

**A Review of Child Labour Laws
of the Bahamas
- a Guide to Legislative Reform**

Clive Pegus

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**ILO/CIDA Regional Child Labour Project
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TABLE OF CONTENTS

Executive Summary	1
1. Introduction	6
1.1 Terms of Reference	6
1.2 Methodology	6
1.3 Structure	7
1.4 Issues	8
2. Convention Framework	9
2.1 Background	9
2.2 Definition of Child Labour	9
2.3 ILO Convention No. 138	10
2.3.1 Primary Objectives	10
2.3.2 Child Labour Policy	10
2.3.3 Minimum Age for Employment	11
2.3.4 Exception for Light Work	11
2.3.5 Exception for Artistic Performances	12
2.3.6 Hazardous Work	12
2.3.7 Exclusions	13
2.4 ILO Convention No. 182	14
2.5 Enforcement	15
2.6 Legal Status of Convention	15
3. Socio-economic Background of Child Labour	17
4. A Review of the Policy, Legal and Institutional Framework on Child Labour	19
4.1 Policy	19
4.2 Legal Framework	23
4.2.1 Minimum Age for Employment	23
4.2.2 Exception for Light Work	26
4.2.3 Exception for Artistic Work	27
4.2.4 Hazardous Work	27
4.2.5 Exclusions	29
4.3 Unconditional Worst Forms of Child Labour	29
4.3.1 All forms of slavery or practices similar to slavery	29
4.3.2 Sale and trafficking of children	30
4.3.3 Debt bondage, serfdom, forced and compulsory labour	32
4.3.4 Compulsory recruitment in armed conflict	32

4.3.5	Use, procuring or offering a child for prostitution, pornography or pornographic performances	33
4.3.6	Use, procuring or offering a child for illicit activities, production and trafficking of drugs	34
4.4	Enforcement	35
4.5	Investigation and inspection	36
4.6	Institutional Framework	37
5.	Conclusions and Recommendations	39
	References	41
	Appendix I - Summary of Good Practices in countries studied	43
	Appendix II – Questionnaire on Child Labour	49

Executive Summary

The Bahamas has ratified both ILO Conventions No. 138 on the Minimum Age for Admission to Employment and No. 182 on the Worst Forms of Child Labour. An obligation of ratification is that the Government of the Bahamas must ensure that its laws comply fully with the requirements of the Convention and that all measures are in place for the implementation of the Convention. This study seeks to review the laws on child labour in the Bahamas within the context of the ILO Conventions. Its main concern is to identify apparent gaps and inconsistencies in the laws and to provide a guide for legislative reform.

Policy

An important requirement of ILO Convention No. 138 is for Members to develop a policy for the elimination and prevention of child labour. Unfortunately, although the Bahamas has sound national policies in areas connected with child labour, such as education, childcare protection, welfare, social security, labour administration and other social development, there is no coherent explicit policy on child labour. What exist are related policies that were formulated without any specific reference to the Convention on child labour.

The Ministry of Labour and Immigration has initiated action to remedy the policy deficiency and has recently established a National Committee on Child Labour whose task is to make recommendations for a policy on child labour. The procedure for the establishment and the composition of committees on child labour should take cognizance of the fact that child labour transcends the policy limits of the Ministry of Labour. It involves not only the Ministry of Labour and Immigration but also the Ministries of Education, Health, Social Services, Human Development, Family Services, Justice and Police, Attorney General, Youth Affairs, Immigration, Agriculture, Tourism and Statistics. It also involves the trade union movement, employers' organizations and non-governmental organizations. A policy on child labour must be placed in the context of national, social and economic development policies that address the larger issues of poverty, education, family life and youth development.

The Bahamas may wish to ensure that the Committee considering the formulation of policies on child labour is a sub-Committee of the National Committee on Children. Thus, the policies would be considered within a broader policy, administrative and institutional context that seeks to connect all programmes and institutions promoting the protection of the rights of the child. This would facilitate an integrated and coordinated approach by all agencies in the implementation of their work programmes.

It is also important that the national policy be formulated in a coherent and coordinated manner. This will ensure that all aspects of child labour, including legislation, education, labour market policies, social security, health, welfare and social development are properly addressed and coordinated. In this connection, child labour policy must provide the framework within which all institutions approach their individual and collective tasks of seeking to abolish child labour. It should also facilitate an integrated and coordinated approach by all agencies in the implementation of their work programmes. Each agency will identify the connection of their work with the work of other agencies. Moreover, a policy framework will also serve to guide the administration of the laws on child labour.

Legal Framework

Minimum Age for Employment

ILO Convention No. 138 requires member States to adopt one general minimum age for admission to work. This age should not be less than the age of completion of compulsory schooling and not less than fifteen (15) years. Countries whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers, initially specify a minimum age of fourteen years.

The Bahamas has two minimum ages for admission to work. The Bahamas, after consultation with the social partners, has determined a general minimum age for admission to employment or work at age fourteen (14) years. It also has a minimum age of sixteen (16) years, which is limited for work on ships. The Bahamas' economy and educational facilities cannot reasonably be considered to be insufficiently developed to justify a general minimum age for admission to work at fourteen (14) years. The Bahamas is a high human development country. Its per capita income is higher than Barbados and Trinidad and Tobago, which has set its minimum age for employment at 16 years. Moreover, it has established a compulsory age for completion of schooling at 16 years and has adequate facilities to achieve this objective.

The Bahamas therefore does not comply with its ILO obligation on three grounds:

- (i) it has two rather than one minimum age;
- (ii) its minimum age of fourteen (14) years is less than the compulsory age for completion of schooling; and
- (iii) its economy and educational facilities cannot be considered to be insufficiently developed to justify a minimum age lower than fifteen (15) years.

The Government of the Bahamas is encouraged to review its general minimum age for employment with the objective of increasing it upward to sixteen (16) years.

Light Work

ILO Convention No. 138 makes provision for a lower minimum age for light work. The Government of the Bahamas did not make any declaration on ratification of Convention No.138 regarding any exception from the minimum age for light work. However, its Employment Act provides for an exception to the minimum age in the four categories of work. There is a lacuna in the Bahamas' provision for light work in that its legislation does not stipulate any minimum age for employment in these categories. To be consistent with the Convention, there should be a minimum age of two years younger than the general minimum age for employment and should be set at 12 years, where the minimum age for general employment is 14. Given the suggestion that the minimum age for employment should be consistent with the compulsory age for education and the recommendation that the minimum age should be 16 years, it is recommended that the minimum age for the exceptional categories mentioned in this paragraph should be fourteen and not twelve. It is noted that the exceptional category is limited in time until 2006. The Bahamas should be commended for placing a limitation on the exceptional category.

Artistic Performances

The Bahamas has in place an adequate legal framework to deal with artistic performances of children. Child actors/artistic performers require a permit (Order) of the Minister of Labour and Immigration. The Minister has to consult with both the employers' confederation and the trade unions congress and the Order is subject to affirmative resolution of the House of Assembly. The officials of the Ministry of Labour and Immigration and the social partners are satisfied with the manner in which the issue of artistic performances of children is addressed. There are usually regulations in the Minister's Order, which seek to protect the welfare of the child performer.

Hazardous Work

In the Bahamas, the legal framework that addresses the specific concerns of children and young persons with respect to hazardous work is inadequate. The Health and Safety at Work Act No. 2 of 2002, which seeks to secure the health, safety and welfare of persons at work, generally does not address the requirements of Conventions Nos. 138 and 182. It makes no specific provision for the special protection of young persons and children at work. There is the prohibition of children under fourteen (14) years from working in industrial undertakings. However, the Government has not determined the types of work to be considered as hazardous for young persons under eighteen (18) years.

The ILO provisions concerning hazardous work are partially addressed in the Education Act. This Act gives the Minister of Education the power to prohibit or restrict the employment of children under the age of sixteen years who are registered at a school

where the child's employment is prejudicial to his/her health or otherwise renders him/her unfit to obtain the full benefit of an education. This provision falls short of the requirement of the ILO Conventions Nos. 138 and 182 in that it does not apply to young persons between the ages of sixteen (16) and eighteen (18) years nor does it provide a mechanism for the determination of hazardous work. Moreover, the Ministry of Education does not have the structure in place to directly address the issue of child labour. Its primary role is the educational development of the full potential of the child. The prohibition of hazardous work for young persons under eighteen years is the primary responsibility of the Ministry of Labour and Immigration and not the Ministry of Education.

In order to comply fully with the requirements of the ILO Conventions, the Government of the Bahamas will be well advised to amend its Health and Safety at Work Act to allow for:

- (i) the prohibition of hazardous work by young persons under eighteen (18) years;
- (ii) a procedure for the determination of hazardous work;
- (iii) an obligation on employers to maintain a register of young persons employed; and
- (iv) appropriate penalties for violation of these proposed provisions.

Unconditional Worst Forms of Child Labour

There are laws in the Bahamas which outlaw most activities involved in the worst forms of child labour. However, these laws are not characterized as child labour but as criminal offences and there are some deficiencies and gaps. There is no specific offence of child trafficking, and the upper age limit for some offences under the Offences against the Persons Act and the Sexual Offences Act is below the age of 18 years.

It is recommended that the Bahamas should enact a legal framework specifically for the purpose of addressing the unconditional worst forms of child labour.

Institutional Arrangements

The Labour Inspectorate is the principal organ of the Government of the Bahamas to monitor and detect child labour and the worst forms of child labour. However, there is no legal duty for any systemic review of the situation of child labour in the Bahamas. Moreover, the Government does not have the human resource capability or a programme of action to eliminate as a priority the worst forms of child labour as a matter of priority. The Government will have to devote additional human resources and training to the programme for the elimination of child labour to accomplish its obligations under ILO Conventions Nos. 138 and 182.

The Ministry of Education plays an important role in the prevention of child labour. There is a legal right to compulsory free education up to the age of sixteen years. There is also a system in place to monitor school attendance. There is also a legal framework in place that imposes sanctions upon parents and guardians for neglecting to send children of compulsory school age to school.

The Department of Social Services is the agency responsible for identifying and reaching out to children at risk. It is also responsible for the reintegration in training and educational programmes of children removed from the worst forms of child labour.

These agencies have not yet developed time-bound measures for the elimination of child labour and the removal of children from the worst forms of child labour. Partly responsible for this deficiency is the late official acknowledgement that child labour exists in the Bahamas as well as the absence of a comprehensive policy framework. The Government is urged to proceed with a sense of urgency to develop its time-bound measures for the elimination of child labour.

1. Introduction

1.1 Terms of Reference

This study, commissioned by the International Labour Organization, Subregional Office for the Caribbean, reviews the laws on child labour in the Bahamas, within the context of ILO Conventions Nos. 138 and 182 and ILO Recommendations Nos. 146 and 190. It is part of a wider project, which reviews child labour laws of six Caribbean countries, namely the Bahamas, Barbados, Belize, Guyana, Suriname and Trinidad and Tobago.

The main concern of this review is to identify *apparent gaps and inconsistencies* in the laws relating to child labour in the Bahamas and to provide a *guide for legislative reform to ensure compliance* with the requirements of the ILO Conventions under reference.

The primary practical purpose of the review is to propose *recommendations for an effective legal framework for the elimination of child labour in the Bahamas*. This involves not only consideration of the laws but also certain ancillary non-legal elements contained in the Convention. These include the policy framework on child labour as well as the administrative and institutional arrangements for the monitoring and enforcement of the laws that seek to eliminate and prevent child labour.

1.2 Methodology

This review used as its frame of reference the ILO Conventions and Recommendations on child labour. The author reviewed relevant handbooks, manuals and reports produced by or under the auspices of the ILO in order to determine whether the laws of The Bahamas dealing with child labour were framed and administered in accordance with the expectations of the Conventions.

In this regard, the study benefited from reports by the Government of the Bahamas under Article 22 of the Constitution of the International Labour Organization. It also benefited significantly from the report by Leith Dunn on *The Situation of Children in the Worst Forms of Child Labour in a tourism economy: A Rapid Assessment*, which was undertaken for the Child Labour Project of the ILO Subregional Office for the Caribbean in 2002.

The review took note of the policy, institutional and socio-economic context within which the issues of child labour are addressed in the Bahamas. This was important in order to ensure that relevant country-specific background was taken into consideration in the review of the laws and that recommendations are practical and effective in addressing specific deficiencies.

This study also benefited from the information and insights provided by officials of the Government of the Bahamas and stakeholders in interviews on issues relating to the law, policy, programmes, monitoring and enforcement of measures to eliminate child labour. In this regard, discussions were held with officials from the:

- Ministry of Labour and Immigration;
- Attorney-General's Office;
- Social Services Department;
- The Bahamas Police Service;
- Child Care Board;
- The Bahamas Employers' Confederation (BEC);
- The Bahamas Trade Union Congress;
- The National Congress of Trade Unions.

These interviews provided the author with a broad perspective on the functioning and enforcement of the current laws and their socio-economic context. The attached questionnaire served as the basis for discussion on child labour issues relating to policy, legislation, programmes, administration and enforcement.

The laws reviewed were:

- Employment Act, 2001
- Constitution of the Bahamas, 1973
- Title XI, Brothels and Immoral Traffic (Penal Code)
- Children and Young Persons Administration of Justice Act
- Chap. 318, Recruiting of Workers Act, 28 of 1939
- Dangerous Drugs Act, 1988
- Sexual Offences and Domestic Violence Act, Chap. 99
- Education Act, 1962 (including 1996 amendments)
- Liquor Licences Act Chap. 318;
- Minimum Wages Act No. 1 of 2002;
- Health and Safety at Work Act No. 2 of 2002

The conclusions identified some good practices in the Bahamas, which could be relevant and useful for other Caribbean countries. Similarly, the recommendations took into consideration some good practices identified in the review of child labour laws of the other Caribbean countries, which were included in this project.

1.3 Structure

The study commences with a description of the requirements of the ILO Conventions on Child Labour and an outline of the socio-economic context within which the problem of child labour is addressed. It then proceeds with the actual review of the laws of the Bahamas that seek to comply with the various obligations of the Conventions.

In terms of organization, the core obligations of ILO Convention No. 138 are discussed before those relating to ILO Convention No. 182. The issue of hazardous work, common to both Conventions, is discussed within the context of ILO Convention No. 182. Other issues that are common to both Conventions such as enforcement, investigation and inspection, prevention, and institutional arrangements are discussed after the substantive issues are addressed.

The study is organized into the following broad sections:

- (i) the Convention Framework;
- (ii) the Socio-economic Background;
- (iii) Review of Legal Policy and Institutional Framework
 - (a) policy;
 - (b) minimum age;
 - (c) hazardous work;
 - (d) unconditional worst forms;
 - (e) enforcement;
 - (f) investigation and inspection;
 - (g) prevention;
 - (h) institutional arrangements;
- (iv) Conclusions and recommendations.

1.4 Issues

Some central issues considered were:

- (i) Should the development of a comprehensive policy framework for the elimination of child labour be a pre-condition for law reform and if so, what should be the major elements of such a policy?
- (ii) Should law reform, if required, be limited to amendments of existing laws or a consolidation of the laws, or should it embrace a new comprehensive law dealing specifically with child labour?
- (iii) Could law reform be effective without the mainstreaming of child labour issues within all relevant institutions and without a reorientation of the society's cultural norms and institutional strengthening?
- (iv) What institutional arrangements are required to support the monitoring and enforcement of child labour laws?

2. Convention Framework

2.1 Background

This chapter briefly describes the requirements of ILO Convention No.138 and No. 182 and their related Recommendations, and examines their legal implications for the Bahamas.

The ILO Conventions Nos. 138 and No. 182 seek to protect children from work that is detrimental to their mental, physical, moral, social and educational development. Convention No. 138 was adopted in 1973, twenty-six (26) years earlier than the adoption of Convention No. 182. It requires Member States to establish a *general minimum age* for admission to employment or work. It replaces and consolidates a number of Conventions dating from 1919 on the minimum age for admission to employment in restricted sectors and workplaces. In the words of its Preamble, “*the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour*”.

ILO Convention No.182 seeks to complement and enhance ILO Convention No. 138 by addressing the need for the *immediate prohibition and elimination of the worst forms of child labour as a priority* for national and international action. It addresses concerns that are wider than labour market issues; and includes all economic activities of children whether classified traditionally within the labour market context or not. Thus, it includes activities such as trafficking in children and commercial sex activities. It also has both a national and international focus in its scope and implementation.

2.2 Definition of Child Labour

It is important to stress that these Conventions do not prohibit all forms of work by children. Indeed, the social and moral development of children requires that the value of work be instilled at a reasonable age. Such work must however be compatible with the welfare of the child and a distinction must be made between legitimate child work and prohibited child labour.

Child labour is work carried out to the manifest detriment and endangerment of the child, in violation of the rights of the child, international law as defined in the ILO Conventions and national law of the particular country, in this case, the Bahamas. The ILO Publication entitled “Action Against Child Labour” describes child labour as “*both paid and unpaid work and activities that are mentally, physically, socially or morally dangerous and harmful to children. It is work that deprives them of opportunities for schooling or that requires them to assume the multiple burdens of schooling and work at home and in other workplaces; and work that enslaves them and separates them from their family.*”

The author has found in the course of this study that the distinction between legitimate child work and child labour was not always clearly understood by all officials and stakeholders in the Bahamas and the Caribbean region. Officials in more than one country had expressed the view that the Caribbean did not have genuine child labour and that the Rapid Assessments misconstrued legitimate cultural or social practices as child labour. One high ranking official made the point that in her country child labour was not an obstacle to the proper development of children. The real problem was dysfunctional family values and poor parental skills. That official indicated that in rural agricultural communities in her country children would often miss school during the harvest season to assist in their family farms. Yet, the educational development of those children, of which she was one, was not affected. Many of them turned out to be professionals, such as lawyers, doctors and engineers. She argued that had they not assisted their family in their farms, they would not have had the financial means to achieve their level of professional qualifications. In other words, the ends justified the means. Another misconception was that child labour only involved paid economic activities; that unpaid work could not constitute child labour.

Generally it was found that those officials who attended seminars on child labour organized by the ILO Subregional Office for the Caribbean, had a good understanding of the meaning of the term *child labour* and the requirements of the Convention. In contrast, those officials who did not benefit from such orientation and training did not demonstrate an accurate understanding of the term child labour, even though their work may be connected with some aspect of the rights of children. The lack of a proper understanding by officials about child labour creates difficulties for their monitoring and implementation of the provisions of the Convention.

2.3 ILO Convention No. 138

2.3.1 Primary Objectives

This Convention's primary objectives are the obligations imposed upon member States to:

- pursue a national policy designed to ensure the effective abolition of child labour;
- establish by law a minimum age for admission to employment and work within its territory and on means of transport registered in its territory;
- prohibit the employment of young persons under 18 years of age in work or activities that is likely to jeopardize their safety, health or moral development.

2.3.2 Child Labour Policy

Guidelines regarding the policy on child labour are contained in ILO Recommendation No. 146. These guidelines call for high priority to be given to planning for and meeting the needs of children and youth in national development policies and programmes, and

to the progressive extension of the inter-related measures necessary to provide the best possible conditions of physical and mental growth for children and young persons. It is important to stress that a child labour policy includes but extends beyond the jurisdictional remit of the traditional Ministry or Department of Labour.

Elimination of the causes of child labour is a major policy concern. In this regard, special attention and effective measures are required in the areas of employment policy, poverty alleviation, social security, child welfare and education.

2.3.3 Minimum Age for Employment

ILO Convention No.138 provides that member States must determine a general minimum age for admission to employment. While the Convention permits certain exceptions, its general objective is that *the minimum age should be applicable to all sectors* of the economy. This age should not be lower than the compulsory age for the completion of basic education and in any case not less than fifteen (15) years. The general minimum age is to be determined at the time of ratification of the Convention.

The Convention also enjoins member States to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. ILO Recommendation No.146 provides that the minimum age should be fixed at the same level for all sectors of economic activity and the objective should be to raise it progressively to sixteen (16) years.

The Convention provides some *flexibility for countries whose economy and educational facilities are insufficiently developed* to specify, after appropriate consultations with the social partners, a minimum age of fourteen (14) years.

2.3.4 Exception for Light Work

Article 7 of ILO Convention No. 138 allows a *younger minimum age for light work*. Light work may be undertaken by children two years younger than the declared minimum age for admission to general employment.

Light work is considered to be work which is “*not likely to be harmful to the health or development of young persons and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.*”

It is important to note that the light work has to be *properly regulated*. The activities, number of hours and other conditions in which such work may be permitted must be determined by the competent authority, after consultation with the organizations of employers and workers concerned (social partners).

ILO Recommendation No. 146 elaborates on the conditions in which light work may be permitted. It states that special attention should be given to:

- (a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work;
- (b) the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework), for rest during the day and for leisure activities;
- (c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days;
- (d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults;
- (e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;
- (f) the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.

2.3.5 Exception for Artistic Performances

There is also an exception for artistic performances by children under the minimum age for admission to employment. Exceptions may be granted:

- after consultation with the social partners; and
- by permits in individual cases which must limit the number of hours that can be worked and specify the conditions.

2.3.6 Hazardous Work

Both ILO Conventions No. 138 and No. 182 proscribe hazardous work for young persons under the age of 18 years. Hazardous work is defined as “*any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize their health, safety or moral development.*” ILO Convention No. 182 characterizes hazardous work as a worst form of child labour, which all States should take immediate action to eliminate and prevent.

Both Conventions provide a standard procedure by which hazardous work may be determined, that is, by national laws or by the competent authority, after consultation with the organizations of employers and workers concerned. ILO Convention No. 182 stipulates further that relevant international standards should be taken into consideration. It also calls for the list of hazardous work to be periodically examined and revised. It is important to note that *the list of hazardous work is not to be limited to industrial*

undertakings, factories, machines or construction. It must include all work, activities or occupation that jeopardize the health, safety or moral development of children.

ILO Recommendation No.190 provides some guidelines in determining hazardous work. It specifies that consideration should be given to:

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) 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.

ILO Convention No.138 and ILO Recommendation No.190 exceptionally allow young persons over sixteen (16) years of age to undertake hazardous work in certain conditions under specified protective mechanisms. Article 3 (3) provides that national laws or regulations or the competent authority may, after consultation with the representative organizations of employers and workers concerned, conditionally authorize employment or work as from the age of sixteen (16) years. A vital prerequisite is that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

ILO Convention No. 138 also provides for employers to maintain a register of employees under the age of 18 with information on their date of birth and date of appointment and date of termination of appointment. This register should be open to inspection by the competent authority.

2.3.7 Exclusions

ILO Convention No. 138 provides several flexibility provisions. Apart from the exception for light work and artistic performances, it permits, after consultation with the social partners, *the exclusion of limited categories of work for which special and substantial problems may arise*. However, work that is likely to jeopardize the health, safety or morals of young persons may not be excluded. Moreover, States must review

excluded categories on an ongoing basis and make progress towards eliminating the special and substantial problems, which make broad application difficult.

This flexibility provision applies to developing countries. Article 5 provides that a country whose economy and administrative facilities are insufficiently developed may initially limit the scope of application of the Convention to certain branches of economic activity or types of enterprises. The following sectors, however, are excluded from exemption:

- mining and quarrying;
- manufacturing;
- construction;
- electricity, gas and water;
- sanitary services;
- transport, storage and communication;
- plantations and other agricultural undertakings mainly producing for commercial purposes.

Countries limiting application initially are still to report on child work in excluded categories and on their progress towards achieving broader coverage of the requirements of the Convention. This Article could only be invoked at time of ratification.

The Convention in Article 6 also excludes work done by children and young persons in schools for *general, vocational or technical education or in other training institutions, or work done by persons at least 14 years of age* in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the representative organizations of employers and workers concerned, where such exist, and is an integral part of:

- (a) a course of education or training for which a school or training institution is primarily responsible;
- (b) a programme of training in an undertaking approved by the competent authority; or
- (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or a line of training.

2.4 ILO Convention No. 182

This Convention targets the worst forms of child labour. In addition to provisions on hazardous work similar to Convention No.138 already mentioned, Convention No.182 addresses certain *unconditional worst forms of child labour*, which comprise:

- (i) slavery and all practices similar to slavery including forced labour, serfdom and bonded labour, the involvement of children in wars and armed conflict;
- (ii) prostitution and pornographic performances and other forms of commercial sexual activity; and
- (iii) illicit activities such as the production and distribution of illegal drugs.

Member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. It also specifies the kinds of measures that member States must take in the implementation of the Convention. In designing these measures, States are required to take into account *the importance of education in eliminating child labour* and take *effective and time-bound measures* to:

- (a) prevent the engagement of children in the worst forms of child labour;
- (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) ensure access to free basic education and, wherever possible and appropriate, vocational training for all children removed from the worst forms of child labour;
- (d) identify and reach out to children at special risk; and
- (e) take account of the special situation of girls.

Because of the potential cross-border character of the unconditional worst forms of child labour, ILO Convention No.182, unlike ILO Convention No.138, specifically calls for international cooperation in eradicating the causes of the worst forms of child labour and in the implementation of the Convention.

2.5. Enforcement

Both Conventions require member States to take all measures necessary for the effective enforcement of the provisions of the Convention. This involves the provision of appropriate penalties. In addition, the national laws or regulations or the competent authority must:

- (i) define the persons responsible for compliance with the enabling laws; and
- (ii) prescribe the registers or other documents which have to be kept and made available by the employer.

2.6 Legal Status of Convention

Having ratified ILO Convention No.138 and No.182, the Bahamas has an obligation under international law and under the Constitution of the ILO to ensure that its laws comply fully with these Conventions.

A fundamental principle of international law enshrined in Article 26 of the Vienna Convention on the Law of Treaties, ratified by the Government of the Bahamas, is that *every treaty in force is binding upon the parties to it and must be performed by them in good faith*. Article 27 prevents a party from invoking its internal law as justification for its failure to perform a treaty.

This principle is also enshrined in the Constitution of the International Labour Organization. Article 5 imposes an undertaking on each Member State to bring, within one year from ratification of an ILO Convention, the Convention before the authorities within whose competence the matter lies for the enactment of legislation or other action.

Within the jurisprudence of the Bahamas, unlike Suriname, ratified treaties are not considered to be directly applicable without enabling legislation. Therefore where there is an inconsistency between national law and the provision of an ILO Convention, which the Bahamas has ratified, *the Government of the Bahamas has one year from ratification to enact enabling or amending legislation to ensure compliance with the ILO Convention*.

It should be noted here that, while ILO Conventions are considered to be binding in international law on States, which have ratified them, ILO Recommendations are of persuasive authority only. They are however considered to be soft law, which should serve as guides to the implementation of the Conventions and should be generally observed.

3. Socio-economic Background of Child Labour

The Bahamas is an archipelagic State consisting of approximately 700 islands located 55 miles off the southeast coast of Florida. Only 22 of the islands are inhabited. The most populated of the islands are New Providence and Grand Bahama and over 95 per cent of the population lives on seven islands. The other islands that are inhabited are sparsely populated.

According to the 2000 census, about 28.5 per cent of the population are between 5 and 18 years. The Bahamas has for many years experienced a constant flow of undocumented Haitian nationals fleeing from economic and political oppression in their homeland. The physical nature of the islands, demographic features and the presence of a significant undocumented migrant group present challenges to public administration and social services with implications for the situation of child labour.

The Bahamas is a high human development country. Its economy is dominated by the services sector and tourism in particular. Services account for about 90% of the GDP. Tourism and tourism-related services account for 60% of the GDP and 60 % of employment. It has the highest per capita income in the English-speaking Caribbean estimated at close to US \$17,000. Its unemployment rate stands at under 7% which is very favourable even by the standards of developed countries. It is well placed in the UNDP Human Development Index (51 in the 2004 Index), which measures achievements in terms of life expectancy, educational attainment and adjusted real income.

The education, health and poverty indicators are good. It has a literacy rate of 96%. *School enrolment rates are high (97.4% for primary schools and 85.7% for secondary schools). The teacher pupil ratios are also favourable by Caribbean standards (1:17 for public schools).* Primary and secondary education is free and compulsory up to the age of 16 years. The Minister of Education has a statutory duty to ensure that there are available school places for all children under the age of 16 years.

Primary and secondary health care are provided free of charge to all children. These include health monitoring, surveillance, preventive, curative and rehabilitative care. The Bahamas has a comprehensive programme of social and welfare services including basic needs support for indigent persons, food and financial assistance for unemployed mothers with children, employment programmes for the unemployed, training programmes, and children and family services. The child protection services include the investigation of reported cases of child neglect, abandonment and abuse. It also has the power and resources to remove children from abusive situations and make provision for alternative care. In this regard, it has residential care facilities or institutions for children in most of the inhabited islands.

The Social Services Department also has a school welfare service to monitor the absenteeism of children. There are School Welfare Officers who are responsible for investigating social problems of students who were truanting. The Dunn's report concluded that there were too few Truant Officers to effectively monitor children's school attendance.

The Bahamas' socio-economic situation and policy framework and systems in the areas of education, health, welfare and social services are well developed and there are institutional mechanisms for childcare and protection, which reduce the likelihood of the child labour problem. However, there are pockets of poverty estimated at 9.1% in the recent Survey of Living Conditions and there are special groups of children who may be at risk. The Dunn's study identified those groups in:

- Haitian families headed by a single female who is poor;
- Dysfunctional families with members involved in drugs, violence and gangs;
- Families with parents who are HIV positive or have AIDS;
- Families where moral values are poor and parenting skills are limited;
- Families where incest and other forms of abuse are evident;
- Poor Bahamian families.

Indeed, the study did find children involved in a variety of activities that were suggestive of child labour and the worst forms of child labour. Most cases were associated with tourism, the drug trade and the informal sector. The observation was made that legal loopholes, inadequate monitoring of school attendance and the informal sector, as well as a general tolerance of children working together created an "enabling environment" for child labour. Moreover, poor values and inadequate awareness and respect for laws and the rights of children contribute to the worst forms of child labour.

Dunn attributed the causes of child labour in the Bahamas to materialistic values, poverty, family crises, poor parenting and inadequate awareness of children's rights. It is therefore important that strategies for the prevention of child labour should focus not only on expanding employment opportunities, poverty alleviation, social security, education and welfare of children, but also on family life issues and moral and spiritual values.

4 Review of Policy, Legal and Institutional Framework on Child Labour

ILO Convention No. 182 was ratified by the Bahamas within two years of its adoption. ILO Convention No. 138 on the other hand, was ratified after a period of thirty-one years. In accordance with the ILO Constitution, the Government of the Bahamas is obliged to take measures to ensure that its laws comply with the requirements of these Conventions.

4.1 Policy

As indicated in the previous Chapter, ILO Convention No.136 attaches fundamental importance to the need for a national policy on child labour. The *first Article* of the Convention imposes a primary obligation upon member States to pursue a national policy designed to ensure the effective abolition of child labour.

While ILO Recommendation No.146 specifies the scope of such policy, it is submitted that the subsequent adoption of ILO Convention No.182 requires further policy elaboration to incorporate that Convention's specific concerns. It is also important that while the policy must reflect the requirements of the Conventions on child labour, it must also be country specific taking into consideration the socio-economic situation of the Bahamas. Moreover, it must be conceptualized as a part of a broader policy framework for the protection and development of the rights of children, regardless of whether they are labour connected.

From a legal perspective, *policy should determine the scope and administration of the law on child labour. Law should be consistent with policy but the ambit of policy is wider than laws.* Laws may indicate what conduct should be proscribed, the penalties for violations, the competence and powers of institutions and prescribed persons, and the procedures for enforcement. *Policy addresses legal as well as broader issues of goals, strategies, action plans, institutions and resources. Ideally, policy should precede legislation.*

Unfortunately, although the Bahamas has sound national policies in areas connected with child labour, such as education, childcare protection, welfare, social security, labour administration and other social development, there is no coherent explicit policy on child labour. What exist are related policies that were formulated without any specific reference to the Convention on child labour.

One reason for the absence of a comprehensive policy on child labour in the Social Protocol or elsewhere in the Bahamas may be attributed to the historical perception on the part of officials and social partners that child labour did not exist in The Bahamas. The author's experience confirms the finding of the Dunn's report that most Bahamians

consulted associated child labour with sweatshops in other countries. Moreover, some child labour activities identified by Dunn such as crabbing were referred to by officials as social activities and not child labour.

It is argued that the apparent lack of knowledge of the existence of child labour on the part of the competent authority, the Labour Department, is attributed to that fact that:

- (i) child labour tends to be limited to the informal sector which is generally not adequately inspected by the Labour Department;
- (ii) the unconditional worst forms of child labour constitute criminal offences that have not been characterized in law as child labour. They have always been perceived as criminal acts and not child labour. Law enforcement officers as well as Labour Officers do not readily see the connection between these offences and child labour. Moreover, they are not monitored by the Labour Department;
- (iii) the difficulty in distinguishing between legitimate child work and child labour due to the inadequate awareness of the meaning of the term child labour as defined in the ILO Conventions.

It is significant to note that the Ministry of Labour and Immigration has initiated action to remedy the policy deficiency and has recently established a *National Committee on Child Labour* whose task is *to make recommendations for a policy on child labour*. This Committee has as its members the following agencies:

- Ministry of Labour and Immigration;
- Office of the Attorney General
- Ministry of Education;
- Department of Social Services;
- Social Services Department;
- Department of Statistics;
- Bahamas Trade Union Congress;
- National Trade Union Congress;
- Bahamas Employers' Federation.

It should be noted that this Committee is *not connected with other national committees dealing with the rights of the child*. The Ministry of Labour may consider the approach used by Guyana in having in the Committee a membership that is broader than Government officials, including non-governmental organizations engaged in the welfare of children.

In addition, a useful structure exists in Belize where the Committee considering the formulation of policies on child labour is a sub-Committee of the National Commission on Families and Children and headed by the Director of Labour Administration. Thus, the policies are considered within a broader policy, administrative and institutional context that seeks to connect all programmes and institutions promoting the protection of the rights of the child.

In the Belizean model, the national policy is being formulated in a coherent and coordinated manner. This will ensure that all aspects of child labour, including legislation, education, labour market policies, social security, health, welfare and social development are properly addressed and coordinated.

It is important that the child labour policy must provide the framework within which all institutions approach their individual and collective tasks of seeking to abolish child labour. It should also facilitate an integrated and coordinated approach by all agencies in the implementation of their work programmes. Each agency will identify the connection of their work with the work of other agencies. Moreover, a policy framework will also serve to guide the administration of the laws on child labour.

It is submitted that a national policy on child labour should be specific to the socio-economic conditions of the Bahamas and contain the following elements:

- a definition of national objectives regarding child labour;
- a connection between these policy objectives and overall policies on families and children and national development policy;
- the national social, economic and legal background;
- a description of the nature, extent of and context, including causes, of the problem;
- information gathering and information sharing;
- identification of priority target groups;
- assessing hazardous work;
- resource capacity required;
- description of the main programme areas and types of interventions, including strategies required for the prevention, removal and reintegration of children engaged in child labour activities with indicator, goals and budgetary allocations;
- identification of short term medium term and long term action plans;
- designation of the institutional actors, their roles and functions;
- role of tripartite consultations and social dialogue;
- role of broader community consultation;
- legal framework to eliminate child labour and provide redress for child victims;
- the administrative framework for ensuring the effective and coordinated implementation;
- education and advocacy;
- training of child labour inspectors
- enforcement principles;
- effective review and monitoring mechanisms;
- regional and international cooperation.

It is recommended that the following steps should be taken in adopting a national policy:

- (i) collection of reliable data and information through surveys and other method of assessing the child labour problem;

- (ii) a forum for government, employers' and workers' organizations and NGOs to reflect on the strengths and weaknesses of existing policies and programmes;
- (iii) identification of priority target groups in the programmes of action;
- (iv) identification of main programme areas and types of interventions in the programmes of action;
- (v) adoption of the national policy and programme of action geared towards the elimination of the worst forms of child labour.

In terms of programmes, the role of education is universally recognized as an important solution to the elimination of child labour. However, improvements in the education system are not enough because, as the Dunn's report indicated, child labour is also linked to materialistic values, poverty, family life issues, single parent households and poor parental skills. Intervention in education needs to be accompanied by interventions in the labour markets and by social protection measures, such as family support services, if programmes are to be effective and successful.

Interventions must also aim at empowering the poor. According to the ILO publication entitled "*Action Against Child Labour*", interventions must also include a strong and effective labour inspectorate; an independent and competent judicial system; and the provision of income-earning opportunities to the poor through employment creation and poverty alleviation schemes; small enterprise development; minimum wage systems and social safety nets for the most needy.

Bahamas may also wish to undertake a cost benefit analysis of the interventions required to eliminate child labour. In this regard, the 2004 ILO/IPEC study entitled "*Investing in Every Child: an Economic Study of the Costs and Benefits of Child Labour*" provides an interesting methodology for such study. The study estimated the costs of:

- (i) building new schools, training and hiring new teachers, supplying additional educational materials;
- (ii) administering the income transfer programme to defray the cost to households of transferring children from work to school;
- (iii) achieving the urgent elimination of the worst forms of child labour and addressing the needs of special populations; and
- (iv) the value of child labour foregone.

In terms of benefits, the study identified:

- (i) improved productivity and earning capacity associated with greater education; and
- (ii) reduced illnesses and injuries due to the elimination of the worst forms of child labour.

Putting together these two analyses—net economic benefits and public sector costs—the study demonstrated that a protracted period, approximately fifteen years, of net costs is followed by an even longer period of still larger net benefits. Indeed, the costs are complete after 20 years, but the benefits continue for as many as 40 years past that point.

The study advocates that the child labour elimination programme be placed on the table in discussions over debt relief and development assistance.

4.2 Legal Framework

4.2.1 Minimum Age for Employment

As noted earlier, ILO Convention No. 138 requires member States to determine one general minimum age for admission to all types of employment. This age should not be lower than the compulsory age for the completion of basic education and in any case not less than 15 years. The general minimum age is to be determined at the time of ratification of the Convention.

The Bahamas, after consultation with the social partners, has determined a minimum age for admission to employment or work at age fourteen (14). The Employment Act of 2001 Part X deals with Employment of Children and Young Persons. Section 50 (1) of the Act prohibits the employment of a child under the age of fourteen (14) *in any undertaking*. In the case of *employment on ships*, the minimum age is sixteen (16) years. Section 56(1) states that it shall not be lawful to employ any young person under the age of sixteen upon any ship other than a ship –

- (a) upon which only members of the same family are employed; or
- (b) within the waters of the Bahamas.

There are *four exceptions*, listed in the First Schedule to the Act, to the prohibition stipulated in Section 50 (1). They are grocery packers, gift wrappers, peanut vendors, and newspaper vendors. It should be noted that the exceptions are applicable for a limited period of five years and expires in the year 2006. They are also subject to amendment by the Minister of Labour and Immigration. Section 50 (2) gives the Minister of Labour and Immigration the power to amend the First Schedule. The procedure for amendment requires consultation with the confederation representative of a majority of employers and trade unions and an affirmative resolution of the House of Assembly.

The law does not provide a minimum age for employment in the four exceptions. This is a lacuna in the legislation as technically a child of any age can engage in work in the four activities mentioned in the First Schedule to Act No. 27 of 2001.

The law seeks to ensure that employment does not prejudice the educational development of children and young persons. Section 51 of the Act *prohibits employment of children or young persons at any time during which a school they attend is in session, or during such other periods as may prejudice their attendance at school or render them unfit to obtain the benefit of the education provided for them*. From a Caribbean perspective, this is a commendable provision. It prohibits all school children, including those above the compulsory age for schooling, from working during school hours. Other

Caribbean countries only prohibit school children of compulsory school age from so working.

Section 57 of the Act also provides a general prohibition of night work for children (under age fourteen (14) years and young persons (between fourteen (14) and eighteen (18) years) subject to certain limited exceptions specified in the Second Schedule to the Act. This Schedule entitled “Employment of Young Persons in Night Work” states that a young person may be employed in the following undertakings –

- (a) hotels;
- (b) restaurants;
- (c) food stores;
- (d) general merchandise stores;
- (e) gas stations.

There seems to be a drafting defect here. The term ‘*night work*’ is defined in Section 49 of the Act as work in an industrial undertaking. However, the statutory exceptions relating to night work by young persons do not fall within the scope of industrial undertakings. An industrial undertaking is defined in Section 49 as restricted to:

- (a) a mine, quarry, or distillery, or a sugar, spirit compound, match, soap, cigar or cigarette factory, or any undertaking in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, including shipbuilding and the generation, transformation and transmission of electricity and motive power of any kind, or any agricultural undertaking;
- (b) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundation of any such work or structures;
- (c) transport of passengers or goods by road or rail or inland waterway including the handling of goods at docks, quays, wharves and warehouses but excluding transport by hand.

The Second Schedule may be amended by the Minister of Labour and Immigration after consultation with a confederation representative of a majority of employers and associations of employers and an association of registered trade unions representative of a majority of employees, subject to affirmative resolution of the House of Assembly. He may also by virtue of Section 58 suspend the prohibition of night work for such period as he may deem necessary subject to the same procedures.

Night work is defined in Section 49 of the Act as work *in an industrial undertaking* during any time between the hours of eight o’clock in the evening and six o’clock in the morning. Technically therefore, a child who works in the permitted categories may be

engaged in night work. *It is therefore recommended that the definition of night work be amended to include all undertakings without any exceptions.*

The Employment Act also provides restrictions on the number of hours per day and per month that a *young person* may work outside of school hours. Section 59 provides that a young person may work outside school hours under the following conditions –

- (a) in a school day, for not more than three hours;
- (b) in a school week, for not more than twenty-four hours;
- (c) in a non-school day, for not more than eight hours;
- (d) in a non-school week, for not more than forty hours.

The statutory limitation placed on the number of hours that a young person could work in a school day, school week and non school days is a good practice, which could be adopted in other Caribbean countries.

It should be noted that for the purposes of this Section, a young person is defined as a person who is fourteen (14) years of age and upwards and under the age of eighteen (18) years. The restrictions on working hours stipulated in Section 59 do not apply to a child under the age of fourteen (14) years. Therefore a child who is permitted under the Act to work as a grocery packer or a gift wrapper or a peanut vendor or a newspaper vendor may technically work at night and work in excess of three hours per day on a school day. The only regulation affecting the condition of his work is Section 51 which states that such child is not permitted to work during school hours or during such other periods as may prejudice his attendance at school or render him unfit to obtain the full benefit of the education provided for him.

It is therefore submitted that Section 59 be amended to include not only young persons but also children to address the lacuna identified in the preceding paragraph.

With respect to recruitment for overseas employment, the Recruiting of Workers Act, Chap. 318 Section 5 prohibits the recruitment of persons under the age of eighteen years. *This is a good practice, which should be adopted throughout the Caribbean. At present the law in Barbados and Trinidad and Tobago allows recruitment for overseas employment at age 16 years.*

While ILO Convention No. 138 sets the age of fifteen (15) years as a minimum age, it promotes the age of sixteen (16) years as the benchmark. It permits a temporary minimum age of fourteen (14) years only in circumstances where the economy and educational facilities of the country are insufficiently developed. It is submitted that there are no objective grounds for the Bahamas to avail itself of this special dispensation. The Bahamas' economy and educational facilities cannot reasonably be considered to be insufficiently developed. The Bahamas is a high human development country. Its per capita income is the highest in the region where other countries such as Barbados and Trinidad and Tobago, which has set its minimum age for employment at 16 years. Moreover, it has already established a compulsory maximum age for schooling at 16

years and has adequate facilities to achieve this objective. The minimum age for employment set at fourteen (14) years is therefore inconsistent with Article 2 (3) of ILO Convention No. 138, which states that the minimum age shall not be less than the age of completion of compulsory age.

It is recommended that to be fully compliant with ILO Convention No. 138, the Employment (Miscellaneous Provisions) Act needs to be amended to provide that as a general principle, the minimum age for admission to employment in all undertakings, should be 16 years of age, that is, the same as that of the compulsory age for education. The Bahamas should however be commended for setting a general minimum age for all sectors, subject to very limited exceptions for a limited duration. This contrasts with other countries, which have set minimum age only for the industrial sector.

4.2.2 Exception for Light Work

It should be noted here that ILO Convention No. 138 makes provision for a lower minimum age for light work. Light work may be undertaken by children two years younger than the declared minimum age for admission to general employment. Light work is work which is “*not likely to be harmful to the health or development of young persons and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.*” However, the activities, number of hours and other conditions in which such work may be permitted must be determined by the competent authority.

Although the Employment Act does not specifically characterize the exception in the four categories of work mentioned above from the minimum of fourteen years for employment as light work, it is de facto an exception for light work. However, one lacuna in the Act is that it does not stipulate any minimum age for employment in these categories. To be consistent with the Convention, there should be a minimum age of two years younger than the general minimum age for employment and should be set at 12 years, where the minimum age for general employment is 14. *Given the suggestion that the minimum age for employment should be consistent with the compulsory age for education and the recommendation that the minimum age should be 16 years, it is recommended that the minimum age for the exceptional categories mentioned in this paragraph should be fourteen and not twelve. It is noted that the exceptional category is limited in time until 2006. The Bahamas should be commended for placing a limitation on the exceptional category.*

4.2.3 Exception for Artistic Performances

The issue of the engagement of children for artistic performances is not unusual in the Bahamas as it may be in some other Caribbean countries. The Bahamas is a popular location for shooting foreign films, at times involving child actors. The Bahamas has in place an adequate legal framework to deal with artistic performances of children. Child actors/ artistic performers require a permit (Order) of the Minister of Labour and Immigration in accordance with Section 50 (2) already discussed above. The Minister has to consult with both the employers' confederation and the trade unions congress and the Order is subject to affirmative resolution of the House of Assembly. The Officials of the Ministry of Labour and Immigration and the social partners are satisfied with the manner in which the issue of artistic performances of children are addressed. There are usually regulations in the Minister's Order, which seek to protect the welfare of the child performer.

The Bahamas should be commended for putting in place a general prohibition on artistic performance of children and a procedure whereby Ministerial dispensation, after consultation with the social partners and Parliamentary approval, could be given on terms and conditions that protect the welfare of the child. This is a practice that could be adopted by other Caribbean countries that have no provision for artistic performances by children.

4.2.4 Hazardous work

Both ILO Conventions No. 138 and No. 182 prohibit the engagement of young persons under the age of 18 years to undertake hazardous work. As indicated earlier, hazardous work is defined as any type of employment or work, which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or moral development of the worker. Convention No. 182 characterizes hazardous work as a worst form of child labour.

In the Bahamas, *the legal framework that addresses the specific concerns of children and young persons with respect to hazardous work is inadequate. The Health and Safety at Work Act No. 2 of 2002*, which seeks to secure the health, safety and welfare of persons at work generally, does not address the requirements of ILO Convention No. 138 and No. 182. It makes no specific provision for the protection of young persons and children at work. There is no provision, which specifically prohibits young persons from hazardous work. There is no determination of hazardous work or any procedure for such determination. Moreover, *there is no obligation for employers to maintain a register of workers under the age of 18 years.*

There are two laws, which address the health, safety and moral development of children at the workplace. The Education Act Chapter 46 Section 37 gives *the Minister of Education the power to prohibit or restrict the employment of children under the age of*

16 years who is registered at a school maintained by him where the child's employment is prejudicial to his/her health or otherwise renders him unfit to obtain the full benefit of an education. The Minister's notice of prohibition may be directed to the parent or the employer of the child to prohibit the employment of the child or to impose such restrictions on the employment of the child, as the Minister deems expedient in the interest of the child.

The Minister may, by notice in writing served upon the parent or employer of any child who is a registered pupil at a school maintained by him/her, require the parent or employer to provide the Minister, within such period as may be specified in the notice, with such information as appears to the Minister to be necessary for the purpose of enabling him to decide whether the child is being employed in such a manner as to render him/her unfit to obtain the full benefit of the education provided for him/her.

Any person who employs a child in contravention of any prohibition or restriction imposed under the Act, or who fails to comply with the requirements of a notice, shall be guilty of an offence against this section, and shall be liable on summary conviction, in the case of a first offence to a fine not exceeding fifty dollars, in the case of a second offence to a fine not exceeding seventy-five dollars, and in the case of a third or subsequent offence to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding one month or to both such fine and such imprisonment.

It is submitted that this legal power on the part of the Minister of Education is too limited to meet the requirements of the ILO Conventions. It does not apply to children between the ages of sixteen (16) and eighteen (18) years. In addition, the Minister of Education does not have any investigative power in the workplace and has to rely on the child's conduct within the education environment.

The other law relates to the prohibition against the employment of persons under 18 years in certain premises that sell liquor. The Liquour Licences Act Chapter 372 prohibits the employment of any person under the age of eighteen (18) years in premises that sell liquor except for hotel or proprietary club or restaurant. The Act does not state whether someone employed in a hotel or proprietary club or restaurant can serve liquor. It is suggested that the Act be amended to prohibit any person under the age of 18 years from serving liquor.

It is recommended that the Health and Safety at Work Act be amended to make provision for the following:

- (i) the prohibition of hazardous work by young persons under eighteen (18) years;
- (ii) a procedure for the determination of hazardous work;
- (iii) an obligation on employers to maintain a register of young persons employed; and
- (iv) appropriate penalties for violation of these proposed provisions.

4.2.5 Exclusions

The Convention includes several flexibility provisions. Apart from the exception for light work, it permits the exclusion of limited categories of work for which special and substantial problems arise. The procedure requires the Government to consult with the social partners in its determination of excluded categories. However, work that is likely to jeopardize the health, safety or morals of young persons may not be excluded. Moreover, States must review excluded categories on an ongoing basis and make progress towards eliminating the special and substantial problems, which make broad application difficult.

The Bahamas should be commended for not restricting the scope of the application of ILO Convention No. 138.

4.3 Unconditional Worst Forms of Child Labour

ILO Convention No. 182 requires member States to eliminate the worst forms of child labour, which are defined as:

- 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 recruitment of children in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs;
- work, which by its nature or the circumstances in which it is carried out, is likely to harm the safety, health or morals of children.

The legislation should in all cases:

- prohibit the worst forms of child labour;
- provide for the determination and periodic revision of the types of hazardous child labour, either directly or by mandating a competent authority to do so;
- establish measures aimed at eliminating the worst forms of child labour;
- apply measures addressing the performance of the worst forms of child labour;
- identify the special needs of certain groups of children who are particularly at risk;
- establish effective implementation and enforcement measures.

4.3.1 All forms of slavery or practices similar to slavery

The Bahamas is a democratic country where fundamental human rights are respected and guaranteed by the Constitution. Chapter 111 of the Constitution provides for the protection of fundamental rights and freedoms. Section 18 protects persons from slavery or servitude or forced labour. Freedom of movement is also entrenched in the

Constitution under Section 25. Moreover, there are constitutional remedies for any breach of these rights and freedoms.

4.3.2 Sale and trafficking of children

The Bahamas is also a party to the Hague Convention on the Civil Aspects of Child Abduction, which protects children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access. The International Child Abduction Act, Chap. 137 provides procedures for the implementation of the Convention in the Bahamas.

However, there exists no specific legislation on human or child trafficking in the Bahamas. There is an offence of abduction with intent to cause the abducted person to be married to, or to co-habit or have sexual intercourse with, any person or to unlawfully take a child from the lawful custody, care or charge of another person. Also, the offence is committed by any person who procures or attempts to procure any person under eighteen years of age to have unlawful sexual intercourse, either in or outside the Bahamas, with any other person. The offence is committed where the procurement takes place by false pretences or false representations, as what happens in some countries, which are the subject of this study, where young girls are encouraged to migrate from the hinterland to the city to work in restaurants and bars in the city and then forced to be engaged in prostitution.

There is also an offence laid down in the Sexual Offences and Domestic Violence Act, Chap. 99 of procurement of a person below the age of 18 years. Section 7 provides that any person who procures or attempts to procure any person under eighteen years of age to have unlawful sexual intercourse, either in or outside the Bahamas, with any other person commits an offence.

There is also an offence of child stealing under the Penal Code, Chap. 84 Section 288. From a child labour perspective, it is significant to note that an employer having temporary possession, care or charge of a child can commit the offence of child stealing if the employer does not have the consent of the child or his parent or guardian. It is not necessary that the taking or detaining should be without the consent of the person taken or detained, and it suffices if the child is persuaded, aided or encouraged to depart or not to return. It is also not necessary that there should be intent permanently to deprive any person of the possession or control of the child taken. Mistake as to the age of the child is not an excuse.

From an ILO Convention perspective, one deficiency in this law on child stealing is that it is only applicable to children below the age of 16 years. Children between 16 years and eighteen (18) years are not covered. It is therefore recommended that the Penal Code provisions on child stealing should be amended to be applicable to all children

under the age of 18 years. It is also recommended that legislation be enacted to deal with child trafficking.

In addition, the Government of the Bahamas may wish to consider introducing comprehensive legislation on the sale and trafficking of children similar to the Combating Trafficking in Persons Bill in Guyana. This Bill meets the requirements of ILO Convention No. 182 in areas relating to trafficking of children, commercial sex activities, debt bondage and forced labour. It provides for the offence of trafficking in children. Clause 3(1) provides that whoever engages in or conspires to engage in or attempts to engage in or assists another person to engage in or organizes or directs other persons to engage in trafficking in persons shall

- (c) be sentenced to any term of years or life imprisonment;
- (d) be subject to forfeiture of property; and
- (e) be ordered to pay full restitution to the trafficked person.

Clause 3(2) provides that the recruitment, transportation, transfer, harbouring, or receipt of any child, or the giving of payments or benefits to obtain the consent of a person having control of a child for the purpose of exploitation shall constitute trafficking in persons. The purpose of the trafficking is not limited to sexual exploitation. It includes keeping a person in slavery or subjecting the person to practices similar to slavery; compelling a person to provide forced labour or services; keeping a person in servitude and engaging in any form of sexual exploitation such as pimping, pandering, procuring, profiting from prostitution, maintaining a brothel and child pornography. A child for the purposes of this bill is someone under the age of 18 years.

The Bill in Clause 9 provides that consent or past sexual behaviour of the victim is not a defence and is irrelevant to the prosecution. The offence of trafficking in persons is an extraditable one. In addition, assistance is provided in the Bill to allow non-national victims to remain in Guyana for the duration of the prosecution.

Special provision is made for the evidence of victims who are children. Clause 25 provides that special programmes should be developed to accommodate child witnesses including:

- i. testimony of minor conducted outside court setting by video;
- ii. all testimony and court proceedings take place with parent, legal guardian or foster parent present;
- iii. whenever safe and possible, children should be reunited with family members either in country of origin or destination;
- iv. special mental and physical medical care tailored to the child's needs;
- v. child victims of trafficking should be guaranteed education.

4.3.3 Debt bondage, serfdom, forced and compulsory labour

The Constitution of the Bahamas prohibits forced labour. Section 18(2) states that no person shall be required to perform forced labour.

3) For the purposes of this Article, "forced labour" does not include-

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour which that person is required by law to perform in place of such service;
- (c) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained; or
- (d) any labour required during a period of public emergency (that is to say, a period to which Article 29 of this Constitution applies) or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

In addition Section 5 of the Recruiting of Workers Act, Chap. 318 prohibits the recruitment of persons under the age of 18 for overseas employment. By Section 9 any person who acts in contravention of or fails to comply with any of the provisions of this Act, or the regulations made thereunder, shall be guilty of an offence and shall be liable on summary conviction to a fine of four hundred dollars or to imprisonment for twelve months or to both such fine and imprisonment.

The prohibition of the recruitment of persons under the age of 18 for overseas employment is a good practice and should be adopted by other countries, whose laws have a lower age threshold for such recruitment.

4.3.4 Compulsory recruitment of children in armed conflict

The Defence Force Act, Chap: 211 prohibits the recruitment of persons under the age of 18 to the Defence Force. Section 16 (2) provides that a recruiting officer shall not enlist a person under the age of eighteen years in the regular Force. Moreover, the onus is on the Recruiting Officer to be satisfied that a recruit is over the age of 18 years. By Section 16 (3) where the recruiting officer is satisfied by the production of a certified copy of an entry in the register of births or by any other evidence appearing to him to be sufficient, that a person offering to enlist has or has not attained the age of eighteen years, that person shall be deemed for the purposes of this Act to have attained, or as the case may be, not to have attained, that age. *This law, which prohibits the recruitment of persons*

under the age of 18 to the Defence Force, is a good practice and should be adopted by other countries, whose laws have a lower age threshold for such recruitment.

4.3.5 Use, procuring or offering a child for prostitution, pornography or pornographic performances

The Penal Code S33 prohibits the immoral traffic and offences against children under the age of 16 years. This includes prostitution, pornography and pornographic performances. A Police Officer may take into custody without a warrant any person who in his view has committed such an offence where the name and address of such offender are unknown to such Police Officer and cannot be ascertained by him. Where a person is charged with any of the offences against females or children in respect of a child who is alleged in the complaint to be under any specified age and the child appears to the magistrate or the court to be under that age, such child shall for the purposes of this Code be deemed to be under that age, unless the contrary is proved.

Under Section 41, if it appears to any magistrate, on complaint laid before him upon oath by any parent, guardian, or relative of any female or by any other person who, in the opinion of the magistrate, is bona fide acting in her interests, that there is reasonable cause to suspect that she is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, he may issue a warrant authorizing any person named therein to search for her, and when found, to take her to and detain her in a place of safety until she can be brought before him or some other magistrate; and the magistrate before whom she is brought may cause her to be delivered up to her parents or guardian or to be otherwise dealt with as circumstances may permit and require. The magistrate issuing the warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining the female to be arrested and brought before him or some other magistrate, and proceedings to be taken for punishing the person according to law.

A female shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any person, whether any particular person or generally, and either-

- (a) is under sixteen years of age;
- (b) if of or above sixteen years of age and under eighteen years of age, is so detained against her will or against the will of her father or mother, or of any other person having the lawful care or charge of her;
- (c) if of or above eighteen years of age, is so detained against her will.

Any person who is authorized by warrant under this section to search for any female so detained may enter (if need be by force) any house, building or other place mentioned in the warrant and may remove her therefrom.

Where a person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction or influence over the movements of a

prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution with any other person or generally, such person shall, unless such person can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Upon the conviction of the tenant, lessee or occupier of any premises of knowingly permitting the premises, or any part thereof, to be used as a brothel, the landlord or lessor shall be entitled to require the person so convicted to assign the lease or other contract under which the said premises are held by him to some person approved by the landlord or lessor, which approval shall not be unreasonably withheld, and, in the event of the person so convicted failing within three months to assign the lease or contract as aforesaid, the landlord or lessor shall be entitled to determine the lease or other contract but without prejudice to the rights or remedies of any party to such lease or contract accrued before the date of such determination. If the landlord or lessor should so determine the lease or other contract of tenancy, the court or magistrate which or who has convicted the tenant, lessee or occupier shall have power to make a summary order for delivery of possession to the landlord or lessor.

If the landlord or lessor after such conviction has been brought to his notice fails to exercise his rights under the foregoing provisions of this section and subsequently during the subsistence of the lease or contract any such offence is again committed in respect of the premises, the landlord or lessor shall be deemed to have knowingly aided or abetted the commission of that offence, unless he proves that he had taken all reasonable steps to prevent the recurrence of the offence.

The above laws fall short of the requirements of ILO Convention No. 182 on the grounds that they offer no protection to male victims and female victims between the ages of sixteen (16) years and eighteen (18) years. *It is therefore recommended that Sections 33 be amended to include protection for victims between the ages of sixteen (16) years and eighteen (18) years and Section 41 be amended to include male victims.*

4.3.6 Use, procuring or offering a child for illicit activities, production and trafficking of drugs

There are laws against the use, production and trafficking of dangerous drugs. There is an offence of aiding and procuring another person to use, produce and traffic in drugs but there is no specific offence regarding the use, procuring or offering a child for illicit activities.

In fact, the law provides for penalties for child offenders. Chapter 228 Section 22 provides that where a child or young person is charged with committing an offence with intent to supply a dangerous drug to another child or young person, the charge shall be heard by a magistrate who shall, if satisfied of the guilt of the child or young person so

charged, order him to be committed to an industrial school or place of detention for a period not exceeding five years.

In light of the findings of the Dunn Report that children were used by adults in the trafficking of drugs the Dangerous Drugs Act should be amended to make a specific offence of the use or procurement of children in the trafficking of dangerous drugs with appropriate penalties to reflect the seriousness of the offence.

4.4 Enforcement

ILO Convention No. 138 provides that all necessary measures must be taken by member States to ensure the effective enforcement of the provisions of the Convention. Minimum age provisions should be enforced through sanctions. The legislation should:

- provide for penalties and other necessary measures for violations of child labour provisions (Article 9 (1);
- ensure that the law provides for sanctions for all persons responsible for under-age employment (e.g. employers, parents, guardians, etc.)
- ensure that sanctions are sufficiently deterrent;
- diversify sanctions between criminal, civil and administrative sanctions;
- diversify sanctions as a function of the seriousness of the offence, e.g. heavier sanctions for the employment of children in hazardous work, heavier sanctions for repeat offenders;
- facilitate the access of children to legal remedies, e.g. by ensuring that children can join trade unions as soon as they are admitted to work, or by guaranteeing legal standing for trade unions (or other civil society organizations concerned with child labour) to represent children in law;
- ensure that laws do not subject children themselves to penalties for engaging in under-age work even if it is illegal.

There are legal sanctions in the Bahamas on employers and others responsible for child labour violations. Section 52 (1) of the Employment Act of 2002 provides that if any person employs a child or young person contrary to any of the provisions of the Act, he shall be liable to a fine of one thousand dollars. Section 52 (2) imposes a like fine on any parent or guardian of a child or young person who has consented to the commission of the alleged offence by willful default, or by habitually neglecting to exercise due care.

Section 53 imposes a similar liability on an agent or employee of employer where the offence of taking a child or young person into employment contrary to the Act is committed by such agent or employee.

The Employment Act also makes provision for false representation as to age and presumption of age. Section 54 states that where a child or young person is taken into employment in contravention of the Act, on the production, by or with the consent of the parent or guardian, of a false or forged certificate, or on the false representation of his

parent or guardian, that parent or guardian shall be liable to a fine of one thousand dollars.

Section 55 provides that, if in a charge for an offence, it is alleged that the child or young person in respect of whom the offence was committed was under the age of fourteen or eighteen, as the case may be, at the date of the commission of the alleged offence, he shall, unless the contrary is proved, be presumed at that date to have been under the age of fourteen or eighteen years as the case may be.

It should be noted that the Minimum Wages Act No. 1 of 2002 does not apply to children and young persons. It is recommended that this Act should be amended to apply to children and young persons.

4.5 Investigation and inspection

In order to properly enforce child labour laws and create effective programmes aimed at the elimination of child labour, instances of child labour and the circumstances surrounding such labour first have to be identified. The Conventions provide for the identification of occurrences of child labour by:

- a legal requirement for a systemic review of the national child labour situation, including the collection of detailed information and statistical data on the nature and extent of child labour, including information on:
 - the sex of child workers, their age, occupation, branch of economic activity, status in employment, school attendance and geographic location;
 - violations of national provisions for the prohibition and elimination of the worst forms of child labour; and
- ensuring that NGOs, trade unions, religious institutions, charitable organizations and other concerned groups play a role in the investigation of child labour.

In the Bahamas, there is no legislative or institutional mandate for a systemic review of the national child labour situation. The lack of legislation is generally not an impediment to the review of the child labour situation. Policy or administrative arrangements could be made even in the absence of legislation for such a review. However, in the Bahamas there has been no systematic review. In fact, the recent Annual Reports of the Labour Department seen by the author made no reference to child labour in terms of investigation, inspections or policy development.

It is recommended that consideration be given to amending the Employment Act to provide for a legal duty on the part of the Director of Labour Administration to have systemic reviews of the child labour situation in the Bahamas.

Once the existence of child labour is established, compliance with minimum age legislation should be actively pursued. Inspection services normally carry out this function, and a legal mandate is important to ensure that their work is bolstered by the

necessary authority and carried out equitably. In providing for such a mandate, the legislation could:

- establish a framework for the operation of labour inspection setting out certain necessary entitlements, including training to detect abuses in the employment of children and young persons and to correct such abuses, adequate transportation in order to inspect rural areas, etc;
- ensure that labour inspection services have the power to secure the enforcement of legal provisions relating to the employment of children and young persons;
- ensure that the mandate of the labour inspection services extends to all workplaces where child labour actually exists;
- establish the role of inspectors in supplying information and advice on effective means of complying with child labour provisions and securing their enforcement;
- mandate a gender balance within the labour inspection services;
- ensure that labour administration services (including labour inspection services) work in close cooperation with the services responsible for the education, training, welfare and guidance of children and young persons;
- provide that the labour inspection services have a duty to respond to alleged violations reported by trade unions or any other public organizations which, in the discharge of their functions, are liable to obtain critical information on violations of the provisions relating to child labour.

In the Bahamas, the Labour Inspectorate Unit does not have the human resource capability or the administrative framework to conduct the requisite inspection of workplaces for child labour. Significantly there is no requirement for employers to have a register of employees under eighteen (18) years. The Dunn Report found that most child labour took place in the informal sector, which is not generally inspected by the Inspectorate. In addition, the Minimum Wages Act is not applicable to persons under the age of 18 years.

It is recommended that the Labour Inspectorate Unit be given the specific mandate and resources to target child labour in its inspections.

4.6 Institutional Framework

The provisions relating to the worst forms of child labour are administered by a number of state agencies. The Ministry of Labour and Immigration is the competent authority and has lead responsibility for enforcing legislation relating to the minimum age for employment and work and hazardous work. However, this Ministry has not yet developed the capability or programmes for the monitoring of the situation of child labour or for the elimination of child labour. Its Annual Reports do not address issues of child labour and until the Dunn Study the Ministry's official view was that child labour did not exist in the Bahamas. The Ministry has established a Committee to develop an action plan to address the issue of child labour. One major constraint is the manpower capability in the Ministry to service a multi-island country.

In the areas of unconditional worst forms of child labour, because they are traditionally considered to be crimes, they are enforced by the Bahamas Police Service. The Bahamas Police Service enforces the criminal law. The worst forms of child labour are enforced within the context of the Bahamas Penal Code and not within the context of the ILO Convention on Child Labour. It is recommended that there should be a public awareness programme on child labour within the Police Service. In addition, the Police Service should play an important role in the formulation and implementation of any programme to address the issue of child labour.

The Social Services Department is the lead agency for the prevention and protection of children. The Social Services Department, while it does not focus specifically on child labour, provides wide ranging child protection services to ensure that there is no need for children to seek employment. They administer a welfare system for children and families in need. Other forms of assistance such as the employment creation for females with dependant children are available. In addition, the General Assistance Programme provides food, clothing and disability allowance on the basis of need. The Placement Services Unit screens prospective foster and adoptive parents, oversees the placement of children and provides follow-up care of children in foster and adoptive homes. The Social Services Department's role also includes the removal and rehabilitation of children at risk. This includes children engaged in the worst forms of child labour.

The Ministry of Education also plays an important role in the prevention of child labour. There is the legal right to compulsory free education up to the age of 16 years. The Minister of Education has a legal duty to provide school places for all children up to the age of 16 years. It is also the legal duty of parents to ensure the education of their children. If a child of compulsory school age fails to attend school, the parent shall be guilty of an offence under the Education Act Section 29.

It should be noted however that the Education Ministry does not directly address the issue of child labour. Its primary goal is the development of the full potential of the child thereby obviating the need for child labour but it does not place any priority on advocacy for the elimination of child labour.

5 Conclusions and Recommendations

The Bahamas has an obligation to ensure that its laws comply fully with the requirements of ILO Convention No. 138 and No. 182 on child labour and the worst forms of child labour and that all measures are in place for the implementation of the Convention.

Policy

The Bahamas has yet to develop a comprehensive policy for the elimination and prevention of child labour. Although it has sound national policies in areas connected with child labour, such as education, childcare protection, welfare, social security, labour administration and social development; there is no coherent explicit policy on child labour.

It is also important that the national policy be formulated in a coherent and coordinated manner. This will ensure that all aspects of child labour, including legislation, education, labour market policies, social security, health, welfare and social development are properly addressed and coordinated. It must provide the framework within which all institutions approach their individual and collective tasks of seeking to abolish child labour. It should also facilitate an integrated and coordinated approach by all agencies in the implementation of their work programmes. Each agency will identify the connection of their work with the work of other agencies. Moreover, a policy framework will also serve to guide the administration of the laws on child labour.

Legal Framework

Minimum Age for Employment

The Employment Act needs to be amended to provide one general minimum age of sixteen (years) for admission to employment in all undertakings.

Light Work

The Employment Act needs to be amended to provide a minimum age for employment in the First Schedule dealing with employment of children as grocery packers, gift wrappers, peanut vendors and newspaper vendors. Given the recommendation that the minimum age for admission to work should be sixteen (16) years, it is submitted that this minimum age should be fourteen (14) years.

Artistic Performances

The Bahamas has in place an adequate legal framework to deal with artistic performances of children, which serves as a benchmark for the rest of the Caribbean.

Hazardous Work

The legal framework that addresses the specific concerns of children and young persons with respect to hazardous work is inadequate. It is recommended that the Health and Safety at Work Act be amended to make provision for the following:

- (i) the prohibition of hazardous work by young persons;
- (ii) a procedure for the determination of hazardous work;
- (iii) an obligation on employers to maintain a register of young persons employed; and
- (iv) appropriate penalties for violation of these proposed provisions.

Unconditional Worst Forms of Child Labour

There are laws in the Bahamas which outlaw most activities involved in the worst forms of child labour. However, these laws are not characterized as child labour but as criminal offences and there are some deficiencies and gaps. There is no specific offence of child trafficking, and the upper age limit for some offences under the Offences against the Persons Act and the Sexual Offences Act is below the age of 18 years.

It is recommended that the Bahamas should enact a legal framework for addressing the unconditional worst forms of child labour.

Institutional Arrangements

The Employment Act should be amended to impose a duty on the Minister of Labour and Immigration to have a periodic systemic review of the situation of child labour.

The Government needs to develop a programme of action to eliminate, as a matter of priority, child labour and the worst forms of child labour. In addition, Labour Inspectorate should be given additional manpower resources and training to implement such a programme.

The Social Services Department and Ministry of Education, in collaboration with the Ministry of Labour and Immigration, should develop time-bound measures for the elimination of child labour and the removal of children from the worst forms of child labour. The Government is urged to proceed with a sense of urgency to develop its time-bound measures for the elimination of child labour.

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Programmes: Guidelines for Strengthening Legislation, Enforcement and Overall Legal Framework ILO/IPEC

The laws reviewed were:

- Employment Act, 2001
- Constitution of the Bahamas, 1973
- Title XI, Brothels and Immoral Traffic (Penal Code)
- Children and Young Persons Administration of Justice Act
- Chapter 318, Recruiting of Workers Act, 28 of 1939
- Dangerous Drugs Act, 1988
- Sexual Offences and Domestic Violence Act, Chap. 99
- Education Act, 1962 (including 1996 amendments)
- Liquor Licences Act Chap. 318;
- Minimum Wages Act No. 1 of 2002;
- Health and Safety at Work Act No. 2 of 2002

APPENDIX I

Summary of Good Practices in Countries Studied

Policy on Child Labour

- (i) The Steering Committee to consider the development of a policy for the prevention and elimination of child labour is appointed by Cabinet. (*Guyana, Trinidad and Tobago*)
- (ii) The Steering Committee is a sub-Committee of the National Committee on Families and Children or with direct links to such a Committee. (*Belize*)
- (iii) The policies for the prevention and elimination of child labour are considered within a broader policy, administrative and institutional context that seeks to connect all programmes and institutions promoting the protection of the rights of the child. (*Belize*)
- (iv) The Prime Minister and the Leader of the Opposition sign a MOU establishing a bipartisan Working Group to build consensus on a National Plan of Action for Children and Adolescents. (*Belize*)

Minimum Age for Employment

- (i) The minimum statutory age declared for admission to work is sixteen years. (*Barbados*)
- (ii) The minimum age for admission to work is consistent with the human development standard of the country. (*Barbados*)
- (iii) One basic minimum age is applicable to all sectors and occupations, without any exception. (*Guyana*)
- (iv) The minimum age for admission to employment is consistent with the compulsory age for completion of schooling. (*Barbados, Guyana*)

Compulsory Age for Completion of School

- (i) All children shall attend school up to the age of 16 years. (*Bahamas, Barbados*)

Light work

- (i) Light work is limited to four activities. (*Bahamas*)
- (ii) Light work is permissible for a period of five years only. (*Bahamas*)

Working Hours

- (i) No child attending school, whether of compulsory school age or not, shall work during school hours. (*Barbados, Bahamas*)
- (ii) No young person shall work from 6:00 p.m. to 7:00 a.m. (*Barbados*)
- (iii) A young person may work outside school hours under the following conditions –
 - a) in a school day, for not more than three hours;
 - b) in a school week, for not more than twenty-four hours;
 - c) in a non-school day, for not more than eight hours;
 - d) in a non-school week, for not more than forty hours. (*Bahamas*)

Artistic Performances

- (i) No child may be engaged in artistic performances unless the competent authority, after appropriate consultations with the representative organizations of workers and employers, gives a permit under terms and conditions that takes into consideration the welfare of the child. (*Bahamas*)

Hazardous Work

- (i) No young person under the age of 18 years shall be engaged in any type of employment or work, by its nature or the circumstances in which it is carried out, is likely to jeopardize their health, safety or moral development. (*All countries*)
- (ii) The Minister of Labour shall, after appropriate consultations with the representative organizations of workers and employers, determine the list of hazardous work and activities. (*All countries*)
- (iii) No person under the age of 18 years shall be employed in connection with the sale or supply of intoxicating liquor on any premises in respect of which a retail member's club or proprietary club licence is granted. (*Barbados*)
- (iv) No person under the age of 18 years shall be wholly or mainly employed in serving intoxicating liquor on any premises in respect of which a restaurant or hotel licence is granted. (*Bahamas*)

- (v) All employers shall maintain a register of workers under eighteen years. Any employer in an industrial undertaking or ship who refuses to maintain a register of young persons employed with them is guilty of an offence. (*All countries*)
- (vi) No young person may be admitted to employment except in occupations approved by Labour Officers as not being injurious to the moral or physical development of the young person. (*Belize*)
- (vii) No young person shall be required to work between the hours of 6:00 p.m. and 7:00 a.m. (*Barbados*)
- (viii) No young person shall be admitted to employment in a factory for a period exceeding 2 weeks unless after a medical examination he has been found fit for the work he is employed to do. (*Barbados*)

All forms of slavery or practices similar to slavery

- (i) The Constitution prohibits all forms of slavery or practices similar to slavery. (*All countries*)
- (ii) In addition to constitutional protection, there is the criminal offence of taking away a child under eighteen years from his parent or guardian: Any person who unlawfully, either by force or fraud takes away any child from his parent or guardian, commits an offence of child stealing. (*All countries*)
- (iii) Criminal offence of ill-treatment of child under eighteen years: Any person over the age of eighteen years, who has custody, charge or care of any child or young person, willfully assaults, ill-treats, neglects, abandons, or exposes the child or young person, or causes or procures the child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause the child or young person unnecessary suffering or injury to health, commits an offence. (*All countries*)

Sale and trafficking of children

- (i) The Combating Trafficking in Persons Bill provides for the offence of trafficking in children. Clause 3(1) provides that whoever engages in or conspires to engage in or attempts to engage in, or assists another person to engage in, or organizes or directs other persons to engage in trafficking in persons shall:
 - (f) be sentenced to any term of years or life imprisonment;
 - (g) be subject to forfeiture of property; and
 - (h) be ordered to pay full restitution to the trafficked person. (*Guyana*)

Clause 3(2) provides that the recruitment, transportation, transfer, harbouring, or receipt of any child, or the giving of payments or benefits to obtain the consent of a person having control of a child for the purpose of exploitation shall constitute trafficking in persons. The purpose of the trafficking is not limited to sexual exploitation. It includes keeping a person in slavery or subjecting the person to practices similar to slavery; compelling a person to provide forced labour or services; keeping a person in servitude and engaging in any form of sexual exploitation such as pimping, pandering, procuring, profiting from prostitution, maintaining a brothel and child pornography. A child for the purposes of this bill is someone under the age of 18 years.

The Bill in Clause 9 provides that consent or past sexual behaviour of the victim is not a defence and is irrelevant to the prosecution. The offence of trafficking in persons is an extraditable one. In addition, assistance is provided in the Bill to allow non-national victims to remain in Guyana for the duration of the prosecution.

Special provision is made for the evidence of victims who are children. Clause 25 provides that special programmes should be developed to accommodate child witnesses including:

- (i) testimony of minor conducted outside court setting by video;
- (ii) all testimony and court proceedings take place with parent, legal guardian or foster parent present;
- (iii) whenever safe and possible, children should be reunited with family members either in country of origin or destination;
- (iv) special mental and physical medical care tailored to the child's needs;
- (v) child victims of trafficking should be guaranteed education.

Debt bondage, serfdom, forced and compulsory labour

- (i) Protection under both the Constitution and Employment Law Act against debt bondage, serfdom, forced and compulsory labour. (*All countries*)

Recruitment of children in armed conflict

- (i) Protection under the Defence Act against compulsory recruitment.
- (ii) Prohibition under the Defence Act of recruitment under the age of eighteen years. (*Bahamas*)

Use, procuring or offering a child for illicit activities

- (i) Protection for children under Dangerous Drug Act:
it shall be unlawful for any person to knowingly and intentionally-
 - (a) employ, hire, use, persuade, entice or coerce a child or a young person to contravene any provision of this Act;
 - (b) employ, hire, use, persuade, induce, entice or coerce a child or young person to assist in avoiding detection or apprehension for any offence under this Act;
 - (c) receive a controlled drug from a child or young person in contravention of any provision of this Act. (*All countries*)

Measures to Prevent Child Labour

- (i) Where a parent of a child or guardian or a person having custody of a child by willful default or neglect fails to exercise due care over such child or conduces to the offence of taking a child into employment contrary to this Act, is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both. (*Trinidad and Tobago*)
- (ii) Education Act places a duty on School Attendance Officers to ensure that the parents are complying with their duty to secure education for their children. School Attendance Officers shall investigate the family circumstances and assist with counselling where necessary or make referrals to other social service agencies, which could facilitate the child's return to school. (*Barbados*)
- (iii) The Minister of Education shall prohibit or restrict the employment of children under the age of sixteen years who are registered at a state-maintained school where the child's employment is prejudicial to his health or otherwise renders him or her unfit to obtain the full benefit of an education. (*Bahamas*)

Enforcement

- (i) The labour inspectors have the power to enter, inspect and examine at all reasonable times, by day and night, any premises or place liable to inspection, when he has reasonable cause to believe to be liable to inspection. He may require the employer to provide documents and information to show that all laws are complied with. (*All countries*)
- (ii) Where, on information of a member of the Police Force, the Port Manager or the Chief Labour Officer, it appears to any Justice of the Peace that there is reasonable cause to believe that a child is employed in any place contrary to the

Act, such Justice of the Peace may authorize any member of the Police Force to enter that place at any reasonable time within forty-eight hours and examine such place and any person therein concerning the employment of any child therein. Any person who assaults, obstructs or intimidates, uses indecent, abusive or insulting language; interferes with, hinders or refuses to admit; or by any gratuity, bribe, promise or other inducement prevents or attempts to prevent from entering such place and examining that person therein a member of the Police Force is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or imprisonment for a term not exceeding twelve months or both. (*Barbados*)

- (iii) Restrictions on the disclosure of information obtained by the Labour Officer in an inspection are only limited to commercial or manufacturing secrets. (*Guyana*)

APPENDIX II

Questionnaire on Child Labour

A. POLICY

- (i) Is there a national policy on child labour? When was it established? Who was the lead agency advocating for the policy? Which agencies participated in its formulation? What were the concerns of the various agencies?
- (ii) What factors led to the policy? How important was the ILO Conventions 138 and 182 to the formulation of the policy? How important was the United Nations Convention on the Rights of the Child?
- (iii) Is there a minimum age for admission to employment? Does the minimum working age coincide with compulsory age for completion of education?
- (iv) Does the policy seek to raise progressively the minimum age for admission to employment to the standard set by the Convention No. 138 (age of completion of compulsory schooling not less than 15)?
- (v) Does the policy prohibit and seek to eliminate the worst forms of child labour? Does it set out clear stages for the elimination of the worst forms of child labour? Does it have short-term, medium-term and long-term goals?
- (vi) Does the policy define hazardous work (likely to jeopardize the health, safety or morals of young persons less than 18 years)? Does it identify vulnerable groups or types of work likely to harm the health, safety and morals of children? Does it take special account of the special situation of girls and other children at special risk? Was there consultation with social partners?
- (vii) Has any special authority been granted to allow persons from 16 years to do hazardous work under special protective measures? Under what conditions?
- (viii) Does the policy exclude or exempt any categories of employment or work from its application? Has there been consultation with the social partners in this regard?
- (ix) Has the policy addressed the issue of light work for students under the minimum working age? Has the State determined the activities in which such employment or work may be permitted?

- (x) Does the policy identify the competent authority(ies) for its implementation? Could you identify the agencies and their role in the implementation of the policy?
- (xi) What policies are in place for the prevention of child labour? What social and economic programmes are in place to remedy the causes of child labour?
- (xii) What policies are on place for the removal and rehabilitation of child workers?
- (xiii) Does the policy provide for a system of monitoring evaluation and review? If yes, what agencies are involved? What information and data are collected?
- (xiv) Does the policy provide for international cooperation and assistance?
- (xv) What policy reforms in education, labour market, social security, health, welfare and social development are required to eliminate and prevent child labour?

B. LEGISLATION

- (i) Is there legislation abolishing or regulating child labour and in particular the worst forms of child labour? If so, what laws?
- (ii) Is there a minimum age for all types of work? Does the legislation coincide with the completion age of compulsory education?
- (iii) Is there legislation on the minimum age for hazardous work?
- (iv) Does the legislation define hazardous occupations? If so, how?
- (v) To what extent has account being taken of Paragraphs 3 and 4 of ILO Recommendation 190 in determining such types of work?
- (vi) Are there any exemptions or restrictions from the application of laws on child labour? If so, please elaborate?
- (vii) Has legislative or other action taken to prohibit and eliminate:
 - (a) all forms of slavery and similar practices of children;
 - (b) the sale and trafficking of children;

- (c) child debt bondage and serfdom;
 - (d) forced or compulsory child labour;
 - (e) the forced recruitment of children for armed conflict;
 - (f) the use of children for prostitution;
 - (g) the use of children for child pornography;
 - (h) the use of children in illegal activities, especially drug production and trafficking?
- (viii) Does the law provide for penalties and other measures for violations of child labour provisions? Does the law ensure that sanctions are provided for all persons responsible for under-age employment (e.g. employers, parents, guardians etc.)?
- (ix) Are the sanctions considered to be sufficiently deterrent? If not, what reforms are considered? Are sanctions diversified between criminal, civil and administrative? Are sanctions diversified as a function of the seriousness of the offence, e.g. heavier sanctions for employment of children in hazardous than in non-hazardous work, heavier penalties for repeat offenders?
- (x) Does the law facilitate the access of children to legal remedies, e.g. by ensuring that children can join trade unions as soon as they are admitted to work?
- (xi) Does the law provide satisfactory conditions for the employment of young persons such as, fair remuneration and its protection; limitation of hours at work; prohibition of overtime; minimum rest periods; minimum annual holidays; satisfactory standards of health and safety; appropriate instruction and supervision; social security schemes; periodic medical examinations?
- (xii) Does the law subject children themselves to penalties for engaging in under-age work?
- (xiii) Does the legislation provide for a system of review of the national child labour situation, including the collection of detailed information and statistical data on the nature and extent of child labour?
- (xiv) Does the legislation establish a framework for the operation of labour inspection in child labour?
- (xv) What are the powers of the labour inspector or any other official to secure the enforcement of legal provisions relating to the employment of children and young person?

- (xvi) Does the legislation ensure that the mandate of the labour inspection services extends to all workplaces where child labour actually exists? If not, what restrictions apply?
- (xvii) Are labour inspectors required by law to supply information on child labour to any other agency involved in child protection?
- (xviii) Does the legislation provide for labour administration services to work in close cooperation with the services responsible for education, training, welfare and guidance of children and young persons?
- (xix) Does the legislation impose a duty upon labour inspection services or other national institutions to investigate reports of alleged violations? Does the law establish any special complaints procedures? Does the law provide for the protection from discrimination and reprisals of those who expose violations of child labour?
- (xx) Does the law provide for an effective system of birth registration?
- (xxi) Does the law require employers to keep and make available documents indicating the names and ages of all workers under 18 years of age?
- (xxii) What is the burden of proof with respect to the actual age of a child in the case of violations of child labour laws? Are there penal sanctions or other sanctions to enforce the laws on the worst forms of child labour?
- (xxiii) Does the law provide for free legal aid to be given to victims of child abuse? Does the law protect the privacy of victims of child labour?
- (xxiv) Is there legislation, which institute social and economic measures to alleviate poverty, such as minimum wages?
- (xxv) Does the law provide for social security and family welfare measures aimed at ensuring child maintenance, including payments to unemployed parents with children, low cost community health and education?
- (xxvi) Is there legislation, which provides for equal pay for work of equal value for young persons and adults?
- (xxvii) Is there legislation, which provides an obligation on employers to protect children from hazardous work?

- (xxviii) Does the law ensure that basic education is free for all and in particular for those who have been removed from situations of child labour?
- (xxix) Does the law provide for the determination and periodic revision of the types of hazardous child labour?
- (xxx) What laws prohibit the sale and trafficking of children; debt bondage and serfdom; forced and compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; or other forms or practices similar to slavery or forced or compulsory labour?
- (xxxi) What laws prohibit child prostitution and pornography?
- (xxxii) What laws prohibit the use of children for other illicit purposes such as the production and trafficking of drugs; the trafficking of other goods; gambling operations; begging; stealing; other organized criminal activities

C. PROGRAMMES

- (i) Are there programmes of action to identify and denounce the worst forms of child labour? Has the State designed and started to implement programmes of action to eliminate the worst forms of child labour? Is it tackled on all fronts (economic, educational, social and cultural)? Have the social partners been consulted? Have the views of other stakeholders been taken into account? What NGOs are involved?
- (ii) What measures is the State taking to eliminate the worst forms of child labour? Are priorities identified? Are the vulnerable groups identified? Are the measures effective? Is the problem of child labour confronted in a wholistic manner?
- (iii) Has the State identified the places and activities where the worst forms of child labour are likely to occur? Were the social partners consulted? Is this list of types of hazardous work likely to be revised periodically?
- (iv) Are effective and time-bound measures being taken to:
 - i. prevent the engagement of children in the worst forms of child labour;

- ii. provide direct assistance to remove children from the worst forms of child labour;
 - iii. provide direct assistance for the rehabilitation and social integration of the children concerned;
 - iv. ensure access to free basic education and to vocational training for such children;
 - v. identify and reach out to children at special risk;
 - vi. take into account the special needs of girls?
- (v) What programmes are there for sensitizing public opinion and mobilizing public support on child labour?
- (vi) What awareness-raising programmes on child labour are targeted to labour inspectors, police officers, employers, trade unions, teachers and social workers?
- (vii) What socio-economic programmes are intended to remedy the causes of child labour;
- (viii) What programmes are in place for social security and family welfare of children at risk?
- (ix) Are adequate financial and human resources provided to eliminate and prevent child labour? What more could be done?

D. ADMINISTRATION AND ENFORCEMENT

- (i) Has the State designated the competent authority responsible for the implementation of the Convention?
- (ii) Has a national mechanism been established to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of legislation?
- (iii) What are the institutions that administer the laws, policies and programmes relating to child labour? Are their roles and authority clearly defined? Are the institutions adequately resourced to implement the programmes?
- (iv) Are labour inspectors trained to detect abuses in the employment or work of children and young people and to correct such abuses? Do they work in close cooperation with the services responsible for the

education, training, welfare and guidance of children and young persons?

- (v) Is special attention paid to the enforcement of provisions concerning employment in hazardous types of employment or work and to the prevention of the employment of children and young persons during school hours?
- (vi) Is there a balance between advisory, enforcement and supervisory functions?
- (vii) Are detailed information and statistical data on the nature and extent of child labour being compiled and kept up to date to serve as a basis for determining priorities for national action? Are the data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. Is there an effective system of birth registration?
- (viii) Is the information at (v) communicated to the ILO on a regular basis?
- (ix) Has the country submitted any declaration to the ILO on the minimum working age?
- (x) What educational/advocacy programmes are implemented for child labour?
- (xi) What alliance has been established to tackle child labour? Who are involved? What training is provided to these organizations to deal with child abuse?
- (xii) What policies are being promoted by employers' and trade unions' organizations to address child labour? What programmes of action are there to sensitize parents to the problems of child labour?
- (xiii) What enforcement devices are available? Are there penal or other sanctions to enforce child labour laws? What are the penalties? Are the sanctions being applied?
- (xiv) Are employers required to keep a register of employees under the age of 18 for inspection by labour inspectors? How do labour inspectors monitor children working in the streets, in outside stalls, in public places, in itinerant occupations or in other circumstances, which make the checking of employers' records impracticable?
- (xv) Has there been any landmark court decision on child labour?

- (xvi) Is the State cooperating with other countries to give effect to the provisions of the Convention?
- (xvii) Has the State provided its status report on child labour to the ILO?
- (xviii) Does the Annual Labour Administration Report give information on child labour?