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Opinion

The Worst Forms of Child Labor

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Contents

| | |
|---|----|
| First: Introduction..... | 2 |
| Second: A Brief Definition of the ILO Convention No. 182, 1999 on the Worst Forms of Child Labour and the Immediate Procedures to Eradicate It..... | 2 |
| Third: Differentiating Types of Child Labor..... | 3 |
| Fourth: ILO Statistics Points to a Massive International Failure in the Elimination of the Worst Form of Child Labor..... | 5 |
| Fifth: Prominent Reasons for Convention 182's Failure to Eliminate the Worst Forms of Child Labor..... | 10 |
| Sixth: Proposal for the Establishment of a New Convention Sponsored by The ILO, CRC, and UNICEF, with a multi-disciplinary committee..... | 17 |

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First: Introduction:

This paper critically analyzes the effectiveness of the ‘Worst Forms of Child Labour Convention²’ of 1999 in attaining the objective for which it was created since its launch and up to the present day. Here, we shall provide a brief description of child labor³ then proceed to supply statistics from the International Labour Organization⁴ (ILO) demonstrating the extent to which the worst forms of child labor are spread across the world; these statistics clearly show the continuing international failure to eradicate this problem. The paper attributes this failure to three main reasons:

1. Problems in the convention’s articles;
2. The weak and unnecessarily complicated nature of the ILO complaints system’s mechanism;
3. The lack of commitment from many countries to tackling this issue seriously and strategically.

The paper concludes that it is necessary to build a new coalition to eradicate the worst forms of child labor, which continue to threaten the fundamental rights of the child. Such a coalition, which could be formed by the International Labour Organization (ILO), the Committee on the Rights of the Child⁵ (CRC), and the United Nations Children’s Fund⁶ (UNICEF), could create a new convention drawing on previous international conventions whilst overcoming their shortcomings, and incorporating political, economic, and judicial powers of pressure.

Second: A Brief Definition of the ILO Convention No. 182, 1999 on the Worst Forms of Child Labour and the Immediate Procedures to Eradicate It.

The first serious and organized international effort to regulate child labor began with the forming of the ILO in 1919. The organization affirmed in its constitution that it would fight against child labor.

The Minimum Age Convention⁷ of 1973 (No. 138) and the Worst Forms of Child Labour Convention of 1999 (No. 182) are considered the most important conventions adopted by the ILO against child labor. Convention No. 182, especially, is considered the first historical example of an international legal document aiming to protect children from the worst forms of child labor⁸. The convention focuses mainly on criminal cases⁹, with its ultimate objective being to effectively end the worst forms of child labor. The convention classifies the abolition of the worst forms of child labor to be a national and international priority in ultimately achieving the complete eradication of child labor.

To date, 186 States have ratified this convention¹⁰, showing near-complete international agreement.

² C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 17 September 2019]

³ What is child labour, ILO, <<<https://www.ilo.org/ipec/facts/lang-en/index.htm>>> [accessed 17 September 2019]

⁴ International Labour Organizations <<<https://www.ilo.org/global/about-the-ilo/lang-en/index.htm>>> [accessed 17 September 2019]

⁵ Committee on the Rights of the Child << <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.asp>>> [accessed 17 September 2019]

⁶ UNICEF <<<https://www.unicef.org/what-we-do>>> [accessed 17 September 2019]

⁷ C138 - Minimum Age Convention, 1973 (No. 138) <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138>> [accessed 17 September 2019]

⁸ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Preamble, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 17 September 2019]

⁹ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Preamble, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 17 September 2019]

¹⁰ Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312327>> [accessed 17 September 2019]

The first article¹¹ of the convention states that each member state shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor, while the second article¹² defines the term “child”. The convention’s third¹³ and fourth¹⁴ articles define the worst forms of child labor, and the fifth¹⁵ and sixth¹⁶ articles stipulate the mechanisms that will help in applying and executing the convention’s articles through a strategy to monitor the implementation of the convention and to design and implement programs of action. The seventh article¹⁷ of the convention requests that penal sanctions are implemented and asserts that member states must ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children rescued from the worst forms of child labor, as well as stating that each member state shall designate a competent authority responsible for the implementation of the provisions giving effect to the convention. The eighth article¹⁸ affirms the importance of the critical matter of enhancing international cooperation and/or assistance to help implement the provisions giving effect to the convention.

Third: Differentiating Types of Child Labor:

The ILO defines child labor¹⁹ as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that:

- **is mentally, physically, socially or morally dangerous and harmful to children;** and
- **interferes with their schooling** by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.”

In fact, the ILO report titled “Marking progress against child labour, Global estimates and trends 2000-2012²⁰” differentiates between three levels of child labor²¹;

The first level: Children in employment are those engaged in any economic activity for at least one hour per day. Economic activity covers all market production and certain types of non-market production.

¹¹ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 1, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 17 September 2019]

¹² C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 2, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 17 September 2019]

¹³ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 3, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 17 September 2019]

¹⁴ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 4, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 17 September 2019]

¹⁵ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 5, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 18 September 2019]

¹⁶ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 6, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 18 September 2019]

¹⁷ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 7, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 18 September 2019]

¹⁸ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 8, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 18 September 2019]

¹⁹ Defining child labour, ILO, <<<https://www.ilo.org/ipec/facts/lang-en/index.htm>>> [accessed 19 September 2019]

²⁰ Marking progress against child labour - Global estimates and trends 2000-2012 / International Labour Office, International Programme on the Elimination of Child Labour (IPEC) - Geneva: ILO, 2013.

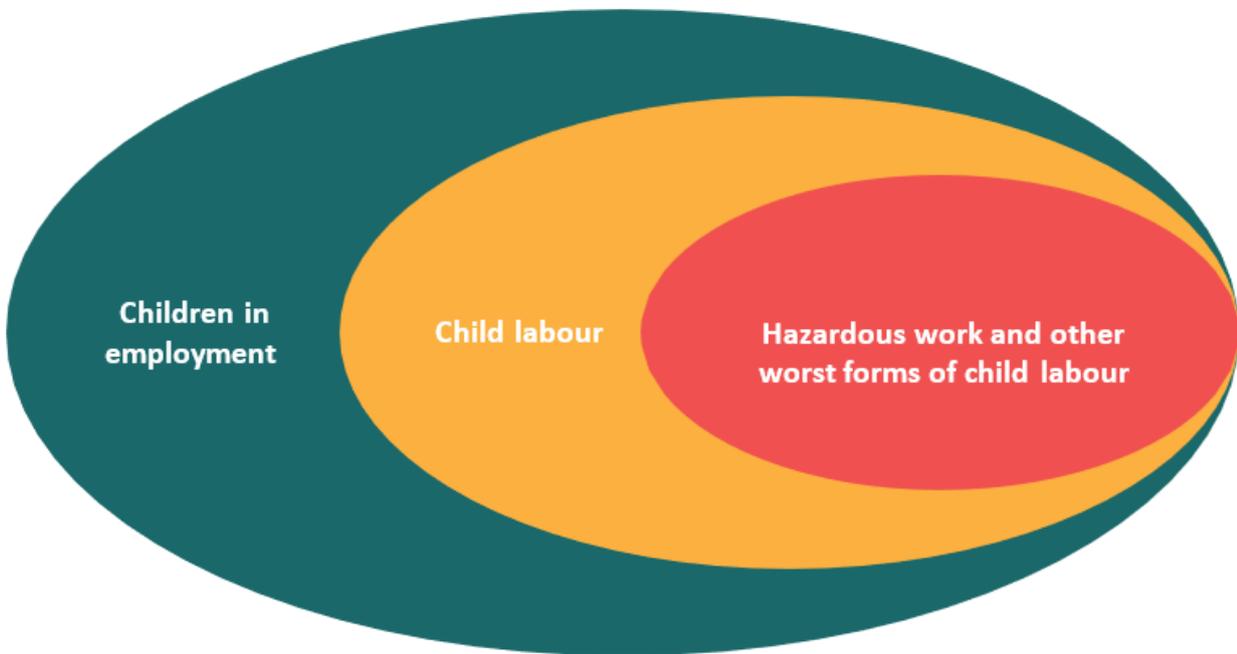
²¹ Marking progress against child labour - Global estimates and trends 2000-2012 / International Labour Office, International Programme on the Elimination of Child Labour (IPEC) - Geneva: ILO, 2013, P. 16.

The second level: Children in Child Labor are a subset of Children in employment. They include those engaged in the worst forms of child labor and children in employment below the minimum age, excluding children in permissible light work, if applicable.

The third level: Hazardous Work by Children is defined as any activity or occupation that, by its nature or type, has or leads to adverse effects on the child’s safety, health and moral development. Hazardous work by children is often treated as a proxy for the Worst Forms of Child Labor. This is for two reasons.

First, reliable national data and statistics on the worst forms other than hazardous work, such as commercial sexual exploitation and children engaged in conflict, are still difficult to come by.

Second, children in hazardous work account for the overwhelming majority of those in the worst forms.



Article 3 of the ILO Convention No. 182, 1999 clarified that the term “the worst forms of child labor”²².

According to article 2, of the same convention, the term “child” applies to all persons under the age of 18.

This differentiation between the types of child labor is vital, because according to the ILO there is positive acceptable work for children that should be enhanced, while there must also be coordination and collaboration between all countries and labor organizations around the world to eliminate the worst forms of child labor.

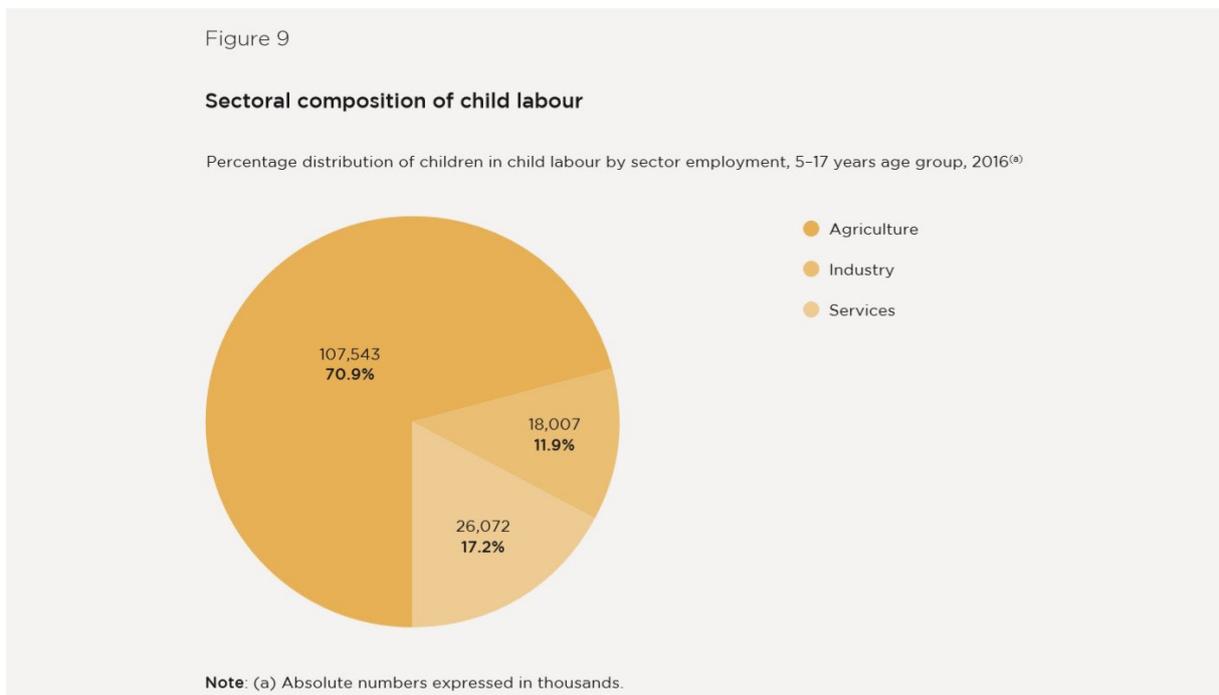
²² The term “the worst forms of child labor” comprise:

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

Fourth: ILO Statistics Points to a Massive International Failure in the Elimination of the Worst Form of Child Labor:

According to the Global Estimates of Child Labour Results and Trends 2012-2016²³, there are globally still 218,000 employed children, of whom 152 million are engaged in child labor, and 73 million in hazardous work.

Of these, 70.9% of the 152 million-child laborers work in agriculture, 11.9% work in industry, and 17.2% in services²⁴.



Divided according to gender²⁵, 58% or 88 million of all documented child labourers are male, while the remaining 42% or 64 million are female.

The report's statistics show that male children are more likely to be subjected to hazardous work compared to female children²⁶, as there are 24 million more male child laborers. There are also 17 million more male child laborers than there are female child laborers.

²³ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017

²⁴ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 35.

²⁵ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 5.

²⁶ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 42.

On any given day in 2016 children aged 5-17 years



REGIONAL PREVALENCE OF CHILD LABOUR

| | |
|-------------------------|-------|
| Africa | 19.6% |
| Americas | 5.3% |
| Arab States | 2.9% |
| Asia and the Pacific | 7.4% |
| Europe and Central Asia | 4.1% |



OF THE 152 MILLION CHILDREN IN CHILD LABOUR

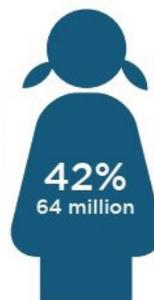
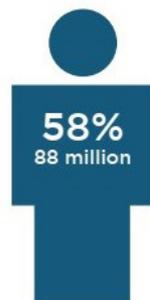
AGE PROFILE

48%
5-11 years-olds

28%
12-14 years-olds

24%
15-17 years-olds

GENDER



ECONOMIC ACTIVITY

70.9%
Agriculture

11.9%
Industry

17.2%
Services

Figure 1

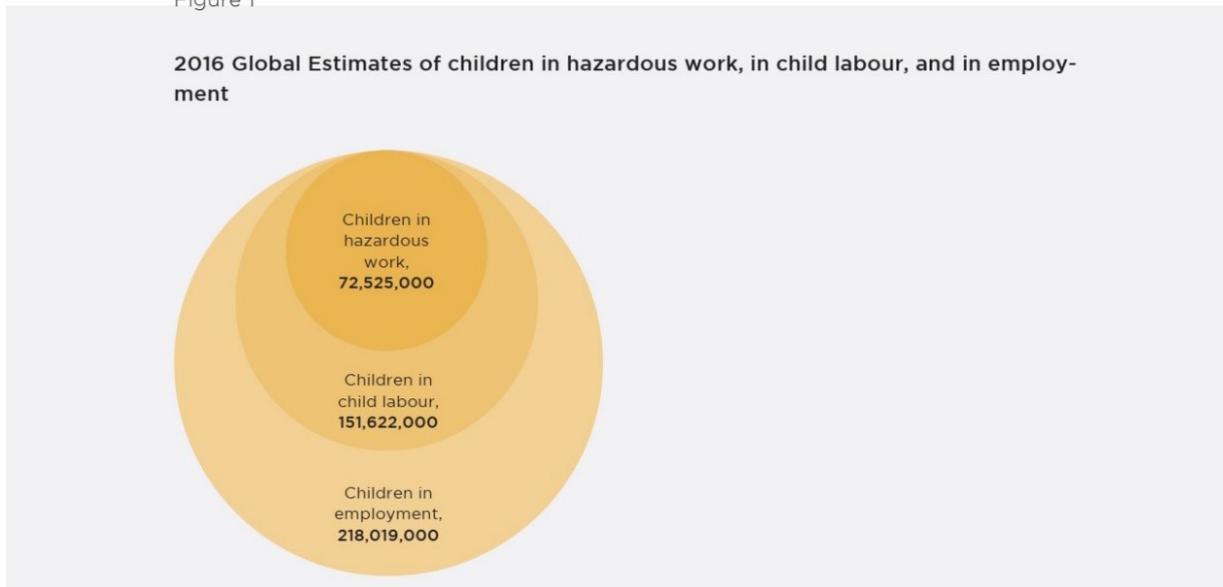


Figure 2

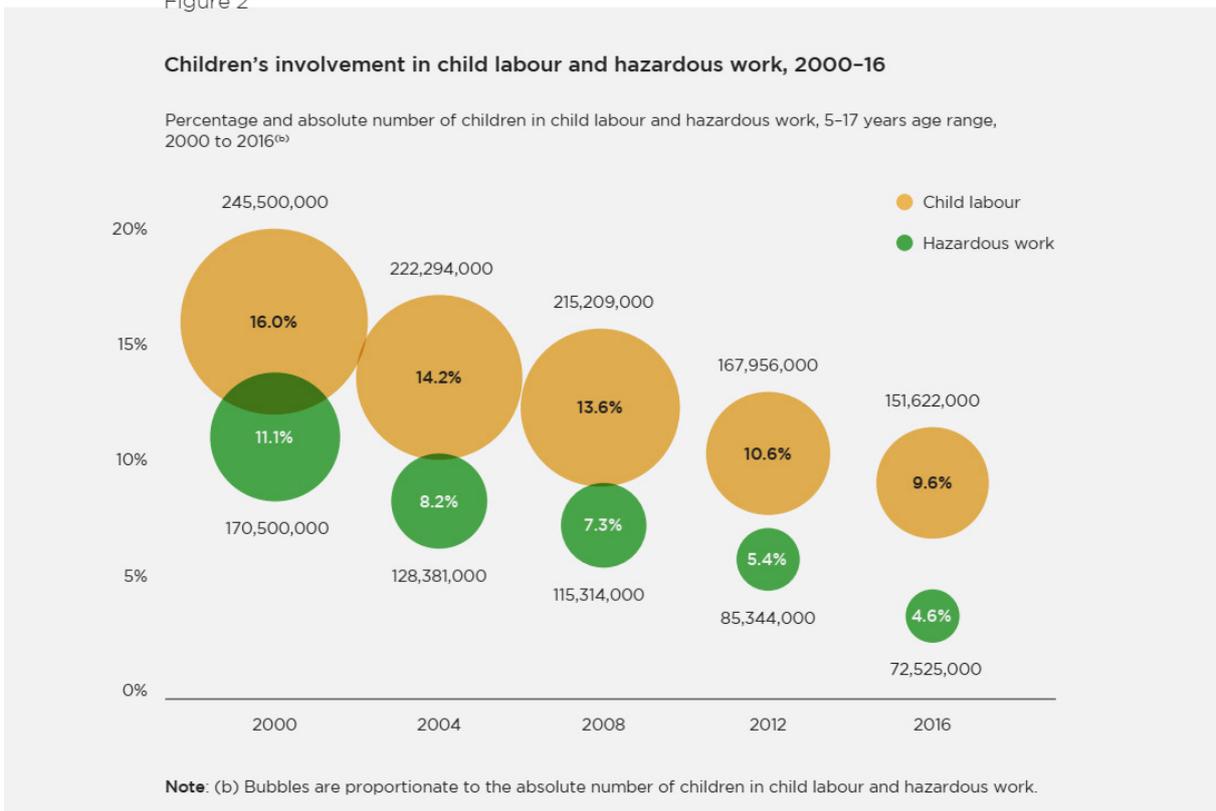
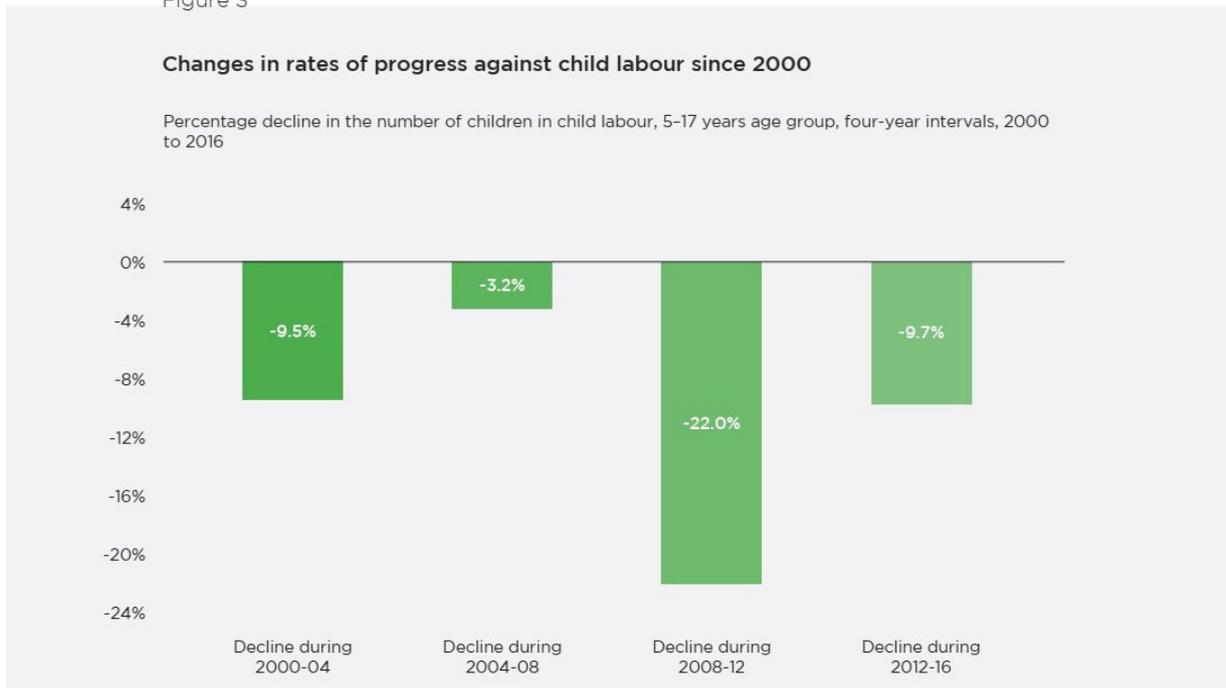


Figure 2²⁷ of the report shows a significant decline in child labor and child labor in hazardous work from the year 2000 to the year 2016. However, it is noticeable that the percentage of the drop from 2012 to 2016 again changed, which is more clearly seen in Figure 3²⁸ of the report showing upwards and downwards fluctuations in the percentage of the decline in the statistics of the worst forms of child labor.

²⁷ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 24.

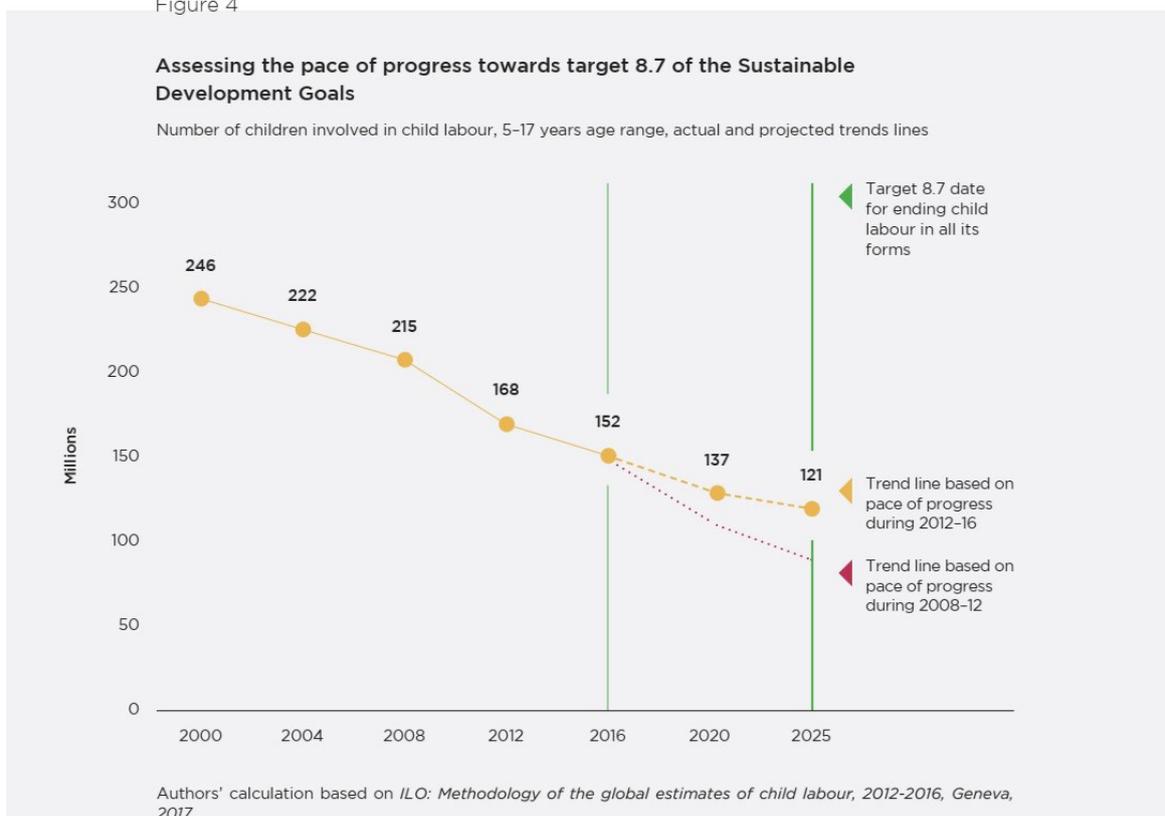
²⁸ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 26.

Figure 3



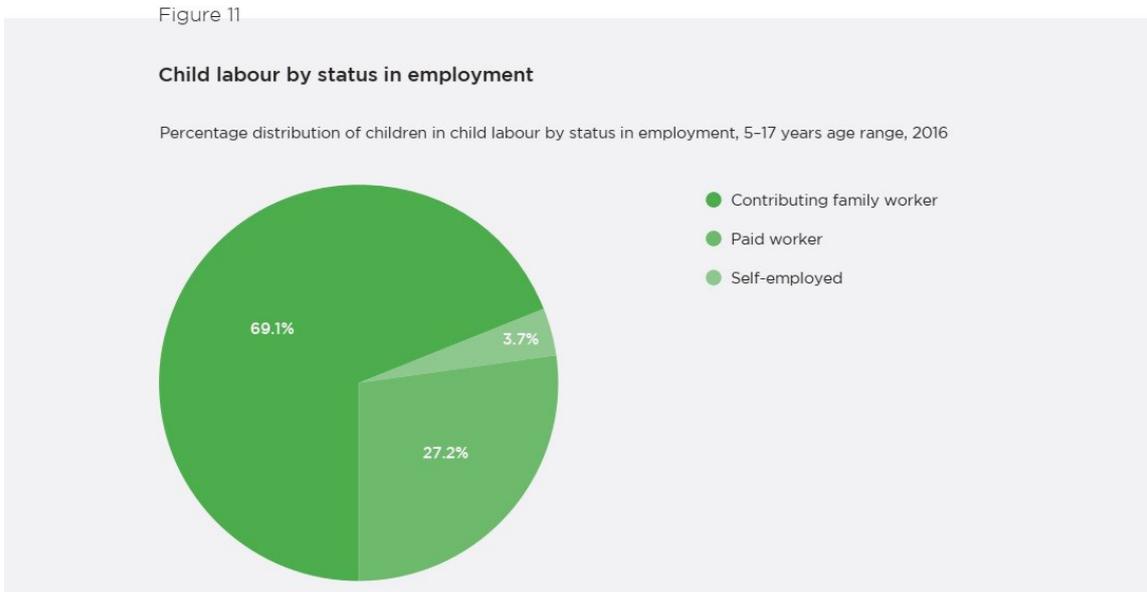
In Figure 4²⁹, it is clear that, if the decline continue at the same levels as those seen between 2012 and 2016, child labour will still exist by 2025, with around 121 million children in child labor, though it would fall to less than that if the levels are similar to the drop levels of the period between 2008 and 2012, but both cases show a massive and continuous failure in efforts to eliminate the worst forms of child labor, which continues to place generations of child laborers in danger.

Figure 4



²⁹ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 27.

In Figure 11³⁰, we can see that the majority of child laborers - 69.1 percent - are contributing family workers, while 27.2 percent are paid workers, and 3.7 percent are self-employed.



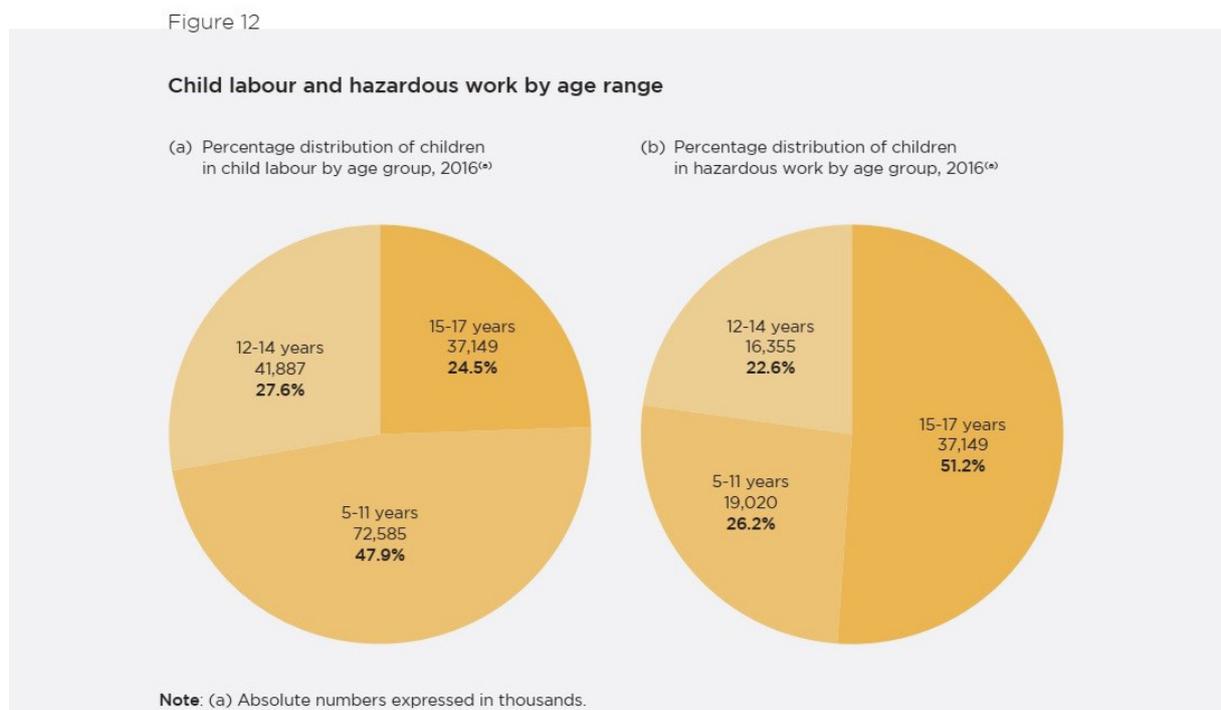
In Figure 12³¹, we can see that the percentages of children engaged in hazardous work are distributed according to age as follows:

5-11 years: 26.2%

12-14 years: 22.6%

15-17 years: 51.2%

This means that as they grow older children participate in more hazardous work.



³⁰ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 27.

³¹ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 39.

Fifth: Prominent Reasons for Convention 182's Failure to Eliminate the Worst Forms of Child Labor:

The ILO report entitled 'Marking progress against child labor - Global estimates and trends 2000-2012' states that the governments' commitment in the 12 preceding years was essential to the implementation of the ILO conventions, which the report said was reflected in the historical pace of ratification among ILO conventions. In ratifying this convention, countries are formally acknowledging that child labor is no longer acceptable and assuming responsibility for ending it³².

Despite 186 countries ratifying Convention 182 to date, however, with only a few countries still to ratify it, there are still around 73 million child laborers globally engaged in hazardous work.

Why did Convention 182 fail to alleviate or eliminate the worst forms of child labor?

In this paper, we endeavor to analyze three reasons for issues we believe could be addressed, two of which are concerned with implicit self-dysfunction. The first of these regards criticism of some articles of the Convention; secondly, the complexity and ineffectiveness of the ILO complaints system, and thirdly the failure to address the underlying basis of the problem which, as we have noted, concerns the cooperation of governments and how to ensure that they respond and comply more effectively.

A. Criticism of a number of articles of the Convention³³ and its vision; reflected in several ways:

1. The Convention requires states ratifying it to comply with a number of obligations, but has not clearly defined what the role of the Convention would be if the state fails to meet one or more of the obligations, if the government of a state deliberately ignores or delays compliance with these obligations, or if the government itself is involved in the worst forms of child labor. The Convention did not recommend, for example, the establishment of any special committee tasked with monitoring member states' compliance with to its articles and issuing periodic reports and statements on the extent of compliance. Such reports could be distributed via national and international media to pressure those governments and raise awareness domestically and internationally over these governments' violations of the convention articles.

We note that the Convention does not have its own supervisory authority. Moreover, the Convention does not have real pressure tools to compel States to abide by its ratification. It has left all this to the complex ILO oversight mechanisms that is involved in overseeing dozens of other conventions. The Convention does not create its own monitoring mechanism under the umbrella of the ILO.

2. There is a clear absence of any effort to address the worst forms of child labor in the context of situations of armed conflict, and in domestic and international armed conflicts³⁴, although these are among the primary causes of child labor, in particular concerning children's participation in the

³² Marking progress against child labour - Global estimates and trends 2000-2012 / International Labour Office, International Programme on the Elimination of Child Labour (IPEC) - Geneva: ILO, 2013, P. 8.

³³ Eric Gravel, Tomi Kohiyama and Katerina Tsotroudi. 'A Legal Perspective on the Role of International Labour Standards in Rebalancing Globalization'

³⁴ UNGA 'Situation of children in armed conflict cited as major concern, as third committee continues discussion of children's rights' GA/SHC/3701

worst forms of labor, more especially in light of the forced displacement³⁵ those conflicts cause, which in turn leads to internal displacement³⁶ or asylum³⁷, and therefore to families losing their homes, possessions and stability, and maybe to children losing the family breadwinner, father or mother or both, due to their death, arrest, or forced disappearance. This drives millions of children to accept work of any kind, including the worst forms of labor, for survival; it is not enough for the Convention to simply refer to forced recruitment, because there are tens of thousands of children being lured with money to enter the ranks of military conscription, as this often pays more than any other work. It is true that this is the prerogative of international humanitarian law³⁸, but Convention 182 has already discussed criminal cases and matters. The Convention had to address the involvement of children in the worst forms of work in the context of armed conflict, in more detail.

3. It is noticeable in the articles of the Convention that there is no mention of the role or coordination of local or international civil society organizations, especially human rights bodies, with only governments and labor organizations playing any role in consultations and coordination. I believe that this is a major flaw in the Convention since civil society organizations play essential roles in supporting the accomplishment of the Convention's goal, through monitoring, advocacy and exposing perpetrators of abuses by governments or labor organizations, as well as through grassroots family and social awareness programs, rehabilitation, education, financing, etc³⁹. Thus, inclusion and emphasis on the importance of coordination, consultation and working with these organizations would serve as an invaluable incentive for them and encourage further engagement in this field.

4. In the first paragraph of its fourth article, the Convention requires national authorities to determine types of actions, which by their nature or by the circumstances in which they are practiced, are likely to harm the health, safety or moral development of children⁴⁰. This means that the definition of hazardous work will be subjective, decided by the country's leadership, varying from country to country, which complicates the possibility of monitoring such actions globally, as well as adding uncertainty to states' supervision of each other. This makes it difficult to build a global database that monitors and analyzes the phenomenon because identifying hazardous work is the starting point for targeting and eliminating it. Meanwhile the second paragraph of the same article states that "The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist"⁴¹.

³⁵ UNESCO, Displaced Person / Displacement, <<<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/>>> [accessed 19 September 2019]

³⁶ Internal Displacement Monitoring Centre, Internal Displacement, <<<http://www.internal-displacement.org/internal-displacement/>>> [accessed 19 September 2019]

³⁷ UNHCR, Asylum-Seekers, <<<https://www.unhcr.org/asylum-seekers.html>>> [accessed 19 September 2019]

³⁸ ICRC, International Humanitarian Law, <<https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf>> [accessed 19 September 2019]

³⁹ The end of child labour: Within reach REPORT OF THE DIRECTOR-GENERAL, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work / International Labour Conference, 95th Session 2006

⁴⁰ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 4, Para 1, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 20 September 2019]

⁴¹ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 4, Para 2, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 20 September 2019]

5. Article 7 of the Convention requires Member States, in order to effectively implement its provisions, to provide for penal or other types of penalties, but does not establish any general framework as to what such sanctions, or the types, forms and minimum or maximum limits should be⁴², despite the great disparity in the worst forms of work; for example, what would be the punishment for those who contribute to trafficking and the sale of children compared to those who exploit them in the drug trade or recruit them for work? This provision has left wide discretion to governments and weakened the framing of somewhat convergent penalties between the different countries of the world for the worst forms of child labor.

6. Paragraph 2 of article 7⁴³ requests that ratifying States take account of the special situation of girls, without giving any reasons why girls specifically should be singled out. In fact, the ILO reports and statistics cited in this paper suggest, on the contrary, that the proportion of male children working in the worst forms of child labor is tens of millions higher than the number of female children in the same areas of labour⁴⁴. There is a strong argument that legislation against the worst forms of child labor should protect all children equally simply because they are children and equally vulnerable to the same exploitation and oppression.

B. The ILO's supervisory mechanism is complex and weak

The ILO Constitution⁴⁵ is the source of the legitimacy of the supervisory system⁴⁶, which is binding on all Member States, and within this supervisory system there are two main mechanisms: the regular supervisory mechanism⁴⁷ and the special supervisory mechanism⁴⁸.

a. Explanation and Criticism of the Regular Supervisory Mechanism:

The ILO has recently recognized the complexity and intersection of its oversight and complaint mechanisms, with its Governing Body requesting that the Chairman of the Committee of Experts on the Application of Conventions and Recommendations⁴⁹ (CEACR) and the Chairman of the Committee on Freedom of Association⁵⁰ (CFA) prepare a joint report for submission to the 326th Session of the Governing Body⁵¹ in March 2016. The subject of the report is the interrelationship, work and possible improvement of various supervisory procedures relating to Articles 22⁵², 23⁵³, 24⁵⁴ and 26⁵⁵ of the ILO Constitution and the complaints mechanism on freedom of association.

⁴² C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 7, Para 1. <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 20 September 2019]

⁴³ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Article 7, Para 2. <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 20 September 2019]

⁴⁴ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 5.

⁴⁵ The ILO Constitution, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO>> [accessed 20 September 2019]

⁴⁶ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁴⁷ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁴⁸ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁴⁹ CEACR, ILO, <<<https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang-en/index.htm>>> [accessed 20 September 2019]

⁵⁰ CFA, ILO, <<<https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm>>> [accessed 20 September 2019]

⁵¹ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁵² ILO Constitution, Article 22, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A22>> [accessed 20 September 2019]

⁵³ ILO Constitution, Article 23, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A22>> [accessed 20 September 2019]

⁵⁴ ILO Constitution, Article 24, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A22>> [accessed 20 September 2019]

⁵⁵ ILO Constitution, Article 26, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A22>> [accessed 20 September 2019]

This report acknowledges that: “The ILO supervisory system whereby the Organization examines obligations relating to the standards of member States derived from ratified conventions is one of the oldest and most complex international control systems that has evolved over the years⁵⁶ .”

I believe that up until the current moment in 2019 this system remains excessively complex, which undermines the possibility of criticizing and exposing violations by violating member states or labor organizations, and thus weakens the mandatory capacity of many ILO conventions, most notably the Worst Forms of Child Labor Convention.

The regular supervisory mechanism works as follows: Once a Member State has ratified a specific ILO Convention, that state is bound by Article 22 of the ILO Constitution, which asserts that Member States should report on the measures they have taken to implement the conventions they have ratified. While the ILO Constitution mentions the submission of an annual report, the ILO Governing Body subsequently amended this to approve new terms whereby governments should report every three years on core and priority Conventions and every five years on other Conventions. Workers’ and employers’ organizations have the right to submit comments on the Government’s report and its implementation of the Convention. The CEACR⁵⁷ will then study the implementation of ILO Conventions and Recommendations by ILO Member States. This committee will also examine and review the report submitted by the government and review the comments received thereon, then assess the state’s compliance with the convention standards before preparing an annual report containing evaluations and observations, as well as recommendations and measures to be implemented by the government, with the report of the Committee of Experts being published in March of each year.

In addition to the Committee of Experts there is the annual International Labor Conference Committee on the Application of Standards (CAS). CAS is a tripartite standing committee (governments, workers’ organizations, employers) of the International Law Commission, consisting of some 200 members. This Committee is tasked with examining the report of the CEACR and the Conference Committee is free to choose the observations which it believes should be discussed at the annual ILO Conference; the government in question first provides explanations and justifications to the Committee and explains what measures it will adopt for subsequent implementation to comply with the implementation of the ratified Convention, then employers and workers are given an opportunity to clarify certain points and respond to government claims. After this discussion, the Committee draws up its conclusions, with the government often recommending certain measures, which are then followed up by the CEACR. This is in short the regular supervisory mechanism.

Six key points in criticizing this mechanism:

1- While Convention No. 182 is one of the fundamental and most important conventions, in practice there will be no real feasibility or careful follow-up simply because a government with a high proportion of the worst forms of child labor needs only to report every three years on its progress. A three-year period is a very long one in this context, during which the government and the people concerned may change more than once.

⁵⁶ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁵⁷ CEACR: an independent body consisting of 20 legal experts, established by the International Labor Conference with the experts appointed by the members of the Governing Body of the ILO

2- Although some workers' and employers' organizations can comment on the report and can submit a parallel report similar to the UN Universal Periodic Review⁵⁸, there is no similar role for local human rights and civil society organizations.

3- The number of cases selected for discussion is very limited, and this includes cases of violations of all ILO conventions. This further reduces the possibility that cases will be chosen from the most prominent of nations responsible for violating the Convention on the Elimination of the Worst Forms of Child Labor, which are numerous, as shown in the countries where hazardous labor for children is common. Although it's possible that a couple of cases at most from the worst one or two countries will be chosen, this omits the sorely needed focus on these problems in those and other countries, with decades-worth of abuses and violations of Convention No 182, all of which need intensive and lengthy discussion and a climate of real accountability in order to resolve these issues.

4- Discussion sessions should include local and international human rights organizations (such as Amnesty International⁵⁹, Human Rights Watch⁶⁰ and Anti-Slavery International⁶¹) and relevant civil society organizations. These bodies should have the opportunity to respond to government justifications, with the fact that these organizations have been excluded from playing a central role in this process leading them to become skeptical of and lose interest in ILO conventions and meetings.

5- Despite the divergent views among governments, labor organizations and workers during the discussion of the report of the Committee of Experts at the annual conference, the report is invariably adopted unanimously; this is because the members of the conference do not want to undermine the credibility of the supervisory mechanism; this further weakens the effectiveness of the report.

6- The most important of all of the above points is that the recommendations issued should be binding on the states, with the recommendations issued in the reports currently being non-binding on them, and being intended only to guide the actions of the ruling authorities. The Committee's work is based primarily on continuous dialogue and discussion with governments. This is, in my opinion, one of the main reasons why governments are indifferent to the implementation of Convention 182, with very few adverse consequences for violations of the articles of the Convention and repeated violations annually and widely, encouraging governments to continue with these violations, knowing they are operating in a climate of impunity.

b. Explanation and Criticism of Special Supervisory Mechanism:

In cases of systematic and widespread violations of a convention, complaints may be invoked in accordance with Articles 26 to 34⁶² of the ILO Constitution.

⁵⁸ OHCHR, Universal Periodic Review, <<<https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>>> [accessed 18 September 2019]

⁵⁹ Amnesty, <<<https://www.amnesty.org/en/who-we-are/>>> [accessed 18 September 2019]

⁶⁰ Human Rights Watch, <<<https://www.hrw.org/about-us>>> [accessed 18 September 2019]

⁶¹ Anti-Slavery International, <<<https://www.antislavery.org/about-us/>>> [accessed 18 September 2019]

⁶² ILO Constitution, Article 27, Article 28, Article 29, Article 30, Article 31, Article 32, Article 33, Article 34, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A22>> [accessed 19 September 2019]

Any Member State ratifying the Convention has the right to file a complaint against another State that has ratified the Convention but is not committed to do so. Complaints can also be made by employers and workers - in fact, most of the complaints are from workers⁶³. When a particular complaint is filed, the Board of Directors should establish a commission of inquiry⁶⁴ consisting of three independent members. If the complainant's government agrees, the commission will visit the country and investigate the complaint⁶⁵. Based on the data and information provided by the Government and the data collected by the Commission during its investigation, the Commission then prepares a detailed report of approximately 500 pages outlining its findings and recommendations.

The recommendations differ from those in the regular supervisory mechanism in that these recommendations have a specific implementation date, and when a State refuses to comply with the recommendations of the commission of inquiry, the ILO Governing Body can take action under Article 33⁶⁶ of the ILO Constitution. Article 34 of the Constitution allows the Government to announce at any time that it has taken the necessary steps with the recommendations of the Commission of Inquiry or the decision of the International Court of Justice, after which another investigation committee is established to verify the claim⁶⁷.

Four key points in the criticism of the special supervisory committee:

1- The Commission of Inquiry is the most vigorous investigation procedure available to the ILO⁶⁸. Nevertheless, this mechanism hardly offers anything concrete in order to ensure States' compliance with Convention No. 182. This is because children in the worst forms of labor are unlikely to file a complaint against the government or their employers, with most children being unfamiliar with these standards, and lacking the material and logistical capacity to file a complaint. Civil society organizations should be allowed to submit complaints on their behalf. Meanwhile, only a very limited number of committees have been established since 1961, with a total of 30 complaints being received in the intervening period of over half a century and only 12 investigation committees having been established to date⁶⁹.

This system also does not include any commission of inquiry to investigate any complaint by children whose rights have been violated while participating in the worst forms of child labor.

2- The supervisory system suffers from a very slow process. The average time between filing a complaint under article 26 of the ILO Constitution and concluding a result is 3 years.

3- The recommendations of the commission of inquiry are non-binding on the State, and article 33 has been invoked only once in the entire history of the ILO, namely in 2000, when the organizations Governing Council requested the International Law Commission to take measures against the widespread and systematic use of forced labor in Myanmar⁷⁰. It is clear, therefore, that this is a very exceptional measure and, accordingly, States often know that no serious action will be taken against them in the event of any violation of Convention No. 182 and thus continue to violate its articles.

⁶³ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁶⁴ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁶⁵ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁶⁶ Article 33 states: "In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith."

⁶⁷ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁶⁸ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁶⁹ Complaints/Commissions of Inquiry (Art 26), ILO, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:50011:16287379805008:::P50011_DISPLAY_BY:1>> [accessed 20 September 2019]

⁷⁰ ILO Governing Body opens the way for unprecedented action against forced labour in Myanmar, <<https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007918/lang-en/index.htm>> [accessed 20 September 2019]

4- The role of the Commission of Inquiry is limited to recommendations without further requirements for implementation, with the ILO Governing Body and the International Labor Conference Committee being responsible for lobbying the Government for implementation⁷¹. Whilst this separation between the investigative process and implementation is vital, I believe that the commission of inquiry could play a larger role, which would be to continue to monitor the government's implementation of the commission's recommendations. In the event of non-implementation, the commission of inquiry should again submit objections and recommendations to the Governing Council and the International Labor Conference Committee, all of which should be done with the involvement of local and international media and civil society organizations.

Based on the above, ILO supervisory mechanisms cannot overcome stark examples of states' non-compliance with the Convention of the Worst Forms of Child Labor. If this situation continues, the ILO and Convention 182 will fail to eliminate the worst forms of child labor. What should be added, which is closely related to the monitoring and supervision process, is that the ILO does not have a detailed and continuously updated database on the worst forms of child labor in the ratifying countries, a shortcoming that greatly weakens the monitoring and observation process. Finally, we should seriously reconsider the appropriateness of the supervisory system emanating from the ILO Constitution for all its various conventions. This would require an increase in the financing of the supervisory system.

C. The lack of commitment by many governments around the world to combating the worst forms of child labor:

The inability of Convention No. 182 and the complaint system to bring serious pressure on the governments of States has led, as noted, to a large number of countries in the world ignoring the need for compliance with its articles⁷². The fight against the worst forms of child labor is a complex issue, as it involves a wide range of economic, social, cultural and political factors at several levels. This phenomenon will not be effectively addressed without the involvement of the government and therefore several other official institutions in the fight against it, requiring the development of economic, social, cultural and legislative plans that work together. Only the Government of the State can achieve such an integrated scheme, and therefore the effort should be aimed at persuading Governments by explaining the dimensions and disadvantages of the phenomenon and its impact on the decline of the State and society, as well as providing various forms of technical, material and information support for that purpose. When the government in question does not care about, contributes to, condones, or participates in such activities involving the children of the citizens of the nation it governs in working in the worst forms of child labor, such complicity must be exposed and criticized directly and these practices must also be exposed and various types of pressure and sanctions applied on the leadership to force them to comply with the articles of Convention 182.

⁷¹ The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, ILO Governing Body, 326th Session.

⁷² Eric Gravel, Tomi Kohiyama and Katerina Tsotroudi. 'A Legal Perspective on the Role of International Labour Standards in Rebalancing Globalization'.

Lack of government involvement and cooperation in ensuring compliance adversely affects several key related issues and thus ensures the failure of efforts to eliminate the worst forms of child labor. On the contrary, only when there is the necessary central will and political decisiveness by the government will this dynamic spirit be reflected by a state of mobilization and interaction within several ministries and coordination with community leaders and civil society organizations to determine what is needed to address this devastating phenomenon.

Finally, in general, democratic governments are most concerned with the advancement of their people and their abilities, because they are elected by the people, not imposed by iron and fire, and are often less corrupt because of the existence of accountability mechanisms for the government.

The following world map shows the prevalence of child labor, clearly demonstrating that the worst forms of child labor are most prevalent in tyrannical dictatorships that preserve power and plunder the country's wealth, at the expense of development, education and human rights.



Sixth: Proposal for the Establishment of a New Convention Sponsored by The ILO, CRC, and UNICEF, with a multi-disciplinary committee

The prevalence of the worst forms of child labor is complex and intertwined with several factors. The elimination or alleviation of this problem requires the participation of state authorities in several levels of cooperation and coordination alongside ILO Convention No. 182. In this context, I believe that the relevant ILO committees on the issue of child labor, in particular concerning the worst forms of child labor, should coordinate periodically and continuously with United Nations bodies, in particular UNICEF, and the Committee on the Rights of the Child of the 1990 Convention on the Rights of the Child. Such coordination should result in the joint drafting of a new convention between the ILO, the Committee on the Rights of the Child and UNICEF based on the Convention on the Rights of the Child⁷³ and its Protocols⁷⁴, ILO Convention No. 138 and 182 and its Recommendation No. 190⁷⁵. This new convention should overcome all the problems and take into account the observations and mistakes of all past years, and a joint working committee should emerge from the new convention.

⁷³ OHCHR, Convention on the Rights of the Child, <<<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>> [accessed 19 September 2019]

⁷⁴ OHCHR, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, <<<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>>> [accessed 19 September 2019]. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, <<<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>>> [accessed 19 September 2019]

⁷⁵ R190 - Worst Forms of Child Labour Recommendation, 1999 (No. 190), <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312528>> [accessed 19 September 2019]

The most prominent characteristics of this Committee:

- High flexibility in receiving and responding to complaints.
- The ability to impose tangible pressure on violating countries, for example, by requiring other ILO and UN member states to impose political, economic and legal sanctions⁷⁶ against the violating State.

As for the main tasks of this committee, they should be as follows:

a. Build and maintain an accurate and comprehensive global database of all the world's worst forms of child labor:

There is also a need to sensitize and assist governments in building a database of the causes, distribution and classification of the worst forms of child labor, and to ensure that these are periodically updated, including monitoring, documentation, archiving, technology, field visits, periodic meetings, etc. Without a doubt, such a database would contribute effectively to assisting in the reports and studies issued by the Committee, which would in turn contribute effectively to the formulation of operational plans, as well as raising the awareness amongst government officials and wider society about the seriousness and extent of this issue, and facilitate the process of coordination between the various actors, ensuring the compatibility of legislation and laws in the countries of the world with international conventions and protocols.

b. Focus on helping the countries worst affected by the worst forms of child labor⁷⁷ :

This is achieved through providing various forms of assistance and support. In case of repeated violations and non-responsiveness by the government in question, resort to putting pressure on the government. The aim of all this is to advance the fight against the phenomenon of the worst forms of child labor politically and make it a central issue for the government of the state by launching a comprehensive and central national revitalization program at several stages and levels. This would begin with monitoring the phenomenon, building a database, analyzing and studying the information, and committing to implementing the laws stipulated to combat all forms of child labor. This also includes harnessing state media to disseminate the necessary information and raise community and family awareness, implementing compulsory primary education⁷⁸, and combating child exploitation networks⁷⁹ engaged in the worst forms of child labor. Combating this phenomenon must be incorporated into education and poverty reduction strategy plans, technical and vocational training, rehabilitation programs, compensation for children and affected families⁸⁰, and other effective practices that the government can take when convinced of the feasibility and importance of eliminating the worst forms of child labor.

⁷⁶ UN, Sanctions, <<<https://www.un.org/securitycouncil/sanctions/information>>> [accessed 19 September 2019]

⁷⁷ World Atlas, Worst Countries For Child Labor, <<<https://www.worldatlas.com/articles/worst-countries-for-child-labor.html>>> [accessed 20 September 20, 2019]

⁷⁸ US Legal, Compulsory Education Law and Legal Definition, << <https://definitions.uslegal.com/c/compulsory-education/> >> [accessed 20 September 2019]

⁷⁹ Europol, CHILD SEXUAL EXPLOITATION, << <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/child-sexual-exploitation> >> [accessed 20 September 2019]

⁸⁰ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Preamble, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 19 September 2019]

c. Poverty alleviation:

It should be emphasized that the worst forms of child labor are mainly associated with low-income countries, but are not limited to them⁸¹. However, poor countries suffer more than others from the lack of resources to compensate families whose children have become the sole breadwinners, and the lack of material and human resources to implement the laws they have ratified and become part of their legislation. The Committee must therefore ask the other member states of the Convention to support the poor countries that are seriously willing to fight the phenomenon. Given the limited financial means, governments of countries that are serious and willing to act should be distinguished in order to guard against state exploitation and embezzlement of the funds allocated to fight poverty⁸² and thus contribute to prolonging the worst forms of child labor by the government itself.

d. Fighting the diversion of education:

Monitoring the phenomenon of education dropout and its causes demonstrates that it is closely linked with poverty and societal underdevelopment, with the database of the worst forms of child labor showing that it is one of the main reasons forcing children to engage in the worst forms of child labor. The Committee should ensure that all children of primary school age benefit from the right to free and compulsory education, and that children removed from the worst forms of child labor are integrated into the education system⁸³.

e. Awareness in the community⁸⁴:

The vast majority of child labor is concentrated in agricultural work, with the proportion of those engaged in such labor difficult to estimate given that it is largely concentrated in family business. Because of these two main reasons particularly, the Committee, in coordination with Governments, must make long-term and extensive efforts to raise awareness among society and its leaders about the dangers of the worst forms of child labor and its devastating impact on children and their future. Through a comprehensive outreach program involving multiple agencies and state ministries in each country as well as civil society organizations directed at eliminating any form of tolerance and acceptance by society and families towards allowing children to participate in the worst forms of child labor, all members of society can contribute to the fight against the phenomenon. This may include, for example: Training workshops, awareness workshops attended by community leaders, and prominent figures including intellectuals, artists and athletes, preparing press releases and documentaries, publishing stories and interviews, establishing a website and utilizing social media, as well as more traditional posters and publications.

The elimination of the worst forms of child labor is a core issue for defenders of human rights and children rights globally. Without real constructive criticism and serious changes to the existing mechanisms and methods of implementation, as well as efforts to devise new, stronger and more effective methods, we will never be able to eliminate the worst forms of child labor.

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⁸¹ Global estimates of child labour: Results and trends, 2012-2016 International Labour Office (ILO), Geneva, 2017, P. 13.

⁸² European Parliament, Cost of corruption in developing countries - how effectively is aid being spent?, 2015, <<[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU\(2015\)549042](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2015)549042)>> [accessed 20 September 2019]

⁸³ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Preamble, <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>> [accessed 19 September 2019]

⁸⁴ The end of child labour: Within reach REPORT OF THE DIRECTOR-GENERAL, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work / International Labour Conference, 95th Session 2006