *ibid.*

³⁰ Beguele,A and Boyden ,' Working Children :Current Trends and Policy Responses' 2 [1988]172 *International Labour Review* 153-171.

³¹ Website on Capital development and operations policy
<<http://www.worldbank.org/html/extdr/hdd/flash/workflash/workp/docs/wp-00056.doc>> (accessed on 19 June 2004.)

³² Pins Brown, 'Labour Intensive: Anti-Slavery's Work using Child Rights to combat Child Labour' *Understanding Children's Rights*. Ghent Papers, 534.

³³ Van Bueren , *International Rights of the Child*262.

2.3 DEFINITION OF A CHILD

While a definition of a child has been a frequent source of debate³⁴ the Convention on the Rights of the Child defines a child as,

‘ Every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.’³⁵

Franklin sees childhood as follows:³⁶

[B]eing a child is not a universal experience of any fixed duration, but is differently constructed expressing the divergent gender, class, ethnic or historical locations of particular individuals. Distinctive cultures, as well as histories, construct different worlds of childhood.

Also the definition of childhood can differ from one country to another, from one culture to another and even within the community. It is very difficult to reconcile the *Western notion of ‘childhood’* with that of developing countries.³⁷

Despite being arbitrary it is important to arrive either at a definition of childhood or to mark at its possible boundaries, as children benefit from additional rights, which are only applicable during the period of childhood. Therefore the definition of childhood in international law is critical because it determines which specific rights attach to the status of childhood and which legal remedies are available to children as a class.³⁸ Traditionally a child has been defined as a comparative negative: a child is an individual who is not yet an adult. It is a definition which laden with religious, cultural, physical and psychological practices and beliefs.³⁹

Also Convention No.182 of Worst Forms of Child Labour covers all *persons under the age of 18*.⁴⁰ Even though the Convention defines a child as a person below the age of 18 years, there are differences between societies and cultures as to the

³⁴ Website on the Global March Campaign 2001 against Domestic Child Labour
<<http://www.globalmarch.org/dcl/dcl.overview.htm>> (accessed on 11 May 2004.)

³⁵ UN Convention on the Rights of the Child 1989.

³⁶ Franklin (ed) *The Handbook of Children’s Rights* 7.

³⁷ *ibid.*

³⁸ *ibid* 32.

³⁹ *ibid* 33.

⁴⁰ Article 2 of the Convention No. 182 is in line with the definition of the child under the Convention on the Rights of the Child 1989.

duration of childhood.⁴¹ It is argued that attainment of a particular age is not the only way in which the duration of childhood can be measured. Factors such as the ability to perform certain acts or capacity to perform particular functions are the more important consideration in other communities.⁴²

This approach differs from that of the ILO, Convention concerning the Minimum Age for Admission to employment and the labour Code all of which lays emphasis on age. These international instruments see status of childhood as being determined by the age of the person in question.⁴³ As Van Bueren observes, minimum ages do not necessarily reflect the speed of development of each individual child. The physical ability emphasized in culture is not without problems. Whether the child is capable is mostly the decision of a person who is raising a child, and the child does not have much say in the matter.⁴⁴ This helps them to learn to take responsibility and pride in their activities and it may prepare them for adulthood depending upon their social and cultural context.⁴⁵

The international law allows flexibility in application of age limits. For instance, the CRC sets the upper limit for childhood at 18, but gives State parties permission to set their upper limit of childhood at any age lower than 18. The ILO Conventions make references to age –specific regulations when defining what a child is for purposes of determining child labour.

The ILO Convention defines child labour in terms of a minimum age of employment and establishes that age as not less than fifteen years.⁴⁶ For developing countries, where the economies and educational facilities are underdeveloped, the ILO Convention sets the minimum age of employment at fourteen.⁴⁷

⁴¹ Puleng Letuka, *The Best Interest of the Child and Child Labour Law in Lesotho* in Ncube 'Law, Culture, Tradition and children's Rights in Eastern and Southern Africa', 203.

⁴² *ibid.*

⁴³ Armstrong A. et al., "Towards a Cultural Understanding of the Interplay between Children's and Women Rights: An Eastern and Southern African Perspective", *International Journal of Children Rights* 1995:337.

⁴⁴ Puleng Letuka, 207.

⁴⁵ Website of Child Labour and Education :India Committee of the Netherlands <<http://www.indiannet.nl/ka.nor-e.html>> (accessed on 19 May 2004.)

⁴⁶ Hanson and Vandaele, 'Working Children and International labour Law: A Critical Analysis ', *The International Journal of Children's Rights*, 11 [2003] 1, 99.

⁴⁷ Article 2(4) Children's Rights Alliance, <<http://www.childrensrights.ie/convention.php>>(accessed on 29 May 2004.)

The arbitrary fixing of the upper limit of childhood by the Conventions is problematic in Africa particular in Tanzania, where age has no particular relevance in determining childhood and adulthood.⁴⁸ In African communities the duration of childhood is generally measured by factors such as:

1. Physical development of the child. The definition of a child for purposes of work is dependent on physical ability to carry out a task. The capabilities of the child are left to the discretion of the person giving the task, who may be influenced by his or her economic status, education, and location.⁴⁹
2. Upon marriage a person may cease to be a child, regardless of age, and be deemed to be an adult responsible for running a family. The fact that such a person is still physically and mentally immature is often overlooked. In other communities people may continue being considered children until they have children of their own.⁵⁰

It is clear from the above list of factors that variations in the definition of a child pose problems for the application of laws on child labour. It seems to me that the most common definition of a child is the age below 18 years in Conventions.

2.4 GENERAL OVERVIEW OF THE CONVENTIONS

Although there are many⁵¹ ILO instruments regulating the employment of children, the key Principal Human Rights Conventions for the purpose of child labour are Conventions on Minimum Age for Admission to Employment 1973⁵² and the Worst Forms of Child Labour,⁵³ and their Recommendations, the United Nations on the

⁴⁸ Himonga, C in Ncube (ed) *Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa*. 100.

⁴⁹ Van Bueren, 207.

⁵⁰ *ibid.*

⁵¹ Others are Minimum Age (Non-Industrial Employment) Convention, 1932, C33, Minimum Age (Agriculture) Convention, 1921, C10, Underground Work (Women) Convention, 1935, C 45, Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, C60, Night Work (Women) Convention (Revised), 1948, C 89, Minimum Age (Underground Work) Convention, 1965.

⁵² Minimum Age Convention, 1973 (No. 138).

⁵³ Worst Forms of Child Labour Convention, 1999 (No. 182).

Rights of the Child (CRC), 1989 and its Recommendations and the African Charter on the Rights and Welfare of the child.⁵⁴

2.4.1 Background to the Adoption of the Minimum Age Convention

The protection of children from work and at work has been a basic aim of the International Labour Organization since its inception.⁵⁵ Acting on the call for such protection in the preamble to its constitution, the ILO adopted the Minimum Age (Industry) Convention, 1919 (No.5) at the very first session of the International Labour Conference in 1919.⁵⁶ Since then the Organization has adopted a further ten Conventions and five Recommendations setting standards on the minimum age of admission to employment or work in industry, agriculture, shipping and other non-industrial occupations. In addition, minimum age standards are also specified in several other Conventions concerned with safety, health and/or general conditions in particular industries.⁵⁷

The earliest standards (1919-32) generally fixed the basic minimum age at 14 years, and subsequent revisions (1936-37) raised the age to 15. While most of the basic Conventions exclude work in family enterprises and permit other specific exceptions, those targeting particularly hazardous occupations or sectors set higher standards, for example 16 years for underground work (Convention No. 123 of 1965) and up to 18 years for arduous work in high risk environments (Convention No. 15 of 1921) and work involving exposure to radiation (Convention No. 115 of 1960) or dangerous chemicals (Convention No. 136 of 1971).⁵⁸

At its 181st session in 1970, the governing Body of the ILO reached the conclusion that the 'basic Conventions on the minimum age for admission to employment can no longer be an effective instrument of concerted international action

⁵⁴ The African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November. 29, 1999.

⁵⁵ Mark Larsky, 'Child labour: How the challenge is being met' [1997] 136, no 2 (Summer) *International Labour Review* 235.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ *ibid.*

to promote the well being of children'.⁵⁹ In spite of the ILO's earlier efforts, it was evident that child labour remains a widespread and persistent phenomenon.⁶⁰ All existing instruments on minimum age were indeed of restricted applicability, concerned only with limited economic sectors or specific occupations. Accordingly, the ILO undertook a major revision and consolidation of standards. This led to the adoption of the minimum age Convention, 1973 (No.138).⁶¹

2.4.2 The Minimum Age Convention, 1973⁶²

This Convention establishes the minimum age for admission to employment (14 or 15) years for countries meeting the developing country exception. The Convention remains the fundamental international standard directed at achieving the total abolition of child labour. This Convention is intended as a dynamic treaty to encourage progressive improvement.⁶³

Article 1 places a duty on State Parties to pursue a national policy designed to ensure the effective '*abolition of child labour*' and to raise progressively the minimum age for admission to employment or work to a level, which is consistent with a child's fullest physical and mental development. The ILO Recommendation No. 146 makes this clear. The Recommendation provides that if a State minimum age is below 15 then as a matter of urgency States are recommended to raise the age to 15 years.

2.4.2.1 Exceptions

The Convention No.138 (minimum Age) provides for only two, very limited, exceptions to this rule. The first is work done by children and young persons in schools for general, vocational or technical education or in other training institutions. (Article 6). The second is participation in artistic performances (Article 8). This last

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² Minimum Age Convention, No.138 of 1973.

⁶³ Minimum Age for Admission to Employment. Report IV (1), International Labour Conference, 57th session, Geneva, 1972, 31.)

exception is made subject to the approval of the competent national authorities on a case-by-case basis.⁶⁴

The international legal position on child labour reflects the balance that Convention No .138 strikes between the need to accommodate *light work* up to a few hours per day within context of the household and as part of informal education and training which belongs to the normal process of growing up,⁶⁵ on the one hand and protection against abuses and hazardous work, on the other. Thus the international legality of what children do between the ages of 12 and 18 is determined only by reference to broadly defined types of work or employment that are prohibited at certain (variable) ages, depending both on the nature of the work and/or the circumstances in which it is performed and on individual countries' stages of economic development and/or national specification.⁶⁶

⁶⁴ Mark Larsky, 'Child labour: How the challenge is being met' [1997] 136,no 2 (Summer) *International Labour Review* 238.

⁶⁵ ILO-IPEC 1995, p 5.

⁶⁶ Mark Larsky, 'Child labour: How the challenge is being met', *International Labour Review*, 136[1997] no 2 (Summer) 238.

2.4.2 .2 Light work and hazardous work in relation to Education

The standards set forth by Convention No 138 are summed up in table 1

Minimum ages in accordance with Convention No.138

General minimum age		
(Article 2)	Light work (Article 7)	Hazardous work (Article 3)
In normal circumstances: 15 years or more (not less than compulsory school age)	13 years	18 years (16 years conditionally)
Where economy and educational facilities are insufficiently developed: 14 years	12 years	18 years (16 years conditionally)

Source: ILO, 1996b, p.24, Table 1

This Convention combines broader coverage with greater adaptability to national situations. Though limited exceptions are permitted,⁶⁷ it applies to all sectors of economic activity and, like the earlier Conventions, covers children whether or not they are employed for wages.

The Convention establishes the principle that the minimum age 'shall not be less than the age of completion of compulsory schooling.'

⁶⁷These are not defined, but during preparatory work on the Convention reference were made to employment in family undertakings, domestic service in private households and some types of work carried out without the employer's supervision, such as homework. These exclusions were foreseen mainly because of the practical difficulties of enforcing laws in the categories in question, not because of the absence of possible exploitation or abuse in these situations. As regards homework, for example, Article 4, paragraph (2)(g) of the recent Homework Convention, 1996(no 177), provides for the promotion of equality of treatment as between home workers and wage earners in relation to minimum age for admission to employment; and the accompanying Recommendation (no 184) states that "National laws and regulations concerning minimum age for admission to employment or work should apply to homework "

Subject to a basic standard of 15 years, States parties are required to specify in a declaration appended to their instrument of ratification their own, national minimum age for admission to employment; and states 'whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years'. In either case, the Convention offers added flexibility by allowing lower minimum ages for 'light work' namely 13 for States specifying a basic standard of 15 years and 12 for those specifying a basic standard of 14.

Although light work has not been defined by the Convention, but it has been regarded as the assistance of children in the family economy and the engagement of children outside of school hours in order for them to earn extra money or gain experience.⁶⁸ Article 7(1) provides guidance on the nature of light work. The work that is not likely to harm the health or development of children and must not prejudice their attendance at school..." Light work can be undertaken from the age of 13 or in countries where the economy and educational facilities are insufficiently developed from 12 years on conditions that it does not jeopardize education. As work, which is neither harmful to children's health or development, nor prejudicial to their attendance at school, their participation in vocational training or their capacity to benefit from the instruction received.⁶⁹

The Convention also sets 18 years as the standard for "hazardous" work. This higher standard applies equally to all countries, thereby stressing the principle that a country's level of development is no excuse for allowing children to be exposed to 'employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons.'⁷⁰ Exceptions are permissible for workers aged 16 to 18 provided that they are adequately protected and trained.⁷¹

The Minimum Age Convention does not define 'hazardous'. The duty is placed on the State parties to determine, after consultation with organizations of

⁶⁸ Van Bueren, *International Rights of the Child* 267.

⁶⁹ Minimum Age Convention, Article 7

⁷⁰ Mark Larsky, 'Child labour: How the challenge is being met' [1997] 136, no 2 (Summer) *International Labour Review* 236.

⁷¹ *ibid.*

employers and workers, which types of work fall within the definition.⁷² For hazardous work, the minimum age is raised to 16 or to 18 when the safety and morals are fully protected and the young persons have received adequate specific instruction or vocational training.⁷³

2.4.2.3 Practical problems

It should be noted that the minimum age, which the Convention establishes, for child labour is closely related to the age for the completion of compulsory education.⁷⁴ It is also open for the State to exclude limited categories of employment of work in which special and substantial problems of application arise.⁷⁵ When excluding such work States parties are under a duty to justify the exclusions. Typically, the national basic minimum age applies only to specific sectors or occupations. Agriculture, work in family undertakings and domestic services are excluded.⁷⁶ However it has been noted that the most common exclusion by States is work in family, followed by domestic service.⁷⁷ The well-documented abuses in these areas highlight the need for the ILO to review exclusions for the purposes of domestic services and to begin restricting the ambit of exclusions if necessary by a further treaty.⁷⁸ These special categories have not been defined. The example of housework done outside the family sphere was given for this during the preparatory work. It is argued that important practical difficulties existed, in particular the supervision of this type of employment, for the labour inspectorate was not able or did not have the power to inspect the home of an employer of domestic help.⁷⁹

Approximately half the countries surveyed permit children below the generally prescribed minimum age to perform at least some types of light work. The minimum age set for light work is generally 12 in the Americas and Africa, and 13

⁷² Convention on the Minimum Age, 1973 Article 3(2).

⁷³ Karl Hanson and Arne Vandaele 'Working Children and International Labour Law: Critical Analysis' [2003] 11 *The International Journal of Children Rights* at 99.

⁷⁴ Article 2 of Convention 138 states that the minimum age 'shall not be less than the age for the completion of compulsory schooling'.

⁷⁵ Convention on the Worst Form of Child Labour No. 138, Article 4(1).

⁷⁶ Mark Larsky, 'Child labour: How the challenge is being met' [1997] 136, no 2 (Summer) *International Labour Review* 240.

⁷⁷ International Labour Conference 67th session, 1981, Report 111(part iv B), 26.

⁷⁸ Van Bueren, *The International Law on the Rights of the Child* 266.

⁷⁹ *ibid.*

to)4 in Europe. But to many governments, the determination and/or regulation of 'light work' constitutes a major obstacle to the ratification of Convention No.138.⁸⁰

It has been noted that a crucial aspect of the regulatory framework at the national level is the interdependence of minimum age laws and compulsory education laws. Compulsory education has historically proved one of the most effective instruments for eliminating child labour, hence the explicit link established in Convention No .138 between the minimum age for admission to employment and the age of completion of compulsory schooling.⁸¹

Any serious attempt to tackle the problem of child labour must indeed include a genuine commitment to providing free and compulsory schooling to all children up to the age at which they become eligible to enter employment or work.⁸² Although international law pays attention to the development progress of a State, there are certain absolutes concerning the inherent dignity of the child which States have accepted in international law and which they have a legal duty to adhere to regardless of their level of development. Where the conditions of economic exploitation amount to cruel or degrading treatment the responsibility becomes one of immediate abolition.⁸³

Smolin⁸⁴ discusses the question of the extent to which the aim of totally abolishing child labour is limited to the abolition of certain forms of child labour, laid down in the Convention and also envisaged the more general goal of ending all forms of employment by children. The latter interpretation could be supported by the overall aim of the Convention, which is also the progressive raising of the minimum age for admission to the Convention.

⁸⁰ Mark Larsky, 'Child labour: How the challenge is being met' 136[1997] no2 (Summer) *International Labour Review* 240.

⁸¹ *ibid.*

⁸² Some of the problems confronting developing countries in this field were examined in an earlier 'perspective': "Educational Reform: Issues and trends", [1995] 6. 134 *International Labour Review (Geneva)*, pp.753-770.

⁸³ Van Bueren, *The International Rights of the Child* 263.

⁸⁴ David Smolin, 'Strategic Choices in the International Campaign Against Child Labour' 22 [2000] *Human Rights Quarterly* 942.

However it is argued that, the protection of Minimum Age Convention⁸⁵ can be weakened still further by a State whose economy and administrative facilities are insufficiently developed.⁸⁶ It is my opinion that this is where the problem of child labour lies because it seems to me that child work depends on the economic, cultural, or political practices in the child's country. Poor economies entertain a lower work age limit than their prosperous counterparts. This is a plain contradiction because any treatment of a child, which amounts to exploitation, is rarely due to the violation of a single right.⁸⁷ The Convention clearly outlines the rights and the protection to which every child is entitled.

2.4.3 Convention on the Worst Forms of Child Labour⁸⁸

This is the recent Convention No.182, which came into force in 1999, calls for the immediate elimination of the worst forms of child labour. It adds to and does not supersede Convention 138, which remains the bedrock of national and international action for abolition of child labour. Convention 182 focuses on the worst forms as a priority target while Convention 138 set forth the ultimate objective of the effective abolition of child labour, and also clarifies what should be tackled as child labour by providing for the minimum age standards.⁸⁹ The worst form of child labour is understood to be those types of work for children described in Article 3 of the Convention.

2.4.3.1 General provisions

The definition of the Worst Forms of child labour⁹⁰ comprises,

a) All forms of slavery or practices similar to slavery, such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict.

⁸⁵ Convention No.138 on the Minimum Age, 1973.

⁸⁶ Van Bueren, *International Rights of the Child* 266.

⁸⁷ *ibid.*

⁸⁸ ILO Convention No. 182, against the Worst Forms of Child Labour, comes into force on 19 November 2000.

⁸⁹ Vehleen, E 'Understanding Children Rights'. Ghent Papers on Children's Rights No.6 Collected Papers Presented at 5th International Course on Children's Rights –University of Ghent (Belgium) December 2000 at 468.

⁹⁰ Article 3 of the Convention on Worst Forms of Child Labour No .182 of 1999.

- b) The use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances.
- c) The use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in relevant international treaties
- d) Work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 3 of the Convention⁹¹ prevents all forms of slavery or practices similar to slavery. The 1926 and 1956 UN Conventions on slavery define it as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Complete control over the victim is the key issue here, and domestic workers, in particular those confined to the place of their employer, certainly exercise very little control over their own lives. Recommendation No.190, which accompanies the Worst Form of Child Labour Convention No.182, identifies ‘work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer’s hazardous work.’⁹²

Given such a wide scope of coverage it may be noticed that many countries of the related acts are not at all normal types of employment or even ‘labour’, they are criminal offences in many countries. Some people even ask whether the ILO ‘recognizes prostitution as work, by including it among the worst forms of child labour.’⁹³

The Declaration requires countries to effectively implement and enforce child labour legislation. The elements of enforcement that must be dealt with in legislation include penalties for violations of child labour provisions, including severe penalties for the worst forms of child labour, appropriate investigation, inspection and other

⁹¹ Ibid.

⁹² Pina Brown, ‘Labour Intensive: Anti-Slavery’s Work using Child Rights to combat Child Labour’ *Understanding Children’s Rights*. Ghent papers. 534-38.

⁹³ Ibid.

means of enforcement, record keeping by employers who employ children between the ages of 15 to 18, social and economic programmes to combat child labour.⁹⁴

2.4.3.2 Scope of the Age Limit

Convention No. 182 covers all persons under the age of 18⁹⁵ in line with the definition of child labour under Convention on Rights of the Child. Thus the question arises whether it is a violation of the Convention if 'children' are defined in national legislation in accordance with an age lower than 18 years. Article 2 defines the term 'child' for the purpose of the Convention on Worst Forms of Child Labour as all persons under the age of 18.

On the contrary, even if there is one law defining 'child' as a person under 18, if protection against Worst Forms of Child Labour in a particular situation is available only up to a lower age, then, this will have to be extended to cover all girls and boys under 18.⁹⁶ However this does not mean that Convention 182 requires a complete prohibition of all work for all persons under 18. Those who are under 18 but have attained the general minimum age for work, which is usually lower than 18, can legitimately work, as long as the work does not fall within any of the criteria of the Worst Forms of Child Labour.⁹⁷

The severity of the problem is slowly being recognized, with growing international consensus that more attention needs to be given to the most extreme forms of child labour, regardless of the level of poverty or development of the country. This awareness prompted the development of standards requiring immediate action, adopted by ILO in June 1999 (Convention No. 182).⁹⁸

Despite the ratification of these two Conventions and national legislation, child labour continues to be a problem in African countries. Like other African

⁹⁴ *ibid.*

⁹⁵ Article 2 of the Convention on the Worst Forms of Child Labour No. 182.

⁹⁶ Yoshie Noguchi, *Implementation of the Convention on the Right of the Child and the work of International Governmental Organisations* Ghent papers Report 460.

⁹⁷ *ibid* 461.

⁹⁸ *ibid.*

countries, poor or deteriorating economic situation combined with complex social and cultural factors have contributed to high level of child labour.

2.4.4 African Charter on the Rights of the Child⁹⁹

The African Charter on the Rights of the Child applies to all children under the age of 18 years.¹⁰⁰ In acts by any person or institution of authority that affect the child, the best interests of the child must be the primary objective.¹⁰¹ Like the American Declaration,¹⁰² this Charter also provides for the duties of the child.¹⁰³

In terms of the African Charter on children's rights, children have certain duties in respect of the family, the community, the State and other legally recognised communities, as well as against the international community. The heading to the relevant provision¹⁰⁴ refers to the responsibilities of the child. The underlying objective is probably that children, in fulfilling their duties, should learn responsibility and those they should increasingly make a contribution to society. The contents of this document cannot be separated from the status of the child in society. Children are to a large extent regarded as having responsibilities towards their parents in traditional African societies, and the question therefore arises whether the philosophy of the African Charter on the Rights of the Child is realistic.¹⁰⁵

Although the African Charter raises the standard of protecting children by the definition of a 'Child'. It should be noted that duties towards their family may be used as a justification of child labour but the Charter expressly prohibits child labour. This is where the contradiction lies.

⁹⁹ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

¹⁰⁰ Art 2 of the African Charter on the Rights of the Child.

¹⁰¹ Art 4 (1) of the African Charter on the Rights of the Child. There is nothing unclear about the standard compared to the 1989 Convention, Art 3. In the latter instance, the best interests of the child is the primary consideration.

¹⁰² American Declaration of the Rights and Duties of Man (approved by the ninth International Conference of American States, Bogotá, Colombia, 1948) <www.cidh.oas.org/Basicos/basic2.htm - 29k -> (accessed on 20 October 2004.)

¹⁰³ American Declaration Art 30; African Charter on the Rights of the Child Art 31.

¹⁰⁴ African Charter on the Rights of the Child: Art 31 provides for the responsibilities of the child

¹⁰⁵ See in general Armstrong et al 1995, *The International Journal of Children's Rights* 333-368; Thompson [1992] *International and Comparative Law Quarterly* 439

2.4.5 UN Convention on the Rights of the Child¹⁰⁶

The UN Convention on the Rights of the Child is an international treaty that recognizes the human rights of children, defines children as persons up to the age of 18 years. In 41 substantive articles, it establishes in international law that States Parties must ensure that all children without discrimination in any form benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in, achieving their rights in an accessible and active manner.¹⁰⁷

The human rights of children and the standards, to which all governments must aspire in realizing these rights for all children, are most concisely and fully articulated by the Convention on the Rights of the Child. Following the Geneva Declaration on the Rights of the Child adopted in 1924,¹⁰⁸ the 1959 United Nations Declaration on the Rights of the Child set out the general principles that: 'the child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.'¹⁰⁹ A similar provision was included in the 1966 International Covenant on Economic, Social and Cultural Rights, with added stipulation that:

'Children and young persons should be protected from economic and social exploitation'.¹¹⁰

In 1996, the United Nations Committee on the Rights of the Child set up to monitor the implementation of the 1989 Convention adopted a recommendation

¹⁰⁶ UN Convention on the Rights of the Child 1989.

¹⁰⁷ Convention on the Rights of the Child < www.unicef.org/crc/faq.htm > (accessed on 30 October 2004.)

¹⁰⁸ Recalled in the Preamble to the 1989 United Nations Convention on the Rights of the child, the Geneva Declaration adopted by the Assembly of the League of Nations states inter-alia that 'the child must be put in a position to earn a livelihood and must be protected against every form of exploitation' (League of Nations, 1924, p24.)

¹⁰⁹ United Nations, 1983 p 130.

¹¹⁰ United Nations, 1983 p 5 Art. 10(3).

stressing that 'the child affected by situations of sale, prostitution and pornography should be considered mainly as a victim.'¹¹¹ The relevant United Nations instruments on this subject include the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others¹¹² and the 1956 supplementary Convention on the Abolition of Slavery.¹¹³

The guiding principle for minimum age of employment in the Rights of the Child is Article 32. Paragraph 2(a) does not require the establishment of a single minimum age for admission to employment, which is uniformly applicable without exception to all minors and to all kinds of employment. It simply requires States to provide for a minimum age or ages for admission to employment.

While the Convention itself does not prescribe a precise age, the Committee has consistently indicated and recommended that minimum ages should be set in the light of the provisions of other international instruments and in particular ILO No. 138.¹¹⁴

The global protection of the child against economic exploitation is improved by Article 32¹¹⁵ of UN Convention that places States Parties under a duty to provide for the appropriate regulation of the hours and the conditions of employment and to provide for appropriate penalties and sanctions. However it is weakened by not providing any detail as to the content of the conditions and the limitation on hours; only that it should not amount to economic exploitation.¹¹⁶

¹¹¹ United Nations 1996, pp 4-5.

¹¹² United Nations, 1983 pp71-74.

¹¹³ United Nations, 1983 pp 62-65).

¹¹⁴ Website At what age <<http://www.right.to.education.org/content/age>>(accessed on 15 May 2004.)

¹¹⁵ 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.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

¹¹⁶ Art 32 (2) b and c.

The ILO Recommendation No.146¹¹⁷ provides under Article 12(1) for conditions, which those under the age of 18 are employed, should be maintained at a satisfactory standard and supervised closely. Although Recommendation No.146 does not specify the number of hours which children at different ages should be allowed to work, it does recommend that these hours should be strictly limited on a daily and weekly basis.¹¹⁸

Article 28 of the same article provides for the right of the child to education by making primary education compulsory and available free to all.¹¹⁹ The duty on the states to provide free education to children varies according to the level of the education. The duty is strongest on states with respect to primary education and weaker in relation to secondary education.¹²⁰ This duty in Article 28(1) of the Convention should now be read in the light of articles 2 and 14 of the International Covenant on Economic, Social and Cultural Rights, as during the redrafting of the right to education states expressed concern that they did not wish to lower international standards on the provision of free primary education.¹²¹ Accordingly States Parties are not only under a duty progressively to provide free primary education but must do so according 'to the maximum of [their] available resources'.¹²² Treaty law is clear. All children who live in states which are party either to the International Covenant on Economic, Social and Cultural Rights or to the Convention on the Rights of the Child are entitled to receive free primary education.¹²³

It has been noted that although there is a duty on the State to provide education up to a specific level, there is not any corresponding enforceable international duty on the child to receive an education.¹²⁴ For many children living in developing states the reality is the opposite. Many children would like to be able to attend compulsory education but because of the combination factors, including the

¹¹⁷ ILO Convention 138 & Recommendation 146 (Minimum Age and Recommendation).

¹¹⁸ Van Bueren, *International Rights of the Child* 271.

¹¹⁹ The Convention on the Rights of the Child 1989.

¹²⁰ Van Bueren, *International Law on the Rights of the Child* 234.

¹²¹ *ibid.*

¹²² Art 2(1) International Covenant on Economic, Social, Cultural Rights.

¹²³ Van Bueren *The International Law on the Rights of the Child* 235.

¹²⁴ *ibid* 237.

necessity to contribute to the family's basic survival, the distance of rural schools, traditional opposition to the education of girls and the imposition of school fees, they are unable to receive even the minimum level of education. It is for this reason that the Committee on ESCR, which is entrusted with the monitoring of the implementation of the international covenant, is particularly interested in the provision of primary education to specific groups of children, including girls, children from low-income families, children from rural areas, and children of immigrants and migrant workers.¹²⁵

On the other hand, an article such as Article 29 is of great significance. The education of the child is to be directed inter alia towards the development of the child's personality, the development of respect for human rights, the preparation of the child for responsible life and to inculcate tolerance. As a provision which emphasizes choice and which sees education in broad terms, it is a recognition of children's rights in its widest sense.¹²⁶

2.4.6 Concept of labour as it applies to children.

The notion of special childhood rights derives from the universal recognition that children by reason of their physical and emotional, immaturity are dependant on their family and community for their well-being. There is a problem as to where the demarcations between child work and child labour lie.

According to Fyfe (1995) work which does not detract from the other essential activities for children, namely leisure, play and education is not child labour.¹²⁷ Child labour is work, which impairs the health and development of the child. This is in line with Article 32 of the Convention, which provides that;

“Every child shall be protected from all forms of exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental spiritual, moral or social development.”

¹²⁵ See also Art 26(1) Universal Declaration of Human Rights, 'Elementary Education' should be compulsory in Van Bueren.

¹²⁶ Michael Freeman, *The Moral Status of Children, Essays on the Rights of the child*, 40.

¹²⁷ Fyfe, *Child Labour in J.Ennew*, 1995 on 208.

This Article is the guide in determining what constitutes undesirable child labour. The key elements, which can be taken as distinguishing undesirable child work are exploitation of the child and hazard to or interference with a Child's development.¹²⁸ From this it is clear that even by international standards not all work done by children is undesirable for them.¹²⁹ Work can be necessary aspect of socialization and a way in which children can, within their competence, contribute to the family. It is however important to place the provisions of Article 32 within the context of the cultural dynamics.

The term '*child labour*' does not encompass all work performed by children under the age of 18. Millions of young people legitimately undertake work paid or unpaid, that is appropriate for their age and level of maturity.¹³⁰ By so doing they learn to take responsibility, they gain skills and add to their families' and their own well-being and income, and they contribute to their countries' economies. Child labour does not include activities such as helping out after school is over and schoolwork has been done, with light household or garden chores, childcare and other light work.¹³¹

It should be noted that child labour slated for abolition falls into the following three categories;

- Labour that is performed by a child who is under the minimum age specified for that kind of work (as defined by national legislation, in accordance with accepted international standards) and that is thus likely to impede the child's education and full development.¹³²
- Labour that jeopardizes the physical, mental or moral well being of a child, either because of its nature or because of the conditions in which it is carried out known as hazardous work.¹³³
- The unconditional worst forms of child labour, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2002, International Labour Conference 90th session, *A future without child labour* 9.

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ *ibid.*

recruitment of children for use in armed conflict, prostitution and pornography, and illicit activities.¹³⁴

Under the Declaration, the elimination of all these forms of child labour has become the shared goal of every one of the ILO's 175 member States. It is also an objective of the organisation as a whole, which has pledged, in the same instrument, to assist its members to realize the principle of the effective abolition of child labour.¹³⁵

2.4.7 Child Labour Versus Child Work

There is no single, clear-cut definition of child labour under international law.¹³⁶ As it is a 'portmanteau' term covering many diverse situations.¹³⁷ Child labour can be divided into five categories: domestic, non domestic, on monetary, bonded labour, wage labour and marginal economic activity. It extends to paid employment, piecework at home and unpaid work within the family.¹³⁸

Generally speaking *child labour* is work done by children that harms them or exploits them in some way (physically, mentally, morally or by blocking access to education.¹³⁹ Child labour is exploitative when it threatens the physical, mental, emotional or social development of the child. Varying definitions of the term are used by international organisations, on governmental organisations, Trade Unions and other interested groups. Writers and speakers do not always specify what definition they are using, and that often leads to confusion.¹⁴⁰

¹³⁴ *ibid.*

¹³⁵ *ibid.*

¹³⁶ Mark Larsky, 'Child labour: How the challenge is being met' 136[1997] no 2 (Summer) *International Labour Review*, 237.

¹³⁷ Van Bueren, *International Law on the Rights of the Child* 264.

¹³⁸ *ibid.*

¹³⁹ Website on What is Child Labour

<http://www.childlabourphotoproject.org/childlabour.html> (accessed on 7 June 2004.)

¹⁴⁰ For example, in the preparatory documentation for the Informal Tripartite Meeting at the Ministerial Level (12 June 1996) and more generally, the ILO uses the term 'child labour' to refer to all economic activities (production of goods or services for market, barter or own consumption) carried out by persons under 15. by contrast, the research conducted by the United States Department of labour adopts a double standard derived from Convention No.138, covering children under 15 in developed countries and those under 14 in developing countries(United States Department of Labour, 1994.)

The International Convention adopted by the UN defines '*child labour*' as some types of work performed by children below age 18. And yet the ILO Conventions variously define the appropriate minimum age of work as age 14 or under 15 in developing nations; while in another Convention, the definition of the '*worst forms*' of work applies to all children under age 18.¹⁴¹ Governments, adding to confusion, do not always use the age of 18 as the cut off point for defining a 'child'.

Recent policies developed by ILO, UNICEF and other international organizations similarly acknowledge that not all forms of work are harmful to all children at all ages and that clear qualitative differences exist among occupations and employment relations. It is becoming increasingly evident that, from a policy perspective, a distinction needs to be made between work that is harmless or even beneficial for children and work that is hazardous or exploitative. However the definitions of what is harmful and what is safe are as yet imprecise since the exact impacts of different kinds of settings are not known. Even the UN Convention (CRC) gives no definition for 'economic exploitation' and work that is likely to be harmful to children the central terms of Article 32.¹⁴²

To emphasise qualitative differences in the impacts of work on children, some concerned agencies use the term 'labour' to refer to hazardous or exploitative work in both the informal and formal sectors, reserving the term 'work' for productive and survival activities that are viewed as benign.¹⁴³

International organisations such as UNICEF, and some social scientists make a distinction between '*child work*' (not objectionable) and *child labour* (objectionable). Other phrases 'exploitative' or 'oppressive' child labour.¹⁴⁴ As pointed out, under international law, '*child work*' itself is not prohibited. This is in recognition of the potential benefits of some forms of work and of the realities that require many children to enter the workforce to support their own or their families' basic needs. It is not work per se which is the focus of international law but it's

¹⁴¹ Website on What is Child Labour

<<http://www.childlabourphotoproject.org/childlabour.html>> (accessed on 7 June 2004.)

¹⁴² Boyden J, '*Implanting the Convention on the Rights of the Child*' in Himes J.R on 186.

¹⁴³ *ibid.*

¹⁴⁴ Website on What is Child Labour <<http://www.childlabourphoto>> (accessed on 7 June 2004.)

abuse.¹⁴⁵ For instance, a child who delivers news papers before school might actually benefit from learning how to work, gaining responsibility, and a bit of money. But what if the child is not paid? Then he or she is being exploited. As UNICEF's 1997 state of the world's children Report put it, "Children's work need to be seen as happening along a continuum, with destructive or exploitative work at one end and beneficial work-promoting or enhancing children's development without interfering with their schooling, recreation and rest."¹⁴⁶

International Conventions also define '*child labour*' as activities such as soldiering and prostitution. However not everyone agrees with this definition.¹⁴⁷ Some children workers think that illegal work such as prostitution should not be in the definition of '*child labour*'. The reason behind is that these child workers would like to be respected for their legal work, because they feel they have no other choice but to work.¹⁴⁸ From this point it is clear that even by international standards not all work done by children is undesirable for them.

It seems to me that the definitions between child work and child labour is clear but the demarcation is sometimes lost in a concept of social context. It is argued however that traditional family work is regarded as a productive social function, although increasing by the family is no longer able to act as a protective barrier between the child and employer. Work or employment also amounts to exploitation where it is undertaken at too young and is detrimental to the well being of the child who as the consequence of working too young is also deprived of educational entitlements, vocational training and self progressive for future.¹⁴⁹ I contend that child labour or child work is sometimes a factor of the material worth of each family for what may be seen as child labour in an urban sophisticated set-up may be seen as necessary child work in a rural set up.

¹⁴⁵ Van Bueren, *International Law of the Rights of the Child* 264.

¹⁴⁶ Website on Images of Child Labour

<<http://www.childlabourphotoproject.org/childlabour.html>> (accessed on 07/06/04.)

¹⁴⁷ *ibid*

¹⁴⁸ See New Internationalist Magazine, No 292, July 1997, Issue on Child Labour for further discussion on Child Labour < <http://www.oneworld.org/ni/issue292/contents.html> > (accessed on 7 June 2004.)

¹⁴⁹ Van Bueren, *International Law of the Rights of the Child* 264

The question of what is unacceptable child work has made the application of international law problematic. International law nevertheless attempts to draw a distinction between normal family obligation and work which gives rise to exploitation. The Convention defines child labour not according to activity but according to the effect of an activity on the children concerned.¹⁵⁰

In support of the Convention, UNICEF views 'Child Work's that which does not necessarily deny a child basic entitlements such as the rights of education, leisure and play. UNICEF acknowledges that child work makes children confident, and contributes to their own well-being and that of their families¹⁵¹ promoting physical, cognitive and social development without interfering in scholastic and recreational activity or rest.¹⁵²

It should be noted that the international law does not consider the lack of distinction between child work and child labour in African cultural settings. Even where there is a distinction between 'acceptable' and 'unacceptable work' there is disagreement among cultures about deciding when child work reaches unacceptable levels. In any case, child work is culturally speaking not work as such, but errands ' even if it is (according to international standards) excessive.

In this respect, the definition of child labour and child work in the *Encyclopaedia of the Social Sciences* summarizes the dominant view on child labour when the business of wage earning or participation in self or family support conflicts directly or indirectly with the business of growth and education, the result is child labour. The function of work in childhood is primarily development and not economic, children work.¹⁵³

¹⁵⁰ Article 32 (1) provides 'States 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'

¹⁵¹ Child Labour and Its Impact on Children's Access to and Participation in Primary Education at: <http://www.dfid.gov.uk/pubs/files/childlabourand_its_impact-edpaper48.pdf> (accessed on May 2004)

¹⁵² Ochaita, 'Child Work and Labour in Spain: A First Approach,' 8 [2000] 19 *International Journal of Children's Rights*.

¹⁵³ Karl Hanson and Arne Vandaele, 'Working Children and International Labour Law: Critical Analysis', 11 [2003] *The International Journal of Children Rights* 99.

2.4.8 The Best Interests of the Child and Duties of Child to State and Parents

The 'best interests' clause, the lifeline of present developments in Children's rights law, is a combination of an endeavor to create child autonomy whilst appreciating that the Child's mental capacity may not always permit him to make decisions in his best interest. The Convention on the Rights of the Child is clear when it states that,

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'¹⁵⁴ This shall be so whenever the state, the courts or parents make a decision concerning a child.

In spite of the clarity of Article 3, the 'notion of best interests is not without problems in itself'.¹⁵⁵ As an extreme discretionary principle, it is a two –edged sword that may lend itself. The CRC presents two conceptions of childhood. The first is of the child as a needy dependent and recipient of adult care and concern this understanding is reflected in the Conventions' presentations of children's rights as obligation owed to children by the state and adults generally.¹⁵⁶ The second conception of a child views it as an independent contributing participant to decisions affecting its own life and that of its community.¹⁵⁷

The UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, seem to complement each other in the rights they provide and their conceptions of childhood behind this apparent harmony lie however, ideological and conceptual differences, which are evident in the inclusion of duties in the African Charter on the Rights and duties of the child and their absence in the CRC.¹⁵⁸ The drafters of the CRC featured the 'best interests of the child' principle in

¹⁵⁴ Article 3(1) of the UN Convention on the Rights of the Child.

¹⁵⁵ Thomas Nigel and O'kane Claire, 'When Children's Wishes and Feelings clash with their 'best interests' *The International Journal of Children's Rights* Vol .6, pg 137 at 138.

¹⁵⁶ Article 2 ,a duty of the State to protect children.

¹⁵⁷ Website on Children's Rights Alliance, < <http://www.childrensrights.ie/convention.php>>(accessed on 29 May 2004.)

¹⁵⁸ Ncube, *Law, Culture, Tradition and Children's' Rights in Eastern and Southern Africa*, 12.

order to guide the implementation of children's rights and to provide a mediating principle for conflicts between culture and human rights. The CRC nevertheless does not shed much light on the precise meaning of this phrase, which is further complicated by its subjective application.

This principle, also referred to in African Charter on the Rights of the Child, forms the foundation of the rights of the child and has been the central to legal decision making about children. When determining the acceptability of child work, the usefulness of the 'best interests of the child' test is questionable due to the diverse interpretations that may be given to it in different settings. For example, it might be argued that, in Western or developed countries, the child's interest viz a' vis child labour, are best served by policies that emphasize autonomy and individuality to the greatest possible extent. In most traditional societies, the links to family and the local community might be considered to be of paramount importance, so that the principle requiring the primacy of the best interests of the child should be interpreted as compelling the subjugation of the individual child's preferences under the interests of the family.¹⁵⁹

It seems to me that while the principle of the best interests of the child may be intended to reconcile culture and human rights, how is interpreted and applied by States will be influenced to a large extent by the social, political and economic conditions existing in such countries.

2.4.9 ILO and Education

The thrust of the ILO principle is that the general minimum ages for admission to any employment should be no less than the age of completion of compulsory schooling and; in any case, no less than 15 years.¹⁶⁰ Where the economy and education facilities of a country are insufficiently developed, it may be initially reduced by one year to 14. Other countries also specify a minimum age for light work and may or may not subject it to the conditions set forth in Convention No.138. In some other cases the

¹⁵⁹ Rwezaura, in Alston, (ed) *The Best Interests of Child: Reconciling Culture and Human Rights*, '85

¹⁶⁰ Mark Larsky, 'Child labour: How the challenge is being met' 136[1997] no 2 (Summer) *International Labour Review*, 241.

exceptions are clearly broader than those falling under ILO standards and therefore as not recorded as not according protection as far as minimum age is concerned.

Many other countries are also introducing further legislative or regulatory provisions on child labour and some have recently increased the penalties for violations.¹⁶¹ But the main obstacle to effective legal protection remains the weakness of enforcement mechanisms. Since working children are typically found in agriculture, domestic service and the informal sector, most of them work where labour law enforcement is virtually absent.¹⁶² Besides given the nature and the scale of the problem it would be unrealistic to believe merely bolstering national labour inspection and law enforcement services can solve it. Strong legislation and effective enforcement are important but need to be supplemented by efforts on other fronts as well.¹⁶³

2.5 HIV/AIDS AND CHILD LABOUR

Child labour continues to be a global phenomenon. A wide range of crises including natural disasters, sharp economic downturns, and the HIV/AIDS pandemic and armed conflicts increasingly draws the young into debilitating child labour including illegal and clandestine forms.¹⁶⁴ As the pandemic has spread among adults, millions of children have been affected; they have been orphaned and their opportunities for a complete education seriously compromised. Many of these children have had to enter the workforce to survive. As a result of HIV infection among adults contributes to the child labour and may place child workers at risk of HIV infection themselves.¹⁶⁵

¹⁶¹Mark Larsky, 'Child labour: How the challenge is being met' 136[1997] no 2 (Summer) *International Labour Review*, 241.

¹⁶² *ibid*

¹⁶³Mark Larsky, 'Child labour: How the challenge is being met' 136[1997] no 2 (Summer) *International Labour Review*, 241.

¹⁶⁴ Website on Child Labour [photoproject.org/child](http://www.childlabourphotoproject.org/child) (accessed on 7 June 2004.)

¹⁶⁵ Bill Rau, *Intersecting Risks: HIV/AIDS and Child Labour*, ILO Geneva, June 2002. 1

2.5.1 Loss of household structures

In Western Tanzania, many relatives refused to take responsibility for orphans; many of those who did were unable to look after the children adequately. It has also been found in Uganda and Thailand, while grandparents were most likely to take in orphans, they were also particularly likely to be poor and unable to offer sufficient material support for children. Under economic pressures, related to a combination of recession and unemployment, structural adjustment reforms, drought and HIV/AIDS responsibilities are increasingly confined to nuclear rather than to extended family.¹⁶⁶

2.5.2 HIV /AIDS and children in workforce

HIV has a direct impact on children's participation in the workforce. Children enter or increase their participation in the workforce to compensate for changes in the workforce to compensate for changes in household earnings. Children orphaned as a result of HIV are even more likely to work.¹⁶⁷ A growing number of children orphaned as a result of HIV /AIDS find work in the informal sector, such as petty trade and services. Initially, most children will seek work patterned on their parent's experiences.¹⁶⁸ Many of these informal sector jobs are in urban areas.¹⁶⁹ The presence of children on the street and their need for money, food, shelter and companionship all increase their chances of being drawn into casual sexual relationships or more formal commercial sexual exploitation. Thus the impact of HIV/AIDS can go full circle; from affecting a child to the child becomes infected.¹⁷⁰

2.5.3 Complementarity between CRC and the ILO Conventions

CRC and ILO standards on child labour complement each other. An illustration of this is Article 32 of CRC, which provides for the Child's right to be protected from economic exploitation, with reference to the 'relevant provisions of other international instruments'. Convention No.182 confirms the wide range of

¹⁶⁶ibid 8.

¹⁶⁷ ibid 9.

¹⁶⁸ ibid.

¹⁶⁹ UNICEF, Eastern and Southern Africa Regional Office: 'Listening to the Children: Child Workers in the Shadow of AIDS' (Nairobi, UNICEF, 2001).

¹⁷⁰ Bill Rau, *Intersecting Risks: HIV/AIDS and Child Labour* 10.

issues within its scope and therefore under the ILO's mandate. Many of them have direct connections with CRC. In fact, they are not limited to economic exploitation (Article 32) of the CRC traditional area of child "labour", but also comprise use of children in illicit production and trafficking of drugs (Article 33), sexual exploitation (Article 34), trafficking in children (Article 35). Therefore it can never be overemphasized that the ILO is concerned not only about Article 32 of CRC but several other areas on the Rights of the Child.¹⁷¹

2.5.4 General Comments on Conventions

Although Tanzania has ratified the Conventions on the Rights of the Child, African Charter on the Rights and Welfare of the Child¹⁷² and the ILO Minimum Age Convention No. 138 of 1973, and the recently Worst Forms of Child labour Convention No.182 of 1999. Nonetheless, the national law as well as these International Conventions and commitments, are grossly violated as children are still being employed at a tender age and forced to work under difficult circumstances.¹⁷³

2.5.5 Conclusion

Significant disagreements therefore exist between international labour law and the specific culture on whether the work that a child does within the domestic sphere is in the best interests of the child. Therefore the international law does not cater for cultural variations in the definition of a child, the duration of childhood, the determination of duty bearers towards children and the conception of child labour.¹⁷⁴

While African customary laws are not insensitive to the vulnerability of children, the laws nevertheless do not accord them preferential treatment as required

¹⁷¹Yoshie Noguchi, *Implementantation of the CRC and The Work of International Governmental Organisation: ILO Conventions on Child Labour and the CRC, Understanding Children's Rights.* Ghent papers Report 459.

¹⁷² African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

¹⁷³ Website on African Perspective Child Domestic Workers in Tanzania <<http://www.cwa.lnet.co.th/v15.2/Tz.htm> < (accessed on 16/4/2004.)

¹⁷⁴ Nhenga T, *Thesis proposal on African Cultural Influences on Legal Regulation of Child Labour in the Domestic Sphere* '2004.

by international law and Western legal systems.¹⁷⁵ The rights of any children or any other individual submerged into those of a group, whether family or a group.¹⁷⁶

Culture cannot be ignored either as a matter of practice or law. After all the African Charter on the Rights of the Child affirms in Article 31¹⁷⁷ the value of the African child in its provision of duties owed by a child to its family and society¹⁷⁸ and the African Charter on Human and Peoples' Rights provides for the duties.¹⁷⁹

According to the Director –General of the ILO, legislation without supporting socio-economic changes may risk greater clandestine work and more exploitative work situation.¹⁸⁰ This is not to undermine international laws focusing on economic exploitation. The ILO has acknowledged the role of law as catalyst in bringing about the reforms protecting working children. However, international law can only succeed where it provides a framework which pays heed to the entire relevant economic, social and cultural factors affecting children.¹⁸¹

It is necessary also to point out that international law did not anticipate the problems created by HIV/AIDS. This scourge has wiped out the people who, for purposes of the law, are duty bearers and has left in its wake a large number of

¹⁷⁵ Bennet T. *Customary Law in South Africa*, 295.

¹⁷⁶ *ibid.*

¹⁷⁷ Article 31; 'Every child shall have responsibilities towards his family and society, the state and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

a) To work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;

d) To preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well being of society.

¹⁷⁸ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

¹⁷⁹ *ibid* Article 29.

The individual shall also have the duty: 1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; 2. To serve his national community by placing his physical and intellectual abilities at its service; 3. Not to compromise the security of the State whose national or resident he is; 4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened; 5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law; 6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; 7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; 8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

¹⁸⁰ Van Bueren, *International Rights of the Child* 263.

¹⁸¹ *ibid.*

orphans and child headed households. Children have prematurely taken on the roles of duty bearer for themselves and their younger siblings.¹⁸²

Adopting the stance of the African Charter on Human and Peoples' Rights, the African Charter on the Rights of the Child has sought to underline the fact that children have duties, which they owe to families, societies and the State.¹⁸³ According to the African culture children owe their families the duty of providing labour and obedience, and to their parents the duty of support in times of need.¹⁸⁴ It is of the view that emphasis on duty may thus be the reason for encouraging child labour in the family.

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¹⁸²Nhenga T. *Thesis proposal on African Cultural Influences on Legal Regulation of Child Labour in the Domestic Sphere*2004.

¹⁸³ Ncube, *Law Culture, Tradition and Children's' Rights in Eastern and Southern Africa* 12.

¹⁸⁴ *ibid.*

CHAPTER THREE

THE PROBLEM OF CHILD LABOUR IN TANZANIA

3. INTRODUCTION

This chapter will focus on the causes and forms of the child labour in Tanzania. Children are employed in exploitative and harmful places such as mining areas, plantations, domestic services and prostitution, which have both psychological and physical effects. The chapter also considers evidence from Tanzania where children are reported to work under particularly hazardous conditions. This chapter will examine the kind of work they are doing, whether is permissible under the Conventions and if not, how this work affects the child.

3.1 Causes of child labour in Tanzania

3.1.1 Poverty

Poverty is widely considered the main reason why children work in inappropriate jobs.¹⁸⁵ Child labour has other dimensions and other causes as well. Sometimes child labour is ingrained in the social, cultural and economic structures of societies. For this reason, the best way to address it is through comprehensive and holistic approaches geared towards a clear national policy and plan of action and anchored in the nation's social and economic development.¹⁸⁶

In a developing country like Tanzania the problem of child labour has been widely observed, especially in the informal sectors. Despite efforts since the mid-1980s to address economic and social problems, nearly 48 percent of Tanzania's population of 34 million is considered to be basically poor, and about 27 percent live in abject poverty or in households without sufficient income to meet basic nutritional

¹⁸⁵Website on Child Labour Photo Project <<http://www.childlabourphotoproject.org/child>>(accessed on 7 June 2004.)

¹⁸⁶ See fn 179

requirements.¹⁸⁷ Rural poverty is deep-rooted and extensive than in urban areas, with basic needs poverty estimated at about 57 percent of the rural population.¹⁸⁸ The deterioration of living conditions in rural areas has also encouraged urban migration, including that of children and youth who migrate to urban areas in search of jobs and end up as child labourers.¹⁸⁹

3.1.2 Dependence on agriculture

Eighty percent of the population in country is rural and dependent on agriculture. Commercial crops such as tea, coffee, sugar, tobacco and cotton are the main source of national revenue, grown both on large plantations and on small family farms. However, prices for these crops are hostage to the vagaries of international trade, and do not always benefit the smaller farmer.¹⁹⁰ It seems to me that this causes the problem of child labour because the families are living in deteriorated conditions which forces the children to find other alternatives for their living.

3.1.3 Macro-economic factors

The structural adjustment policies imposed by the World Bank have made it more difficult for vulnerable groups to access social services. There is less public sector employment and real wages for workers have fallen. Debt, poor governance, and lack of access to markets have also contributed to a level of poverty where 50% of the population in the country lives on less than \$1 a day. Those most affected are women and children. About half the population in the countries covered in this programme is under 15 years old.¹⁹¹ In the early stages, structural adjustment and economic reforms tend to benefit urban centers at the expense of rural areas. The deterioration of living

¹⁸⁷ Website on Child Labour Photo Project
<<http://www.childlabourphotoproject.org/child>>(accessed on 7 June 2004.)

¹⁸⁸ Website IPEC Country Profile United Republic of Tanzania
<<http://www.ilo.org/public/English/standards/ipcc/themes/timebound/downloads/Tanzania.pdf>>
(accessed on 20 May 2004.)

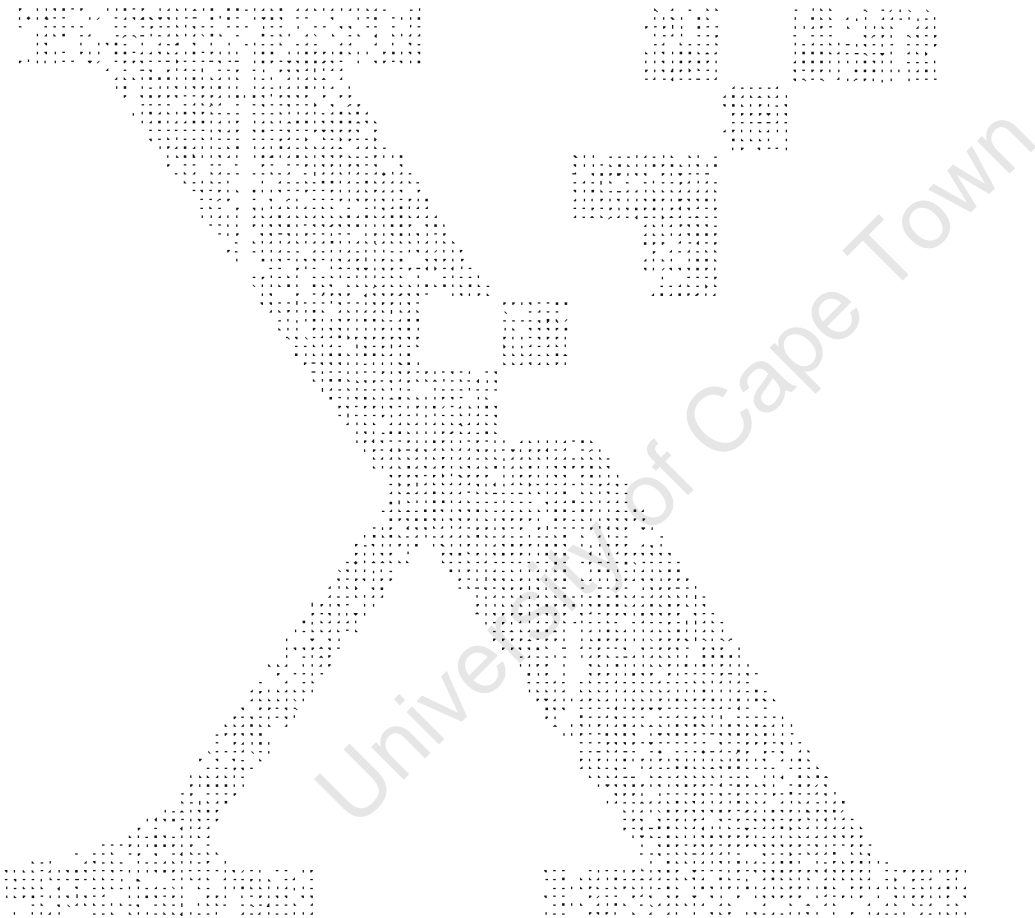
¹⁸⁹ *ibid.*

¹⁹⁰ ILO/IPEC, 'A programme in East and Central Africa by the International Labour Office (ILO), International Programme on the Elimination of Child Labour (IPEC)', Interparliamentary Union, 96 Conference September 1996.

¹⁹¹ *ibid.*

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conditions in rural areas in relation to urban areas pushes many children and youth to urban areas in search of elusive jobs and a better life.¹⁹²

3.1.4 HIV/AIDS

This pandemic has aggravated poverty. Many children have now lost both parents, and extended families can no longer cope with the growing number of orphans. Economic hardships are forcing parents to focus on the nuclear family only. As a result there is a rapid increase in the number of abandoned and neglected children, including HIV/AIDS orphans, who eventually run away from their homes in search of work.¹⁹³ In the United Republic of Tanzania it is approaching one million in terms of HIV/AIDS orphans. No traditional extended family safety net can take care of such a huge burden and this increases the incidence of child labour including its worst forms such as commercial sex.¹⁹⁴ There have also been huge losses among the professional classes, such as teachers, which has further weakened the countries' ability to provide essential services. AIDS has thus created many families headed by a child and has also placed a huge strain on education.¹⁹⁵

3.1.5 Inadequate education facilities

Schools are limited and the infrastructure is poor. Children in rural areas are particularly disadvantaged because of distance and the sparse provision for higher grades. Crowded, poorly equipped classrooms are a disincentive.¹⁹⁶ Secondly, the primary school syllabus does not impart necessary functional skills for those that complete a basic education. Not surprisingly, therefore, some parents and children consider education useless, and prefer instead to make an early entrance into the unskilled labour market.¹⁹⁷

¹⁹² "Special High-Level Session on the Launch of the Time-Bound Programme on the Worst Forms of Child Labour, Address of Mr. Benjamin Mkapa, President of the United Republic of Tanzania," in International Labour Conference, Provisional Record, Eighty-Ninth Session, June 12, 2001, Geneva <<http://www.ilo.org/public/english/standards/reln/ilc/ilc89/a-mkapa.html>>(accessed on June 2004)

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*

¹⁹⁵ ILO/IPEC: A Programme in East and Central Africa by the International labour office (ILO) International Programme on the Elimination of Child Labour (IPEC).

¹⁹⁶ *ibid.*

¹⁹⁷ "Special High-Level Session on the Launch of the Time-Bound Programme on the Worst Forms of Child Labour, Address of Mr. Benjamin Mkapa, President of the United Republic of Tanzania," in

African societies find themselves somewhere between traditionalism and modernity and these compounds the stresses that economic reforms impose on families. As a result dysfunctional families are emerging, characterized by higher rates of divorce, teenage pregnancies, children born out of wedlock, irresponsible parents, and large families all contributing to sending more children out on the streets, or prematurely to the labour market.¹⁹⁸ Unavoidable and outdated cultural practices such as early or arranged marriages force girls to drop out of school. Sexual abuse and early pregnancies all contribute to causing severe and lasting psychological, mental, social and physical damage all of which are detrimental to children's development into responsible adults.¹⁹⁹

3.1.6 The Absence of Trade Unions

The absence of Trade Unions especially in the informal sector, coupled with high demand for cheaper labour by employers, promotes a high incidence of child labour in the informal sector.²⁰⁰

3.2 FORMS OF CHILD LABOUR

Child labour in Tanzania has been mainly identified as a major problem in areas such as domestic work, mining areas, commercial plantation and child prostitution.

3.2.1 Child Domestic Work

Child domestic work is one of the most common and traditional forms of child labour. The practice, especially in the case of girls, is quite extensive as many cultures continue to view girls' work in the household as an essential part of their upbringing. Children working as domestic helpers in their own families (or those of the extended family) is culturally accepted and widely practiced throughout Tanzania. According to

International Labour Conference. Provisional Record, Eighty-Ninth Session, June 12, 2001, Geneva. <<http://www.ilo.org/public/english/standards/re/m/ilc/ilc89/a-mkapa.htm>>(accessed on June 2004.)

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

²⁰⁰ Ministry of Labour, Youth development and Sports, 'Task force Report on the Labour Law Reform in Tanzania', 2003.

African culture especially in Tanzania a child has a duty to work when called upon to do so by a parent, guardian or an elder in the community, it does not matter that work is hazardous or not, a child is supposed to do it.

The performance of household chores in Africa is often considered part of a child's socialization and development.²⁰¹ Culturally by virtue of being a member of an African family, everyone including children assumes the obligation to contribute to the sustenance of the group.²⁰² The lack of action in dealing with this problem lies in the fact that international provisions relating to child labour (and other related child rights) are expressed in abstract terms that embody universally accepted general norms, which do not take account of specific cultures.²⁰³

Families in urban areas often recruit children from rural villages through family, friends or contacts. Most child domestic workers come from extremely poor families; many have been abandoned, orphaned, or come from single parent families.²⁰⁴

In Tanzania, the capital city of Dar-es-Salaam is the main employment centre for child domestic workers. Most girls are recruited from areas such as Makete and Mufindi districts in Iringa region. Domestic workers are expected to be obedient, hardworking and resilient. These two districts act as unofficial trafficking centres for domestic servants and are believed to have relatively high rates of mortality from AIDS.²⁰⁵ Young girls are more likely to be enticed to leave their village to work as house girls after completing primary school at around 12 or 13 years. Most girls work to support their families to escape poverty. However, they too face problems of physical and verbal abuse, and emotional isolation due to lack of opportunities to

²⁰¹Letuka, in Neube 'Law Culture, Tradition and children's Rights in Eastern and Southern Africa', 203.

²⁰² *ibid.*

²⁰³ Nhenga T, *Thesis proposal on African Cultural Influences on Legal Regulation of Child Labour in the Domestic Sphere* 2004.

²⁰⁴ Website on Ippmedia 'Predicament of Fighting Child Labour'

<<http://www.ippmedia.com/ipp/guardian/2004/06/08/12679.html>> (accessed on 8 June 2004).

²⁰⁵ UNICEF (2001). Beyond Child Labour, affirming Child Rights. United Nations Children's Fund.

meet and talk with peers and occasionally they suffer from molestation or rape by their employers.²⁰⁶

For a long time, there has been in Tanzania a tradition of having children, especially girls, working in houses. They believed that the child would get education from the new family. This arrangement was also used as a means to enhance relationship among members of the clan or between family friends.²⁰⁷

Furthermore, for poor families this was a way to reduce the burden of bringing up many children by themselves. It enables relatives to assist each other in fulfilling that responsibility. But the social economic change has in turn changed the situation facing families as children have been used as merely as domestic servants and not been given other opportunities. This happens particularly in big cities and towns because of economic and financial constraints.²⁰⁸

According to the available data collected by KULEANA, ILO and other Human Rights Organizations, most child domestic workers are between 13 and 15 years.²⁰⁹ Some of them are as young as 6 years old, which is appalling. The reports point out that the majority of them are girls. Many of them do not complete primary education. Domestic workers do work under very difficult conditions. They face lots of hardships at work. They get heavy tasks for long hours. They usually wake up early in the morning while the other members of the family are still asleep. Child domestic workers normally work seven days a week, 'being denied regular holidays', a human rights activist observed.²¹⁰

3.2.1.1 Problems of Prevention

According to the information based on a research carried out by Tanzania Media Women Association (TAMWA) in six urban centers in the country, although the

²⁰⁶ Website on a Situation Analysis of Sexual Exploitation of Children in the East and South Africa Region, <<http://www.anppcan.org>>(accessed on 19 June 2004.)

²⁰⁷ Website on Ippmedia 'Predicament of Fighting Child Labour' <<http://www.ippmedia.com/ipp/guardian/2004/06/08/12679.html> >(accessed on 08/06/04.)

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

national laws prohibit employing children under the age of 12 years, the practice goes on unchallenged.²¹¹

It is difficult to clearly identify child domestic workers, because many employers present false identification of their child domestic workers to avoid being prosecuted for employing children. This hampers efforts to distinguish between relatives and workers and makes it difficult to assist the latter. This is because most of these children are still very young and do not have sufficient education; they fail to understand and advocate for their rights. Furthermore, due to hidden work places they are unable to have access to any information about children's rights.²¹²

It is also very difficult to inhibit children from being employed because they are compelled to do so by economic constraints and other social problems within their families, rather than their own preferences.

In most cases, attention is paid to labour cases involving adults and sometimes to cases concerning children working in industries, plantations and mines, but hardly ever to child domestic workers. This situation has also been attributed to the fact that these children are not considered as employees. Child domestic labour is often ignored by policy makers and is excluded from the coverage of the legislation.²¹³ Even so, according to the law, all employees, including child domestic workers, should be visited and their working conditions inspected by labour inspectors.²¹⁴

The Law Reform Commission noted that child domestic labour on the contrary is exploitative and humiliating to child by denying them their fundamental rights to school, resting and recreation and put them in long hours of work with little pay or no pay.²¹⁵ The question is: When does child work become child labour?

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ Global Report under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work 2002, '*A future without a child labour*' 29.

²¹⁴ Michael Kimaryo and Ron Pouwels, 'An African Perspective on Child Domestic Workers in Tanzania' <<http://www.ilo.org/public/index.htm>> (accessed on 15 June 2004.)

²¹⁵ Website of the Law Reform Commission of Tanzania
<<http://www.lrc.tz.org/pdf/labour.pdf>> (accessed on 12 May 2004.)

Indeed, domestic servitude allows children to be placed in a great deal of personal danger. Their safety can never be assured because, as with all informal labour, it is very hard to monitor the quality of the work place. Therefore, any cases in which a child domestic worker is confined to the employers home, bonded by outstanding family debts, verbally and/or physical threatened, forced to work extremely long hours or not remunerated for their efforts, should be considered as a ‘worst form’ of child labour.

As domestic work is considered women’s work, girls start in the home at younger age than boys start work at all; and if the mother works outside the home, the daughter not the son, took over the domestic work.²¹⁶ It has been noted that, children primarily girls from rural areas work as domestic servants, often working an average of 18 hours per day,²¹⁷ with very minimal payment, sometimes through payment in kind. The labour force survey of 2000 found that about 80 percent of all domestic workers were girls (most from rural areas or small towns). In small towns, these girls are reported to earn as little as US\$ 2.00 per month.²¹⁸

In comparison with other work this is much preferred by the girl child because from the beginning the girl child has learnt this type of work. Although this is less inherently dangerous form of child labour, the conditions under which it is general performed lead to its classification as ‘worst form’ of labour.

3.2.1.2 Effects of child domestic labour

- **Long Working Hours**

Domestic work can be a 24 hours per day job involving a great variety of responsibilities. For instance the child can be woken up at any point in the night in order to take care of the employers’ children or to fetch something for the employer. Despite these frequent interruptions to their short sleep these children are still expected to rise early the next morning and start their long list of chores again. Employers rarely allow these children to have any free time to play or to socialize

²¹⁶ Victoria Goddard: *Child Labour in Nepal-the case of outwork*. Anthropology today, [1985]1.no 5, on 18.

²¹⁷ *ibid*.

²¹⁸ Rau, Bill ‘*Combating Child Labour and HIV/AIDS in sub-Saharan Africa*: ILO International Programme on the Elimination of Child Labour Paper 1 Geneva. 2002.

with other children and making friends is largely discouraged because employers feel that it distracts them from their proper duties.²¹⁹

- **Health Hazards**

The health hazards that threaten child servants depend upon issues such as age and sex. Domestic labour poses a threat to all young children under any conditions. Many burn themselves while cooking and ironing, or cut themselves while preparing meals. However the majority of the time it is not the particular tasks performed by the children that pose the danger rather it is their level of mental and physical exhaustion.²²⁰

- **Discrimination**

When we talk of discrimination and child domestic work, what immediately comes to our mind is gender discrimination. Girl children by virtue of their lower status are often kept at homes to take care of their sibling while their parents try their best to send their sons to school. Being illiterate, girls would not be able to find other jobs except domestic work. Child domestic workers carry the effects of their experiences of discrimination even after the period of serving as child domestic workers. In some circumstances they experience worse discrimination because of experiences they had while being domestic workers.²²¹

- **Physical and Psychological Abuse**

Domestic workers, who live in the premises especially where they work, are particularly vulnerable to sexual harassment and sexual violence in the workplace. Violence and sexual abuse are among the most serious and frightening hazards facing children at work. It is of course almost inevitable that children growing up in such an environment will be permanently damaged both psychologically and emotionally.

²¹⁹Website on Basic Labour Standards < <http://www.globalmarch.org/dcl/overview.htm>>(accessed on 5 May 2004.)

²²⁰ Website on Global March Against Child Labour
<<http://www.globalmarch.org/dcl/dcloverview.htm>> (accessed on 12 May 2004.)

²²¹ Michael Kimaryo and Ron Pouwels, 'An African Perspective on Child Domestic Workers in Tanzania' <<http://ilo.org/public/index.htm>>(accessed on 15 June 2004.)

Domestic workers are frequently abused by children's behaviour that are not corrected by parents and sexual harassment of domestic workers done by patrons and sons, including cases in which the servant became pregnant and the families throw girl out.

3.2.2 Child Labour in Mining Areas

Boys and girls work in small-scale mining in many developing countries. Even when the mining is legal, their work is not legal.²²² Children working in small-scale mining are not only exposed to immediate risk but they are also jeopardizing their long-term development both physical and socio-economic. The means to eliminate child labour in mining, especially extreme forms, without delay are being developed and implemented by a number of agencies and organizations, notably the ILO through its International Programme on the Elimination of Child Labour (IPEC).²²³ In practice children participate in a number of socio-economic activities. Children are engaged in such activities as alluvial mining, and other alluvial gold and gemstone works. In some mining areas, children are engaged in gemstone sorting and grading.

In Mererani, near Arusha, there are still about 150 boys aged 12 to 15 working at the mine site as "snake boys" and sieving debris searching for small gemstones. The tasks of the snake boys are to fetch and carry underground, place dynamite charges in confined spaces, fetch water from nearby streams and run errands for the adult miners. Because of their size and agility snake boys can make four round trips in the time an adult would make one.²²⁴

3.2.1.1 Working Conditions

Working children involve in a number of activities and tasks, which are carried out under various physical and climatic conditions. Children work under direct sunshine

²²² Social and Labour Issues in Small Scale Mines
<<http://www.ilo.org/public/english/dialogue/sector/techmeet/tmssm99/tmssmr.htm>>(accessed on 6 October 2004.)

²²³ ibid.

²²⁴ Website on ILAB - Advancing the Campaign Against Child Labour:
<http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/Advance%20Camp_11.htm> (accessed on 1 October 2004.)

and are exposed to high temperatures as well as to wind.²²⁵ They have to perform a range of activities including carrying bags of mud on their heads or backs to the sieving sites, washing sand and grit, removing alluvial sediments and digging sand or mud silk from river basins. The children involved in gold recovery by amalgamating gold with mercury undertook their activities under shelters provided by their employers, but this is an exception to the norm.²²⁶

Children working at the three mining sites worked for long hours and hardly had time to play or rest. It has been noted that children working in the mine pits aged between 7 to 9 years and between 10 to 13 years, worked for an average of four to five hours per day, while children between the ages of 14 to 18 worked for an average of seven hours per day. This was an hour less than the working hours of civil servants.²²⁷

The eagerness to be the first to reach newly blasted areas and hopefully, find Tanzanite means that little time elapses between underground blasting and workers (especially the snake boys) re-entering the mine, if indeed they left it. Some hide in the mine to ensure they will be first at the work place after blasting (evidence of there being no record of who is working). Non-fatal asphyxiation due to lack of oxygen is a common occurrence. With no pay and no choice of work snake boys and other child workers face a bleak future hoping to be taken onto the payroll as they get older, hoping to find some gemstones through scavenging, hoping for a paid job in town, or anywhere but with few prospects.²²⁸

Despite being given one or two meals a day, the nature of the diet maize porridge, boiled leafy vegetables and beans is insufficient to maintain proper health and normal growth, let alone when arduous work is carried out. The local school is inadequate for the number of school age children, with some classes being conducted in the open.²²⁹

The situation has worsened since many former child workers have been withdrawn from mining. Being unable to go to school, they are returning to the mines

²²⁵ *ibid.*

²²⁶ *ibid.*

²²⁷ *ibid.*

²²⁸ Social and Labour Issues in Small Scale Mines

<<http://www.ilo.org/public/english/dialogue/sector/techmeet/tms>> (accessed on 6 October 2004.)

²²⁹ *ibid.*

or, if luckier, they find work in shops or houses. Others end up on the street. Also, the high proportion of migrants in this area brings repatriation into the equation.²³⁰

3.2.1.2 Problems

These children receive no payment, except sometimes when the Tanzanite is found. They get one or two meals a day and often sleep in the open or even in the mines. There is no set work pattern, all work intermittently from dawn to dusk. There are neither specific rest periods nor holidays. Allegations of sexual abuse by older mineworkers are common.²³¹

While the global campaign to end child labour has gained considerable momentum over the past decade, some governments still lack the kinds of policies and initiatives needed to protect children from being exploited in the workplace and from suffering the worst forms of child labour.²³² Children who work in mining and quarrying activities are frequently engaged in hazardous labour. They often work without protective gear and risk illness and serious injury on a daily basis.²³³ These sectors pose the most obvious hazards for children, although they probably involve the smallest number of child labourers.

3.2.1.3 Health hazards

Children in underground mines work in extreme heat and are exposed to high noise levels. Children in mines are more prone to stress, cataracts, burns, and hearing loss than adults.²³⁴ Many suffer from chest pains, tuberculosis, respiratory diseases, and other illnesses due to exposure to harmful mineral residue.²³⁵

The children work long hours, without adequate protective equipment, clothing and training, and are exposed to high humidity levels and extreme temperatures.

²³⁰ *ibid.*

²³¹ Website on *the Guardian* (United Republic of Tanzania), 29 Nov. 1997.
<<http://www.iio.org/public/English/dialogue/sector/techmeet/tmssmaa/>>(accessed on 19/10/2004.)

²³² Website on ILAB - Advancing the Campaign Against Child Labour:
<http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/Advance%20Camp_11.htm>(accessed on 1/10/2004.)

²³³ *ibid.*

²³⁴ Report of the Director General, "A future without child labour"-Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at work on 31.

²³⁵ *ibid.*

Hazards include exposure to harmful dusts, gases and fumes, which cause respiratory diseases that, can develop into silicosis, pulmonary fibrosis, asbestosis, and emphysema after some years of exposure. Child miners also suffer from physical strain, fatigue and muscular skeletal disorders, as well as serious injuries from falling objects. Mercury poisoning endangers those involved in gold mining.²³⁶

The hazards faced by children are the same as for adult miners (inundation, cave-in, asphyxiation, overexertion, malnutrition, TB, malaria, diarrhea, trips and falls, lack of hygiene, dust, noise, vibration, mercury and other chemicals) but the risks to immature bodies are much more severe. Sanitary conditions at the mine sites are deplorable, with no separate eating areas (empty paint containers are used as cooking utensils), no toilets or latrines, no clean fresh water; workers drink water from a nearby stream without boiling it. Heaps of mine waste much of it graphite that contains silica are everywhere, being dispersed by the wind.²³⁷

The major hazards of work mining are heat, noise, vibration and the lack of ventilation underground. Complaints of tiredness, headaches and other stress-related symptoms are common. When pneumatic drills are used, the effects of vibration and dust (neither water nor masks are used to suppress or guard against dust) are more marked on young people, but do not appear until years later.²³⁸ Carrying heavy loads in awkward, crouching, positions is a precursor to lower-back problems later in life. The complete lack of medical and health facilities (other than some private dispensaries manned by medical assistants) means that there is no screening and no indication of the effect of these working conditions on any of the workers. Those who are not paid clearly cannot buy medicine, although some employers may contribute if they feel it is in their interest to have the worker return to work rather than find a replacement. Common medical complaints among child workers include septic wounds, malaria, gastroenteritis, general weakness and aches and pains.²³⁹

²³⁶ IPEC: Child Labour Report: Targeting the Intoretable <<http://www.ilo.org/public/english/standards/ipecc/publ/clrep96.htm#title12>> (accessed on 6 October 2004.)

²³⁷ *ibid.*

²³⁸ *ibid.*

²³⁹ *ibid.*

3.2.1.4 Mining policy

The Tanzania National Mining Policy aims at ensuring that children are not employed in dangerous activities outside those that are traditionally/culturally acceptable as part and parcel of teaching responsibility to children. Thus the policy aims to ensure,

- That claim holders, master dealers and others are educated on the effects of employing children in dangerous activities.
- The policy also encourages expenditure in social (services especially education) so that children spend most of their time in school, ensuring an increase in secondary school enrolment, and establishing vocational centres and other training facilities to assist youth who fail to continue with studies after completing primary school education.
- Encouraging the intensification of technical advancement programmes in mining communities as a way of reducing poverty at family level
- Encouraging and facilitating the regular inspection of mining areas in order to ascertain that operators abide to the rules regarding child employment.
- Ensuring that legal action is taken against parents /employers found to permit child labour in mining.²⁴⁰

3.2.3 Child Prostitution in Tanzania

Girls as young as 9 years old are engaged in prostitution.²⁴¹ There are estimated to be at least 800 children in prostitution in Arusha, Dar Es-Salaam and Singida alone.²⁴² According to UNAIDS, over 650,000 children under the age of 15 were living as orphans in 1999, due to the country's AIDS epidemic.²⁴³ Many HIV/AIDS orphans leave school prematurely and become involved in some of the worst forms of child labour.²⁴⁴ Throughout Tanzania, the growing incidence of HIV/AIDS infection is placing an additional burden on an already strained education system, contributing

²⁴⁰ Law Reform Commission of Tanzania, 'Discussion Paper on the Legal Framework for the Mining Industry' 2003.

²⁴¹ *ibid.*

²⁴² United Republic of Tanzania: Epidemiological Fact Sheets on HIV/AIDS and sexually transmitted infections (UNAIDS/WHO, 2000) 3.

²⁴³ Integrated Regional Information Network, "Tanzania: One Million AIDS Orphans by 2000", June 17, 1999.

²⁴⁴ *ibid.*

to an increase in teacher turnover, loss of experienced teachers, and orphans with special needs.²⁴⁵

3.2.3.1 Defining Child Prostitution.

It is not easy to define the concept of child prostitution, however, child prostitution has been taken to mean the “sexual exploitation of young children for remuneration in cash or in kind, usually but not always organized by an intermediary such as parents, family members or procurer.”²⁴⁶ Hence, child prostitution is tantamount to the exploitation and victimization of the child both physically and emotionally, and it goes without saying that it is a breach of children’s rights.

Laws against the exploitation of child victims of prostitution exist to some extent throughout the world, and both specific and general laws on child prostitution exist. In Tanzania, however, there are no existing laws prohibiting child prostitution. As a result, most of the children practicing prostitution are regarded as loiterers.²⁴⁷ It should be noted that an issue of concern regarding the exploitation of children in the sex business is the age of consent.

3.2.3.2 Extent and Magnitude

Commercial sexual exploitation is one of the most brutal forms of violence against children. Child victims suffer extreme physical, psychological and emotional abuse, which have life threatening consequences. They risk early pregnancy, maternal mortality and sexually transmitted diseases. Studies and testimonies of child victims speak have a trauma so deep that many are unable to enter or return to a normal way of life. Many others die before they reach adulthood.²⁴⁸

The phenomenon of children engaged in prostitution is growing quickly and steadily, and developing largely unnoticed. Moreover, child prostitution is evident

²⁴⁵ *ibid.*

²⁴⁶ Otero, 1996.

²⁴⁷ Kamala E, Lusinde E, Millinga J et al Tanzania Children in Prostitution: A Rapid Assessment <www.ilo.org/public/english/standards/ipec/simpoc/tanzania/ra/prost.pdf>(accessed on 9/10/04.)

²⁴⁸ *ibid.*

throughout the country and highly pronounced in major towns and at main truck stops along the highways where state, administrative, military and commercial activities are highly centralized. The mere existence of the market continues to promote the sexual exploitation of children. The main customers of the children are common men, medium and big businessmen, bureaucrats from public and private institutions, policemen, tourists and foreigners. Prostitution involves quite a number of children who are 10 to 17 years old, do not have families, have criminal records, have a history of drug abuse and very few social skills, and lack parental guidance, love, affection and care. Child prostitution is now becoming a more organized network. According to the survey in Dar es Salaam, in nine selected sites in Kinondoni district approximately 450 – 500 children (*counted per head*) were seen on one occasion or another involved in child prostitution. Child prostitution (*mostly in urban centres*) is commonly practiced in brothels, bars, guesthouses, tourist hotels and along the streets.²⁴⁹

The majority of children in prostitution in Tanzania are there to support themselves and their families. There are at least 800 children in prostitution in Arusha, Dar es Salaam and Singida, alone. Sex tourists are increasingly seeking children in these regions.²⁵⁰ Child abuse in Tanzania is on the rise although it is still a hidden issue. Child pornography is also a taboo in Tanzania and it is presumed that a lack of modern information technology has prevented it from becoming widespread.²⁵¹

The available information so far indicates that child prostitution exists in various forms and that it is growing. Tourism, poverty and the growing number of street children in the urban areas have led to this increase. In most instances, child prostitution is hidden and in some cases it is disguised as early or forced marriages or as child abuse.²⁵²

The Commercial Sexual Exploitation of Children (CSEC) is a growing problem in the Tanzania urban areas due to acute poverty. Harsh economic conditions

²⁴⁹ *ibid.*

²⁵⁰ Website on Tanzania- Facts on Trafficking and Prostitution
<<http://www.uri.edu/artsci/wms/hughes/tanzania.htm>> (accessed on 9 October 2004.)

²⁵¹ *ibid.*

²⁵² *ibid.*

are causing children to drop out of school. Often young children and especially girls have no way to survive other than prostitution. Direct poverty provokes parents to sell their children into sexual exploitation or to give away their young daughters in marriage in exchange for a dowry. There are also increasing reports of children being trafficked from the rural areas to the urban areas because of the belief that they are free from AIDS.²⁵³

Furthermore, sexual abuse of child domestic workers is increasing. Tanzania also has a growing number of street children who are often harassed and sexually assaulted by “Sungusungu” (local traditional community Security guards) or neighbourhood patrols. According to ILO/IPEC (1998/99: 6) in Dar es Salaam city there were about 4500 street children in 1999. Some children exchange sex in return for protection or special favours.²⁵⁴

3.2.3.4 Efforts made to combat Child Prostitution in Tanzania

a) Government

Apparently there are no national plans at stake to address the problem of children in prostitution, nor is there a law prohibiting these practices. As a result, most of the children who have been found in the streets engaging in prostitution have been taken as loiterers.²⁵⁵ The government has been positive in terms of creating an enabling environment in policy and practical terms for international funding as well as for the few NGOs that are striving to address the problem of disadvantaged children in general, and that of children exploited through domestic work and commercial sex in particular. The government has been keen about the programmes and NGOs are encouraged to assume roles in this sector.²⁵⁶

²⁵³ *ibid.*

²⁵⁴ *ibid.*

²⁵⁵ Kamala E, Lusinde E, Millinga J et al ‘ Tanzania Children in Prostitution: A Rapid Assessment’ <www.ilo.org/public/english/standards/ipec/simpoc/tanzania/ra/prost.pdf>(accessed on 9/10/04.)

²⁵⁶ *ibid.*

b) Non Governmental Organizations (NGOS)

NGOs such as Kwetu Counselling Center (Salvation Army), AMREF (African Medical and Research Foundation), Kuleana, KIWOHEDE, and Upendo just to mention a few, have been involved in the effort to combat children in prostitution.²⁵⁷

The efforts which have been made by these NGOs, range from carrying out research to establishing the nature and extent of child prostitution in the country. Outreach programs have been developed in the regions by mobilizing and sensitizing the victims of child prostitution on the effects of the practice, counseling and withdrawing sexually exploited children, and providing them with alternative means to earn a living. The alternatives include small grants and training in employable skills to enable the children to make ends meet.²⁵⁸

c) International Organizations

International Organizations such as the International Labour Organization (ILO)/International Programme on the Elimination of Child Labour (IPEC) and UNICEF have been at the forefront of movements to combat child prostitution. For example, these organizations have built the capacities of the local NGOs and government organizations to address the plight of the disadvantaged children. Other efforts include the provision of supporting funds to undertake the research activities, sensitizing and withdrawing the children involved in prostitution from the street, and providing them with alternatives. ILO Convention 182 provides the framework for action against the Worst Forms of Child Labour (WFCL). The sexual exploitation of children falls into the worst forms category as outlined in Convention 182.²⁵⁹

3.2.4 Child Labour in Plantation Areas

Children works in agriculture throughout the world are subject to occupational hazards such as exposure to machinery, biological and chemical agents. They can be found mixing, loading and applying pesticides, fertilizers or herbicides, some of which are highly toxic and potentially carcinogenic. Pesticides exposure poses a

²⁵⁷ *ibid.*

²⁵⁸ *ibid.*

²⁵⁹ *ibid.*

considerably higher risk to children than adults and has been linked to an increased risk of cancer, neuropathy, behavioral effects and immune system abnormalities.²⁶⁰

Children in Tanzania work on tea, coffee, sugar cane, and tobacco plantations as well as in the production of cloves, corn, green algae (seaweed), pyrethrum, rubber, sisal and wheat.²⁶¹ On farms, children often perform tasks, such as spraying agrochemicals, usually without the appropriate protective gear.²⁶² Children working in agriculture are also vulnerable to health hazards.²⁶³

3.2.4.1 Child Labour and Education

In Tanzania even though the primary education is free the families who are economically disadvantaged cannot afford to live for their livelihood do not send them. The effect of this is that children are vulnerable as they are likely to be hired out by their families as paid domestic labour. The families of these children see this move as being in the interest of the whole family of which the child is a member. Although primary school education is free and compulsory and a person who does not send his child to primary school is criminally liable.²⁶⁴ To side step this legal stipulation parents send their children to relatives who use them as domestic servants in flagrant contravention of the law.

There is no doubt that, the large numbers of children's who work, as domestic workers are children who do not receive any or receive only little education. But education is a fundamental precondition for economic and social development.

3.2.4.2 Wages

Tanzania has minimum wages for all employees. It does set the minimum for commercial, industrial, and service workers. However their employer on their wishes underpays these children because they are ignorant about their rights. Therefore the

²⁶⁰Website on ILAB-TANZANIA

dol.gov/ILAB/media/reports/iclp/advancing1/hun1 (accessed on 19 October 2004.)

²⁶¹ibid.

²⁶² ibid.

²⁶³ ibid.

²⁶⁴Education Act.1978.

payment of wages depends on the employer. It is argued that if children were paid the same as adults' child labour would not be so widespread.²⁶⁵

Conclusion

The chapter has discussed the forms, causes and effects of child labour and the issue of HIV/AIDS as a core element in Tanzania and the measures taken by the government to tackle the problem.

The linkage of individual rights to those of a group is evident in times of economic hardship, which Tanzania continually goes through due to famines, drought and wars, and in this period of HIV/AIDS. Children are working in areas where by it is prohibited by laws but because of the government failure to provide for the basic standard of living, these vulnerable children are not seen.

It is argued that due to this linkage of individual rights to a group, African culture also conceptualizes childhood in terms of intergenerational obligations of support and reciprocity and regards it as a period of internalized and rigorously enforced obedience to persons in authority.²⁶⁶ The intergenerational dependency of African families ensured that the discharge of parental obligations towards their children in tender ages created reciprocal obligations for the children to support their parents all times. In this respect, a child is a resource to be exploited in a number of ways. This conceptualization has proved to be inconsistent with international laws on child.²⁶⁷

I think the government should make sure that these children are not employed, by providing and establishing the social welfare for the orphans and those children who are in desperate conditions.

²⁶⁵ Van Bueren, *The International Law Rights of the Child* 90

²⁶⁶ *ibid* 90.

²⁶⁷ *ibid*.

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²⁶⁵ Van Bueren, *The International Law Rights of the Child* 90.

²⁶⁶ *ibid* 90.

²⁶⁷ *ibid*.

CHAPTER FOUR

THE EXISTING LEGAL FRAMEWORK AND ITS COMPLIANCE WITH THE INTERNATIONAL INSTRUMENTS ADDRESSING CHILD LABOUR

4. INTRODUCTION

This chapter examines the legal framework in Tanzania before and after the passing of the Employment and Labour Relations Act.²⁶⁸ This chapter will focus on the protection of children by the domestic laws. The chapter will also discuss how the implementation of international law is very difficult because of the conflicting laws and other customary laws. Although the government has ratified many Conventions, the problem of child labour is worsening.

The chapter also examines how the definitions of 'child' in different statutes contribute to the problems of child labour and whether the lack of legislation addressing HIV/AIDS pandemic contributes to child labour and whether the government has developed a policy for taking care of those orphanage children.

4.1. Laws of Tanzania

4.1.1 Employment Ordinance, Cap 366

The national concern about child labour in Tanzania can be traced back to the colonial era. In 1955 while under the British rule, the government passed the Employment Ordinance Cap 366, which among other things prohibits employment of children. The Ordinance,²⁶⁹ defines a child as a person under the "apparent age" of 15 years. The Employment Ordinance sets the basic minimum age for employment at 12 years of age and requires that 12 to 14 years old child workers receive a daily wage, work on a

²⁶⁸ Employment and Labour Relations Act No. 7 of 2004

²⁶⁹ Website on ILAB-TANZANIA

<dol.gov/ILAB/media/reports/iclp/advancing1/html> (accessed on 19 October 2004.)

day-to-day basis, are provided transportation home each evening, and obtain permission to work from their parents. Children are forbidden from working in any occupations which are dangerous or injurious to their health, as well as in many industrial occupations. Given the low basic minimum age of 12 and the numerous loopholes for industrial work, Tanzania's child labour laws fall short of international standards.²⁷⁰ The Employment Ordinance, defines any person between the ages of 15 and 18 as a 'young person', and anyone of the age of 15 years or below as a child.

The Employment Ordinance restricted children under the age of 15 from using or working in the vicinity of machinery or engaging in any subsurface work that is entered by means of a mine shaft.²⁷¹ It seems to me that some provisions are still good but the enforcement is too weak that is why the international laws falls short on that because there is no implementation.

The Ministry of Energy and Minerals has also instituted standard regulations to ensure that children under 16 years are not involved in mine work.²⁷² Employers are obliged under the Employment Ordinance to keep registers that indicate the age of workers, working conditions, the nature of employment and commencement and termination dates.²⁷³ The Employment Ordinance also states that any employer found to be in violation of the minimum age of employment law is subject to a fine and/or three months imprisonment.²⁷⁴ If the employer is found to be in subsequent violation, the penalty will be a fine and or six months imprisonment. The fine charged by the labour inspectorate is Tsh 2,000 to 4,000 (approximately US\$2.14 to 4.28).²⁷⁵ This Act is in compliance with the international standards.

However, this prohibition does not apply to children working on family farms or herding livestock. Young persons between the ages of 12 and 15 employed in industrial work may only work between dawn and dusk.²⁷⁶

²⁷⁰Website on Information on Child Labour Around the World < <http://www.globalmarch.org/cl-around-the-world/13> >(accessed on August 2004.)

²⁷¹Website on ILAB-TANZANIA <dol.gov/ILAB/media/reports/iclp/advancing1/html> (accessed on 19 October 2004.)

²⁷²ibid.

²⁷³ ibid.

²⁷⁴ ibid.

²⁷⁵ ibid.

²⁷⁶ Report of the Ministry of Labour, Youth Development and Sports, 2003.

4.1.2 The National Education Act 1978²⁷⁷

One of the basic responsibilities of any parent in Tanzania, and elsewhere in the world, is to see that their children get education particularly primary education.

Section 35 of the Primary Education Act provides for compulsory enrolment and attendance of pupils under which every child who is aged seven years but has not attained the age of 13 years must be enrolled for primary education.²⁷⁸

The Education Act provides for the education of all children of Tanzania irrespective of their gender, although there is a general trend, especially in villages, not to allow girls to go to school. The law provides for the punishment of parents who do not send their children to school or who allow their children to drop out of school. The law can therefore be used to protect girls who are forced to drop out of school to get married or for any other reason.²⁷⁹

Notwithstanding the Act, it has been very difficult to enforce its provisions. Some of the reasons contributing to poor enforceability of the Act include abject poverty in many families, poor quality of education, unqualified teachers and extremely poor school environments in many places. These reasons sometimes force parents and guardians to send their children to work rather than to school.²⁸⁰

It is of the view that the Education Act complies with the international standards because upon completion of primary school the child will have at least managed to do the work which is recognized by the UN Convention on the Rights of the Child under which Article 28 provides for compulsory primary education.

²⁷⁷ National Education Act 1978 as amended by the education (amendment) Act 1995.

²⁷⁸ The primary school compulsory enrolment and attendance Rules 1979, GN.129/1979 holds parents criminally liable if they fail to ensure that their child is enrolled and regularly attends primary education.

²⁷⁹ Website on Major Laws Relating to Women's Lives <tanzania.fes-international.de/doc/wr-major-laws.pdf> (accessed on 16/10/2004.)

²⁸⁰ Muzeo, Fest 'Child Labour: A Challenging Phenomenon in the Labour Law Reform in Tanzania'

4.1.2.1 Changes

The amendments of 1995 to the Education Act actually seek to strengthen the power of the Minister for Education over educational matters. Prior to the amendments, the Minister responsible for education and local governments should agree if they need to modify local authority education plans; the amended law gives this power exclusively to the Minister responsible for education.²⁸¹ It states that 'subject to national policy and plans every local government shall formulate, co-ordinate and supervise the implementation of all plans for social development in its area of jurisdiction.'²⁸²

The relevance of these changes to child labour is that in order to enhance the standard of education the minister responsible should make sure that the national policy and plans are well implemented so that children are not dropping out schools.

4.1.3 Sexual Offences Special Provisions Act²⁸³

In Tanzania, there are no laws actually prohibiting child prostitution although the SOSPA aims to protect women and children from prostitution. As a result, most of the children practicing prostitution are regarded as loiterers. The Sexual Offences Special Provisions Act criminalizes child sexual assault or abuse, and the Penal Code prohibits procuring a female under the age of 21 for prostitution.²⁸⁴ This law amends several written laws and makes special provisions in those laws with regard to sexual and other offences, and further safeguards the personal integrity, dignity, liberty and security of women and children. Under this law, sexual offences against women and children have been elaborated and sentences have been broadened. Examples:

- Rape has been defined to cover children below 18 without consent being material in the defence.
- The offence of trafficking in women is provided for.

²⁸¹ See amendments to part II, s 5(c) of the Education Act.

²⁸² Part V, s 118.

²⁸³ Sexual Offences Special Provisions Act 1998.

²⁸⁴ Website on ILAB-Tanzania

< dol.gov/ILAB/media/reports/iclp/advancing1/html > (accessed on 19 October 2004.)

The law also provides for compensation in cases of sexual offences.²⁸⁵ In this context, the customer is supposed to be charged with criminal responsibility if the child victim is under 18, even if he or she consents.

According to s130 (2) of Tanzania Penal Code as amended by s 5 of Sexual Offences Special Provision Act (SOSPA) of 1998, the age of consent for sexual activity is eighteen years of age and above. It is stated that a male person is said to have raped a girl or woman if he has carnal knowledge with or without her consent when she is less than eighteen (18) years of age, unless the woman is his wife who is fifteen (15) or more years of age and is not separated from the man.

It is of the view that this law complies with the ILO Convention on the Worst Forms of Child Labour as provided in Article 3.

4.1.4 Law of Marriage Act²⁸⁶

The Law of Marriage Act provides the age of consent for sexual activity applicable is fifteen (15) years of age. Girls can even be married at an age below 18 years, but not below 15 years, with the consent of the father and where there is no father, then the mother. Also marriage for girls below 15 years, but not below 14 years, can be permitted by court order. This Act is inconsistent with the "Sexual Offences Act" where the age of marriage is 18 years and above. Therefore it seems to me that the definitions of a child are wide ranging. Separate consideration of each definition only makes sense within a given context.

The issue here is that according to the CRC, this person is supposed to do light work but as long as she is married she can do any work irrespective of hazardous work. This has been challenged as discriminatory towards girls and as a violation of the Rights of the Child.²⁸⁷

²⁸⁵ Major Laws Relating to Women's Lives
<Tanzania.fes-international.de/doc/wr-major-laws.pdf>(accessed on 16 October 2004.)

²⁸⁶ Law of Marriage Act No.5 of 1971.

²⁸⁷ Major Laws Relating to Women's Lives <tanzania.fes-international.de/doc/wr-major-laws.pdf>(accessed on 16 October 2004.)

This discrepancy can lead to a situation where law enforcement authorities are reluctant to act, particularly in cases where the child is considered to be old enough to give consent but is younger than 18. It is argued that in order to avoid contradiction between various legal statutes there is a proposal that the age of consent for marriage should be twenty one (21) years of age.²⁸⁸ However the UN Convention on the Rights of the Child has defined a child as a person under 18 years.

4.1.4.1 Conflicting definitions of a 'child'

The Constitution of the United Republic of Tanzania for leadership and voting purpose recognizes a 'child' as a person under the age of 18 years and restricts such person from contesting.²⁸⁹ It is of my view that even the Constitution recognizes minimum working ages. There is inconsistency in the existing national laws in defining a 'child' in relation to the international standards, thereby, allowing for the employment of children of tender ages. In other words, the laws and regulations in force do not clearly articulate social practices in terms of what is and what is not permissible in the world of work with a view to protect the weak and vulnerable.²⁹⁰ The Interpretation and General Clauses Act,²⁹¹ defines an 'infant' as a person below 18 years.

The minimum working age is lower than the required age of compulsory education, giving children access to employment before they have even completed the minimum amount of schooling. When impoverished children are allowed to work legally, they will often abandon school to better their family's condition. In the reverse situation, if the minimum age requirement for work is greater than the compulsory schooling age, children who have completed the required schooling must stay inactive for a period of time before they can legally work.²⁹² For example when a poor child finishes the required standards at 10 years of age, that child is not supposed to work until the age of 14 an expectation seems unreasonable. It is generally the case

²⁸⁸ Tanzania - Dar Es Salaam - Legislation of Interpol Member states on Sexual Offences against Child <<http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaTanzania.asp>>(accessed on 31 October 2004.)

²⁸⁹ Constitution of the United Republic of Tanzania 1977 Article 5.

²⁹⁰ Muzee, F 'Child Labour: A Challenging Phenomenon in the Labour Law Reform in Tanzania, 2002'.

²⁹¹ Interpretation and General Clauses Act, No 30 of 1972.

²⁹² *ibid.*

for all ILO standards that provisions of a Convention have to be applied both in law and in practice.

Under these confusing pieces of legislation, a person can assume two or three personalities simultaneously, depending on which legislation he or she is addressing. While it is expected that legislation should play a catalytic and supportive role in combating child labour, the labour laws in Tanzania leave much to be desired.

4.1.5 The New Labour Legislation

Tanzania has enacted the new labour legislation, which came into effect in 2004. The old legislation was an awkward amalgamation of colonial master and servant law and socialist legislation and singularly inappropriate for an economy in transition.²⁹³ Some provisions were in conflict with Tanzania's public international law obligations.²⁹⁴ The new Act is now known as the Employment and Labour Relation Act.²⁹⁵

Linking the fight against child labour with improvements of labour laws is another significant goal, which the Government has endeavoured to achieve in order to successfully fight child labour in the country. Although the fight against child labour cannot be won through legislation, it certainly cannot be won without it.²⁹⁶

4.1.5.1 Section 5 deals with the provision of child labour

This Act among other things provides for the fundamental rights and protections of children. This Act applies in both formal and informal sectors.

Section 5 of the Act prohibits the employment of children below the age of 14 years in any work. A child of 14 may be only employed to do light work that is not harmful or prejudicial in any way.

The section also prohibits a child of fourteen years from doing work which is likely to be harmful to the child's health and development; and which does prejudice

²⁹³ Ministry of Labour, Youth, Development and Sports, *Report of the Task Force, Labour Law Reform* 23 May 2003.

²⁹⁴ *ibid.*

²⁹⁵ Employment and Labour Relations Act No.7 of 2004.

²⁹⁶ Muzee, F 'Child Labour: A Challenging Phenomenon in the Labour Law Reform in Tanzania, 2002'.

the child's attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child's capacity to benefit from the instruction received.

The section further restricts a child under eighteen years of age from being employed in a mine, factory or as crew on a ship or in any other worksite including non-formal settings and agriculture, where work conditions may be considered hazardous by the Minister. However a child may be permitted to work below the age of eighteen as part of the child's training; in a factory or mine; in any other work sites on condition that the health, safety and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or vocational training in the relevant work or activity.

The Act also provides in any proceedings, if the age of the child is on issue, the burden of proofing that the child was not below age lies on a person employing or procuring the child for employment.

4.1.5.2 Problem on the New Act

Although the new Act has come into force in 2004, it seems to me that this Act complies with the Conventions but the problem is on enforcement and implementation. In addition this Act does not address the issue of HIV /AIDS. Apart from being exposed to hazardous situation, which jeopardize their health, safety and morals, children selling their labour are also subjected to sexual abuse and to a high probability of being infected with HIV/AIDS.

The Ministry of Labour, Youth, Development and Sports is charged with enforcing child labour laws in Tanzania. Due to a shortage of funds, labour inspectors are not able to operate effectively.²⁹⁷

²⁹⁷ Website on ILAB Advancing the Campaign Against Child Labour
<http://www.dol.gov/ILAB/media/reports/iclp/Advancing_l/html/tanzania>(accessed on 9 December 2004.)

4.1.5.2 Problems with existing legal framework in Tanzania

In the deregulated workplace environment there is potential for abuse. Although the legislation exists, there is a concern that the legislation and the regulations are inadequate to ensure appropriate levels of health and safety for child work. Although some people argue that it may be healthy for children to work because they learn about their family business and gain valuable experience. It is of the view that the employment of the domestic children should be regulated to a higher extent than adult employment.²⁹⁸

There is no provision regarding medical examination of children engaged in agriculture and the informal sector, where they face the risk of chemicals, poison and other hazardous substances. The non-industrial sectors like agriculture, domestic services and small enterprises in the informal sector are currently beyond the ambit of the law.

Domestic child labour has always been seen as one of the worst forms of child labour. Some argue that it should not be considered as one of the worst form because the task involved in domestic labour is not as dangerous or hazardous as those presented by other forms of child labour such as mining and factory work.²⁹⁹ On the other hand there are people who believe that domestic labour is one of the most exploitative and hazardous forms of child labour, due to its hidden nature.

Since the registration of domestic workers is scarce and they work within the confines of a private home, setting up and form of effective inspection system is impossible. This also reflects on the difficulty to regulate the minimum age and wage of child and limits the possibility of rescuing those in danger.

²⁹⁸ Website on Child Labour <<http://www.job.watch.org.au/jwissues/ciecpaper> > (accessed on 15 May 2004.)

²⁹⁹ Website on Worst Forms of Child Labour.Out of Shadow <<http://www.globalmarch.org/dcl.dcl/overview.htm>>(accessed on 15 May 2004.)

4.1.5.3 Policy Problems

The major drawbacks of relevant policies are that they are sectoral in nature, thus making it difficult for them to be implemented fully and in a holistic manner.

This drawback is about to be overcome with the adoption of an all-encompassing National Child Labour Policy. This policy has already been passed by the cabinet and is now awaiting Parliamentary approval.³⁰⁰

In Tanzania the origins of child labour go back to the colonial era, when children were employed to facilitate the expansion of the colonial economy.³⁰¹ From the time of its independence, Tanzania has committed itself to eradicating child labour. A recent advance in government policy was when the government announced its proposal for poverty reduction strategy in broad consultation with local stakeholders and its international development partners, which promises a number of policy initiatives, measures to improve income distribution, and increase primary and secondary school enrolment and retention rates.³⁰²

The Tanzania Development Vision 2025 accords high priority to the education sector it being pivotal in bringing about the desired social economic transformation required to realize the vision targets. The Vision envisages Tanzania to be a country with a well-educated and learning society by year 2025. It is expressly stated in the Tanzania Development Vision document that,

[E] ducation should be treated as a strategic agent for mind set transformation and for the creation of a well-educated nation, sufficiently equipped with the knowledge needed to competently and competitively solve the development challenges which face the nation. In this light, the education system should be restructured and transformed qualitatively with a focus on promoting creativity and problem solving.³⁰³

The development vision does not address child labour directly, but one assumes that compulsory education would exclude the potential for child labour.

³⁰⁰ Muzee, F 'Child Labour: A Challenging Phenomenon in the Labour Law Reform in Tanzania'.

³⁰¹ Website on the Law Reform Commission of

Tanzania <<http://www.lrc.tz.org/pdf/labour.pdf>> (accessed on 12/5/2004.)

³⁰² Website of IPEC country profile United Republic of

Tanzania <<http://www.ilo.org/public/English/standards/ipec/themes/timebound/downloads/Tanzania.pdf>> (accessed on 20 May 2004.)

³⁰³ The Tanzania Development Vision, 2025 on 16.

Conclusion

It is of the view that weaknesses in the existing national laws and conflict of laws promote incidences of child labour in Tanzania. Legislations have been able to control child labour in the formal sector to some degree. As a result child labour is most prevalent in the highly unmonitored informal and rural sectors. This is because most of the children are either in the informal sector or illegal.³⁰⁴

However, the government through the Ministry of Labour, Youth Development and Sports has made an overhaul reform of the labour laws of the country and the parliament has passed new law called 'Employment and Labour Relations Act' which has come in force 2004 to conform to the International Labour Standards.

The lack of enforcement of labour restrictions perpetuates child labour. This is manifested in different ways. The number of enforcement officials is very low, especially in developing countries where the immediate priority of subsistence takes precedence over anything else. There are also inconsistencies in legislation, which may pose problems.³⁰⁵

Therefore some laws are in compliance with the international standards while some others do not. I think the new labour Act complies with the international labour standards but because it is only few months since it has been passed let us hope that it will, although it conforms to the national standards but it does not address the issue of HIV/AIDS and child labour.

³⁰⁴ Website on Human Capital Development and Operation Policy
<<http://www.Worldbank.org/html>>(accessed on 16 May 2004.)

³⁰⁵ *ibid.*

CHAPTER 5

5. RECOMMENDATIONS AND CONCLUSION

This chapter concludes the study. It seeks to draw out the lessons learnt from the challenges of combating child labour. The existing problem are critically examined with the gaps in the law being identified in areas such as mining, domestic work, agriculture and prostitution. The recommendations to the government to deal with the problem are provided for. The study has shown some findings and some major obstacles to child labour.

5.1 The major obstacles identified

Child labour is related to a lack of access to compulsory education and to lacunae in protective legislation.³⁰⁶ Lack of implementation of Conventions and the lack of implementation of the existing laws has left many children to suffer. Many child workers especially domestic servants are invisible. This group of child workers is the most difficult to reach because of the cultural sensitivity surrounding the belief that girls' work is an essential part of their upbringing, but also the dilemma of respecting the privacy of the home makes it difficult to identify and protect those child domestics trapped in exploitative or hazardous working conditions.

The problem is exacerbated by a few rehabilitative and preventive measures in the area and lack of political will in protecting children from exploitation by enforcing existing national standards.

The national laws and international treaties specify minimum ages for light work (12/13 years), normal work (14/15 years) and dangerous work (18 years). Some laws are drafted for specific industries, such as mining and sea fishing. In some cases laws such as Marriage Act and even the new Act are so unrealistic that they are impossible to implement. In particular, the lack of compulsory birth registration means that the ages of children cannot be verified in work situations. In addition they sometimes fail to address the informal sector and it is often in small workshops, agriculture, domestic service, and prostitution that the worst forms of child labour are to be found. The legal

³⁰⁶ International Labour Office, Conditions of Work Digest, volume 10, 1/1991.

and Zambia) to build institutional capacity and prevent children from entering child labor in commercial agriculture. The project seeks to remove and rehabilitate 7,500 children engaged in exploitative work in this sector in the five countries and prevent a further 15,000 at-risk children from entering such work in the first place. To enhance the effectiveness and sustainability of this program, ILO-IPEC is utilizing the Community Child Labour Committees for efforts aimed at monitoring, preventing, and eliminating child labour.³³²

The Government of Tanzania, local government actors and civil society organizations have incorporated child labour issues into their activities. Labour inspectors from the Ministry of Labour, Youth Development and Sports now report and take actions against child labour as a regular task of the labour inspectorate division. At the community level, Child Labour Monitoring Committees have been established which identify and monitor cases of child labour and work to implement by-laws, directives, and collective bargaining agreements regarding child labour, to allow community based actions to precede federal legislative reform.³³³ Community initiatives to increase enrollment and retention rates at the primary school level have resulted in a decrease in the incidence of child labour.³³⁴ Community-based Task Forces and peer group clubs also play a role in activities aimed at preventing and rehabilitating children in prostitution.³³⁵

Various Trade Unions, the Tanzania Federation of Trade Unions (TFTU), and the Association of Tanzania Employers (ATE) have also worked with ILO-IPEC. The efforts of ATE to sensitize owners and managers of sisal, tea, and coffee plantations to child labour issues have helped plantation owners and managers to become active collaborators in designing measures to prevent child labour on plantations.³³⁶ Trade unions have also initiated local community actions to prevent child labour and to withdraw children from hazardous worksites through collective bargaining arrangements with employers. Tanzania is focusing on eliminating child labour in the

³³² *ibid.*

³³³ *ibid.*

³³⁴ *ibid.*

³³⁵ *ibid.*

³³⁶ *ibid.*

us.³⁴⁰ It is not true that Tanzanians wish their children to be exposed to the extreme forms of child labour but without support many parents will not have any alternative sending their children out to work.

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³⁴⁰Michael Kimaryo and Ron Pouwels, 'An African Perspective on Child Domestic Workers in Tanzania' <<http://www.ilo.org/public/index.htm>> (accessed on 12 October 2004.)

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