

AN INTRODUCTION TO LEGALLY PROHIBITING HAZARDOUS WORK FOR CHILDREN



There is overwhelming support for the internationally agreed goal of stopping child labour, most recently reaffirmed by Sustainable Development Goal (SDG) Target 8.7.¹ Child labour is work that would harm or have negative consequences on children's development and wellbeing. However, when it comes to the details as to what exactly constitutes child labour, in terms of children's ages as well as forms, types or conditions of work, this need to be clearly defined in national laws. One of these forms is "hazardous work" – one of the worst forms of child labour, in which the employment or engagement of children (defined in international law as anyone under the age of 18 years) must be prohibited.

The prohibition and the effective elimination of hazardous child labour is a requirement of both of the ILO's fundamental Conventions on child labour, namely: the [Minimum Age Convention, 1973 \(No. 138\)](#), and the [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#).² These Conventions entail concrete legal obligations for action by ratifying ILO member States and are both nearing universal ratification. Both Conventions require the **national determination of a list of hazardous work** "by laws or regulations or by the competent authority" that should follow tripartite consultation with the relevant employers' and workers' organizations.³ The tripartite consultation ensures the relevance of the list, and enactment in law or regulation gives it the legal weight required for enforcement.

¹ The SDG Target 8.7 calls for measures to: "... secure the prohibition and elimination of the worst forms of child labour, ... and by 2025 end child labour in all its forms". See: www.ilo.org/global/topics/sdg-2030/lang--en/index.htm.

² Hazardous work is defined in the ILO Conventions as: "work which, by its nature or circumstances in which it is carried out, is likely to jeopardise the health, safety or morals of children" (Article 3(1) of Convention No. 138 and Article 3(d) of Convention No. 182.). The term "hazardous (employment or) work" is found in the Recommendations (Nos. 146 and 190) accompanying these Conventions. In this document, the term "hazardous work" without further description may be used with this limited meaning of such work "to be prohibited for engagement of children below the age of 18 years", instead of hazardous work as one of the general topics of OSH including regulations regarding adults' engagement in hazardous work.

³ Article 4(1) of Convention No.182 reads: "The types of work referred to under Article 3(d) [i.e. "hazardous work"] shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned...". Article 3(2) of Convention No.138 requires similar action.

BASIC PRINCIPLES REGARDING CHILD LABOUR

- The **general minimum working age** must be in line with the end of compulsory education – children below this age should be in school rather than in work or employment (unless exceptions apply).⁴ This is generally 15 years of age, but may differ by country.
- The **minimum age for hazardous work**⁵ shall not be less than 18 years of age (an exception may be permissible as from 16 years under strict conditions).

The two different age groups of children (below or above the general minimum working age) require different approaches:

- Younger (school age) children below the minimum working age should be withdrawn from work and helped to return to school, whether the work is hazardous or not. However, young children in hazardous work must be a priority target for rescue.
- Even having reached the minimum age, children below the age of 18 years must be protected from hazardous work or other worst forms of child labour (e.g., forced labour, use in commercial sexual exploitation or illicit activities). If a child above the general minimum age is found in hazardous work, it may be possible to change the task he or she is carrying out, or the conditions of work, so that it is no longer hazardous, thereby allowing the young person to keep working. If the work is inherently hazardous,

⁴ For further explanation of the exact requirements as well as flexibilities under Convention No. 138, please see ILO: *ILO Convention No. 138 at a glance*, Geneva, 2018. Available at: www.ilo.org/ipeinfo/product/download.do?type=document&id=30215.

⁵ See Article 3(1) and (2) of Convention No. 138. This does not mean whatever hazardous work is acceptable for adult workers as from 18 years of age – the occupational safety and health (OSH) for all workers is also an important theme of labour law and labour administration. However, even where there exists a good legal framework and implementation system on OSH for adult workers, it is still necessary to determine further specific protection for children under the age of 18 years.

such as in underground mining, and reassignment to a non-hazardous job is impossible, the young person needs to be removed from the work.

- Hazardous work lists are crucial especially for this latter group of children, who are old enough to work, but who still need to be protected as children, including from hazardous work.

CHILD LABOUR, HAZARDOUS WORK AND LIGHT WORK

- The elimination of child labour does not mean no child below 18 should engage in any work. As explained above, **child labour** basically comprises situations in which a child is too young to work (i.e. below the minimum working age, which should be in harmony with the end of compulsory education), or is engaged in work that is too hazardous or otherwise unacceptable and prohibited for all persons below the age of 18.
- “**Hazardous work**”, however, is not the only form of child labour that needs to be eradicated. The basic distinctions made in child labour standards are presented in Figure 1.
- “**Light work**” refers to work that is not harmful to the child and does not interfere with a child’s education, or her ability to benefit from education. Under Convention No. 138, light work can be permitted as from 13 or 12 years of age, as an exception to the general minimum age.⁶
- Between “hazardous work” and “light work”, there exists a wide range of “**normal**” or “**regular**” work.⁷ This is work neither hazardous nor light, and it is perfectly legal to employ or engage a child who has reached the minimum working age in such work.



⁶ See Article 7 of Convention No. 138 for detailed procedures and conditions regarding the light work exception. The exact tasks permissible as light work should also be specified by the national authority after tripartite consultation. Some countries have such consultation at the same time with that for the determination of hazardous work list.

⁷ The international, statistical guidelines on child labour, which address the distinctions in child labour standards in detail. See: *Resolution concerning statistics of child labour* – adopted by the Eighteenth International Conference of Labour Statisticians (November-December 2008). Available at: www.ilo.org/ipecinfo/product/download.do?type=document&id=13794.

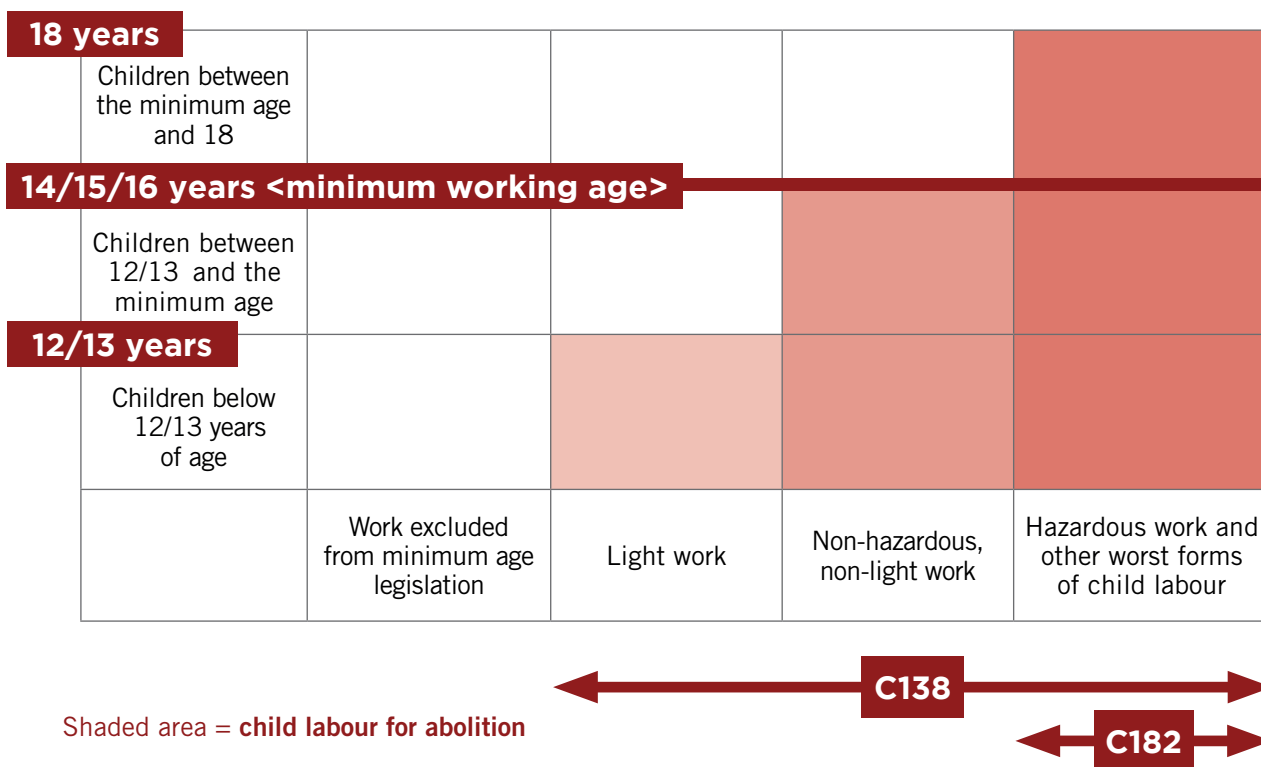
CHILD LABOUR, YOUTH EMPLOYMENT AND THE INTRODUCTION OF CHILDREN INTO DECENT WORK

- When young people who are between the minimum working age and 18 years of age are engaged in hazardous work, it is a worst form of child labour; when they are in decent work (neither hazardous nor other worst form of child labour), it is youth employment. This illustrates the importance of regulating and eliminating hazardous work for adolescents of that age group, who face a massive challenge of unemployment and underemployment.
- The exceptions to the minimum age rules include work by children in the context of education and training, under protection and supervision.
- The exception to the hazardous work prohibition (as from 16 years, under strict protection and prior instruction)⁸ also responds to the need to provide young workers with on-the-job training to learn occupations that may include hazardous tasks – for example apprenticeships in carpentry – that require the use of potentially dangerous tools.
- However, personal protective equipment would not render hazardous work permissible for children: a small helmet does not make underground mining acceptable for a child nor does a small hazard suit permit a child to spray pesticides.
- The transition from school to work is a challenge even where children have completed compulsory or further education. Starting to work prematurely (below the minimum age and usually to the detriment of their education) does not mean a head start in entry into decent work. On the contrary, those who start work too early in child labour are more likely to end up in informal, unskilled or non-standard forms of employment with related disadvantages for life.



⁸ See Article 3(3) of Convention No. 138 and Paragraph 4 of Recommendation No. 190.

FIGURE 1. WHAT IS CHILD LABOUR TO BE ABOLISHED?



Source: Adapted from ILO: *A future without child labour*, Global Report, Report I(B) ILC 90th, 2002 (Figure 2, p. 10). Available at: www.ilo.org/ipecinfo/product/download.do?type=document&id=2427.

HOW WIDESPREAD IS HAZARDOUS CHILD LABOUR?

The 2016 Global Estimates of Child Labour¹ indicate that about **73 million children are in hazardous work** – i.e. work that is likely to harm their health, safety or morals. This is nearly half of the estimated **152 million children in child labour**. Disaggregated by age, more than **37 million children in hazardous work are 15 years of age or older**. Having reached the minimum working age, which is generally 15, if they were in non-hazardous and decent work, they would be in youth employment and not in child labour. The size of this group is not negligible, particularly compared with the estimated **71 million unemployed youth** worldwide in 2017.² Hence, attention should be paid to the link between eliminating hazardous child labour of older children and promoting decent youth employment.

Recent data confirm that the problem exists worldwide, including in high income countries, where 1.6 million children are in hazardous work. The 2016 Global Estimates provide data for the first time from countries in Europe and Central Asia regarding hazardous work by 15-17 year-olds, where 5.3 million, 4% of the 5-17 age group, are in hazardous child labour.

¹ ILO: *Global Estimates of Child Labour: Results and trends, 2012-2016*. Available at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf.

² ILO: *Global Employment Trends for Youth 2017: Paths to a better working future*. Available at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_598669.pdf.

INCREASED ATTENTION TO THE LINK WITH YOUTH EMPLOYMENT

SDG Target 8.7 explicitly requires the ending of child labour in all its forms by 2025. The IV Global Conference on the Sustained Eradication of Child Labour held in Buenos Aires in November 2017 covered not only child labour and forced labour, but also promotion of youth employment.⁹ Further, SDG target 8.8 requires urgent action to promote safe and healthy working environments, in particular for vulnerable workers including young workers who are at high risk of occupational accidents and injuries. As an integral part of the XXI World Congress on Safety and Health at Work in September 2017 in Singapore, a Youth Forum for Prevention focused on occupational safety and health for young workers, and the World Day for Safety and Health at Work 2018 adopted the same theme.

It is therefore timely to call greater attention to the legal framework for the introduction of children and young people into decent work. There is no contradiction between the elimination of child labour including hazardous work by children above the general minimum age for work on the one hand, and the promotion of youth employment on the other. This overlapping age group who are still “children” below 18 years of age are also in the younger age range of “youth” whose employment should be promoted. The ultimate goal for these **adolescents** must not just be getting them out of hazardous work, but also ensuring their transition into **decent youth employment** with appropriate protection of their occupational safety and health. It is important to underline the overlap between the concepts of children and youth, and between eliminating child labour and promoting youth employment.¹⁰ An appropriate legal list of prohibited hazardous work is indispensable for drawing a line between hazardous child labour to be stopped and youth employment to be promoted.

Nonetheless, the link between eliminating hazardous child labour of older children and promoting decent youth employment should neither overshadow nor undermine the imperative of pursuing **integrated approaches** to the eradication of all forms of child labour performed by children of all ages. Among the most shocking data

⁹ See: *Buenos Aires Declaration on Child Labour, Forced Labour and Youth Employment*, p. 6. Available at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/meetingdocument/wcms_597667.pdf.

¹⁰ See e.g. ILO: *Paving the way to decent work for young people – World Report on Child Labour 2015*. Available at: www.ilo.org/ipeinfo/product/download.do?type=document&id=26977.

in the 2017 Global Estimates are that child labour among 5-11 year old children has not diminished and that hazardous work among these youngest and most vulnerable children even increased. Unless one could prevent these young children from entering child labour in the first place, child labour will never be eradicated.

BUILDING ON THE ILO EXPERIENCE IN SUPPORTING CONSTITUENTS

Adopting or updating legislative provisions specifying the types and conditions of hazardous work prohibited for children is an important component of national action against child labour. Member States have requested and received technical assistance in this regard from the ILO through individual projects, ad-hoc advice or **training** over the years.¹¹

The ILO’s supervisory bodies regularly remind member States of their obligation to adopt or revise the legal list of hazardous work prohibited for children. Additional pressure sometimes originates from trade unions, trade counterparts, enterprises in global supply chains and, on occasion, consumers – anyone who wishes to seek clarity on the prohibition, including for the purpose of assessing the situation and thus to move ahead towards the elimination of hazardous child labour. However, a considerable number of countries are yet to adopt or update their list of prohibited hazardous work, and are subject to comments from the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).

The ILO, especially through the technical assistance projects by IPEC (the International Programme on the Elimination of Child Labour), and sometimes in collaboration with other Branches, has produced a number of products on the topic, either for global guidance or as syntheses of national experiences. While a number of these publications address the explicit obligation under both Conventions Nos. 138 and 182 of tripartite consultation in the process of determining hazardous work to be included in the list, more emphasis might need to be placed on the importance of transposing the consensus into enforceable legislative provisions. The ILO’s support to constituents on this specific point is continuing.

¹¹ For instance, advice was given to Myanmar on the Draft List through the MyPEC project; when the First Lady of Côte d’Ivoire visited the ILO HQ in April 2016, one of the main issues of discussion was the hazardous work regulations and further advice has been provided through specialists in the field; the nine Portuguese-Speaking countries (CPLP members) had a tripartite training workshop on the topic in Aug-Sept 2016 in Lisbon.